SUPREME COURT OF INDIA

Deepak Parshad

Vs.

Automobile Products of India

(G Nanavati and S Phukan JJ.)

18.11.1999

ORDER

G.T. NANAVATHI, J.

1. Leave granted.

2. Heard learned Counsel for the parties.

3. The only question that arises in these appeals is whether the High Court was right in holding that the appellate authority ought not to have condoned the delay in filing the appeal against the order of termination of the appellant.

4. The appellant was an employee of Respondent 1 Company. His services were terminated in the last week of April 1986 but the order of termination was made effective from May 10, 1986. The appellant challenged the order before the appellate authority i.e. the Deputy Commissioner of Labour, by filing an appeal sometime in November, 1986. There was delay of 153 days in filing the appeal. The appellate authority on consideration of the statement made by the appellant on oath and the material produced by him was satisfied that the appellant was vigilant in pursuing his remedy but because of his illness and negligence of his advocate the appeal could not be filed within time. The appellate authority therefore condoned the delay by an order dated September 11, 1987 and thereafter disposed of the appeal on merits. Against the order condoning delay, the respondent Company filed Writ Petition No. 10795 of 1987 and against the final order passed in the appeal it filed Writ Petition No. 5361 of 1988. While both the writ petitions were pending before the learned Single Judge, an application for stay was moved and the learned Single Judge directed the respondent Company to pay to the appellant a sum of Rs. 20,000/- within four weeks from the date

of the order. Aggrieved by that order the respondent Company preferred Writ Appeal No. 993 of 1988. With the consent of the parties the writ appeal and the writ petitions were heard together and disposed of by a common judgment. The High Court was of the view that the appellate authority ought not to have condoned the delay in filing the appeal as the delay was not on account of illness of the appellant nor because of any negligence of his advocate but probably because the appellant, initially, did not want to challenge the said order. It, therefore, reversed the order condoning delay, held the appeal as time-barred and declared the order of Deputy Commissioner of Labour null and void. It allowed Writ Petitions Nos. 5361 of 1988 and 10795 of 1987. The writ appeal was disposed of as infructuous.

5. Mr. H.S. Gururaja Rao, learned Counsel for the appellant contended that the High Court has not properly considered the material which was placed before the appellate authority and wrongly held that the delay was not on account of illness of the appellant and negligence of his advocate. In our opinion, the learned Counsel is right in his submission. The order of termination was passed in the last week of April 1986 and was to be effective from May 10, 1986. In his application for condonation of delay, the appellant had clearly stated that he had filed an appeal under Rule 6 of the Rules framed by the Company to the Chairman/Vice-Chairman of the Company and that as he did not hear anything from the Chairman/Vice-Chairman for more than a month he approached a lawyer, took his advice and decided to file an appeal under the Tamil Nadu Shops and Establishments Act, 1947. He had in fact approached the advocate in the month of June and an affidavit for condonation of delay was also prepared in the month of July, 1986. It appears that the advocate who was engaged by the appellant did not file the appeal, kept the appellant in the dark and got two or three more affidavits sworn by the appellant to create an impression that the matter was being pursued by him. Ultimately he filed the appeal in November. The very fact that the appellant had sworn an affidavit for condonation of delay in July 1986 would clearly indicate that he wanted to pursue the matter and was not negligent in taking necessary steps. He had filed an appeal to the Chairman of the respondent Company in time but there was no response. After waiting for a reasonable time he consulted a lawyer in the month of June 1986. He had thereafter approached his lawyer twice or thrice and had given affidavits as suggested. All these aspects have been overlooked by the High Court. Though the High Court referred to the affidavit of July 1986 for holding that the statement contained therein that he had come to know about the order of his termination on May 10, 1986 is false, it failed to take note of the fact that the appellant was thus pursuing his remedy by way of an appeal. The appellant himself had stated before the Court that it was in the last week of April 1986 that he had come to know about the termination order; therefore, from this inconsistency alone the High Court should not have doubted the correctness of the reason given by the appellant for the delay. If in view of these facts and circumstances the appellate authority had deemed it fit to condone the delay, the High Court ought not to have interfered with that discretionary order.

6. In the result we allow these appeals, set aside the common judgment and order passed by the High Court in Writ Petition Nos. 10795 of 1987 and 5361 of 1988 and Writ Appeal No. 993 of 1988. Writ Petition No. 5361 of 1988 is remitted to the High Court for deciding it on merits. As the matter has remained pending since long, we request the High Court to dispose of the writ petition as early as possible, preferably within six months from today.