SUPREME COURT OF INDIA

Raj Kishore Pandey

Vs.

State of U.P.

C.A.Nos.450-452 of 2009

(Tarun Chatterjee and H.L. Dattu)

27.01.2009

ORDER

1. Leave granted.

2. Heard learned counsels for the parties to the lis.

3. This appeal is directed against the orders passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 20552 of 1988 dated 05.08.2003 and the orders passed on Restoration Application No. 216574 of 2005 dated 02.11.2006. By the impugned orders, the court has rejected the writ petition for non-prosecution and further, has declined to grant the reliefs sought in the Restoration Application only on the ground that the reasons stated in the affidavit accompanying the application are not satisfactory.

4. A Principal working in the "Paramhans Sanskrit Pathshala" is fighting against the mighty Management for payment of his salary and other allowances right from the year 1988. Since all his efforts to pursue the Management to distribute the arrears of salary and the current salary due to him, he was constrained to approach the court, inter alia, requesting the court to issue a writ in the nature of mandamus, commanding the respondents to release the entire arrears of salary to which he is entitled to and further, to continue to pay his salary and other allowances as and when the same became due to him.

5. Respondents have filed their counter affidavits. Pleadings are complete. In the interregnum, several petitions/applications are filed before the High Court by both the parties. The appellant has succeeded in all those interlocutory matters.

6. When the matter was posted before the Court on 05.08.2003, unfortunately for the appellant, his lawyers could not be present before the court, and, therefore, the court has rejected the writ petition for non- prosecution on the ground that though, one of the learned counsel Shri R.M. Saggi has sent his illness slip, the other counsel, whose name appears in the cause list, was not present before the court.

7. The appellant coming to know about the dismissal of the writ petition for non-prosecution, had filed Restoration Application, bringing to the notice of the court that he had engaged the services of Shri R.M. Saggi and Shri S.P. Srivastava, learned advocates, to prosecute the writ petition. Shri Saggi was unwell on the date when the writ petition was posted for hearing and, therefore, he had sent his illness slip and had requested the court to accommodate him on account of illness and further, Shri S.P. Srivastava, whose name also appeared in the cause list had been elevated to the bench of the High Court and, therefore, could not appear as the counsel for the appellant.

8. The explanation offered according to the learned Judges is not satisfactory and, therefore, have rejected the Restoration Application. Aggrieved by these two orders, the appellant is before us in this appeal.

9. In our view, the approach of the learned Judges, to say the least is hyper technical. Admittedly, the appellant had engaged the services of Shri S.P. Srivastava and Shri R.M. Saggi. Shri Srivastava is elevated to the bench and, therefore, he could not appear as a counsel for the appellant though his name was shown in the cause list. The other learned counsel was suffering from physical ailment. Admittedly, he had sent "illness slip" with the request for adjournment. When these factual assertions were not in dispute, in our opinion, court should have allowed the prayer made in the Restoration Application and should have heard the case on merits which was pending from last two decades.

10. It is true that the appellant has to take necessary steps to prosecute the petition by following up action after filing the writ petition. The appellant had engaged the services of two learned counsels. Unfortunately for him, one was elevated to the bench and other was suffering with physical ailment. All this information was forthcoming in the application filed for restoration. The High Court has not appreciated these facts. In our opinion, whether the applicant has made out sufficient cause or not, in the application filed, the court is required to look at all the facts pleaded in the application. No doubt, the consideration of the existence of sufficient cause is the discretionary power with the court, but such discretion has to be exercised on sound principles and not on mere technicalities. The approach of the court in such matters should be to advance the cause of justice and not the cause of technicalities. A case as far as possible should be decided on merits and the party should not be deprived to get the case examined on the merits.

11. In view of above, in our opinion, we cannot sustain the impugned orders passed by the High Court, and therefore, the same requires to be set aside and the writ petition requires to be restored.

12. Accordingly, we set aside the impugned orders. We restore the writ petition on the file of the High Court. We request the High Court to consider the writ petition on merits as expeditiously as possible at any rate within an outer limit of six months from the date of receipt of copy of this order, after issuing notice to all the parties concerned.

13. The appeals are disposed of accordingly. No order as to costs.