

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1651-1652 OF 2012
(@ SPECIAL LEAVE PETITION(C)NOS. 20834-20835 OF 2007)

ASHOK KUMAR

...APPELLANT

VERSUS

DISTRICT MAGISTRATE, BASTI & ANR.

...RESPONDENTS

O R D E R

1. Leave granted.

2. These appeals are directed against the judgment and order passed by the High Court of Judicature at Allahabad dated 12.2.2007 in C.M. Delay Condonation Application No.33025 of 2007 in Special Appeal No.123 of 2007 and order dated 12.2.2007 passed in Special Appeal No.123 of 2007. By the impugned judgment, the High Court has affirmed the view taken by the learned Single Judge in his order dated 14.07.2005, wherein he dismissed the Writ Petition filed by the appellant.

3. The facts, in nutshell, are :

The appellant, before us, is the elder son of the deceased employee, who died in harness, according to the appellant. Immediately, thereafter the appellant had filed an application dated 16.06.2001 before the District Magistrate, Basti for his appointment on compassionate grounds. The request so made was not considered by the said authority, in spite of long lapse of time. This prompted the appellant to approach the High Court for a Writ in the nature of Mandamus. The High Court, vide order dated 09.11.2001, taking into

consideration that the authority, who was supposed to exercise its jurisdiction, had not done within a reasonable time and had directed the District Magistrate to consider the representation filed by the appellant within a period of three months.

4. Pursuant to the direction so issued by the High Court, while disposing of the Writ Petition, the District Magistrate, Basti has passed an order dated 15.02.2002, *inter alia*, holding that the appellant's father had expired after he retired from service, on attaining the age of superannuation and therefore, the appellant cannot seek for compassionate appointment. This order again became a subject matter of a Writ Petition.

5. The learned Single Judge, after taking into consideration the date on which the appellant's father retired from service and the date on which he expired, has come to a conclusion that the death of the appellant's father occurred only after he had retired from service, after attaining the age of superannuation. Accordingly, the learned Single Judge dismissed the Writ Petition vide his order dated 14.07.2005.

6. Being aggrieved by the aforesaid order of the learned Single Judge, the appellant had filed an appeal before the Division Bench of the High Court of Judicature at Allahabad in Special Appeal No.123 of 2007. However, there was an unexplained delay of one year and 178 days in filing the appeal. The only explanation that was offered by the appellant was that his mother was suffering from illness, therefore, he could not approach the High Court within the stipulated time. In support of the said application, the appellant

had not produced any documentary evidence, such as medical certificate towards the illness of his mother.

7. The Division Bench vide its order dated 12.02.2007 after taking into consideration the inordinate unexplained delay and also that the appellant's father had retired from service, after attaining the age of superannuation, has rejected the appeal both on the ground of limitation as well as on merits. The correctness or otherwise of the said order is the subject matter of these appeals.

8. We have heard learned counsel for the parties to the *lis*.

9. Learned counsel for the appellant would submit that the appellant's father, since he was a government employee, ought to have been retired only at the age of 60 and, therefore, would submit that when the appellant's father died, he is deemed to be in service. It is further stated by the learned counsel for the appellant that the appellant, in the appeal filed before the Division Bench of the High Court, had categorically stated that he could not approach the High Court within the time limit prescribed due to the illness of the appellant's mother and, therefore, the High Court ought to have condoned the delay in filing the appeal.

10. *Per contra*, learned counsel appearing for the District Magistrate, Basti would submit that the explanation, offered by the appellant in approaching the High Court after a long lapse of time, was not properly explained and, therefore, the High Court was justified in rejecting the appeal on the ground of limitation. Further, on merits, learned counsel would submit that the learned Single Judge was justified in rejecting the Writ Petition which has been affirmed by the Division Bench of the High Court by holding

that the appellant's father had retired from service, after attaining the age of superannuation.

11. The only issue, which requires to be considered by us in this appeal, is whether the Division Bench of the High Court was justified in rejecting the appeal both on the ground of delay as well as on laches and, thereby, affirming the orders passed by the learned Single Judge.

12. It is not disputed and further it cannot be disputed that the appellant's father had not questioned the action of the respondents in retiring the appellant's father from service on attaining the age of 58 years. It also appear that the appellant's father had expired after he retired from service, on attaining the age of superannuation. If that be the case, then it can be safely said that the appellant's father did not die in harness but died only after retiring from service, after attaining the age of superannuation. In that view of the matter, the appellant cannot claim the benefit of the appointment on compassionate grounds.

13. The Division Bench of the High Court has also dismissed the appeal filed by the appellant on the ground of delay and laches. It is, time and again, stated that a party who has slept over his rights is not entitled to the discretionary relief of the High Court. In the instant case, it is the case of the appellant that his mother was suffering from illness and, therefore, he could not file the appeal within statutory period of limitation against the judgment and order passed by the Writ Court. But, in support of that contention, the appellant had not produced any documentary

evidence, such as the medical certificate issued by a competent doctor. In the absence of such an evidence, in our opinion, the High Court was justified in rejecting the appeal on the ground of delay and laches also.

14. In view of the above discussion, we are of the opinion that the appellant has not made out a case for our interference. Accordingly, the appeals stands dismissed. No costs.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(ANIL R. DAVE)

NEW DELHI;
FEBRUARY 07, 2012

JUDGMENT