

Feroz N. Anklesaria

Vs

Union of India and Others

Civil Appeal No. 146 of 1980

(R. S. Sarkaria, R.S. Pathak JJ)

16.01.1981

ORDER

The appellant filed a petition under Article 226 of the Constitution in the High Court of Judicature at Bombay to challenge the order of his dismissal from service passed by respondents. The High Court issued rule nisi to the respondents and the case was set down for hearing on March 23, 1978. On that date neither the writ petitioner nor his counsel appeared. The High Court dismissed the writ petition in default of appearance. Thereafter, in June 1978 the appellant made a petition to the High Court to set aside the order of dismissal. It was stated by him that his counsel had shifted his place of business to Delhi without informing him about the date of hearing and consequently, he wrote to the Registrar of the High Court to intimate to him the date of hearing in the writ petition. He also sent postal stamps to cover the reply postage. The Registrar refused to inform him about the date of hearing, saying that he should make the inquiry from his counsel. The appellant stated that he had made the petition for setting aside the dismissal after coming to know about the dismissal. It appears to us that in the circumstances of the case when the Registry of the High Court itself had refused to inform the appellant about the date of hearing on hypertechnical grounds, the High Court should have set aside its order of dismissal for default. In the interests of justice we set aside the order of dismissal of the writ petition for default passed by the High Court and send the case back to it for disposal on merits after hearing the parties.

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