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Virender Singh Vs. G.M., Fruit and Vegetable Project and anr.

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Court : Delhi

Decided On : Mar-12-1999

Reported in : 1999IIAD(Delhi)20; 78(1999)DLT797; 1999(49)DRJ334

Judge : Arun Kumar and; Manmohan Sarin, JJ.

Acts : [Limitation Act, 1963](#) - Sections 5; [Constitution of India](#) - Article 226; [National Dairy Development Board Act, 1987](#) - Sections 48

Appeal No. : L.P.A. No. 371 of 1998

Appellant : Virender Singh

Respondent : G.M., Fruit and Vegetable Project and anr.

Advocate for Pet/Ap. : Mr. Rajiv Nayyer, Sr.Adv.,; Mr. Pradeep Tewari,; Mr. M.P.

Judgement :

ORDER

Arun Kumar, J.

CM No.2463/1998

1. This is an application under Section 5 of the Limitation Act for condensation of delay in filing the present appeal. Notice of the application was issued to the respondents. They have filed reply opposing the application. Counsel for the

appellant has stated in the application that there is a delay of 120 days in filing the appeal. The delay is sought to be explained on the ground of illness of appellant's mother. It is submitted that she was critically ill from 3rd June 1998 to 4th August, 1998. She was suffering from jaundice and hypertension. She is above 60 years of age and required special care and attention. The appellant has filed the medical prescriptions issued for his mother by private doctors from time to time. The mother was residing at the relevant time in a village near Sonapat in Haryana. She also had some spinal cord problem due to which her movement was not normal.

2 The respondents have opposed the application stating that the illness of the mother of the appellant has been wrongly described as critical. She had only jaundice for which rest and special diet were required. Our attention was drawn to the medical prescriptions which showed that routine medicines were being prescribed besides rest. The appellant submits that there was no one else in the family to look after his aged mother. Without going into the rival contentions any further, we are of the view that in the facts and circumstances of the case, the delay in filing the appeal ought to be condoned. Accordingly this application is allowed. Delay in filing the appeal is condoned.

LPA No.2/99.

3. We have heard the learned counsel for the appellant on the question of admission of the appeal.

4. The appellant was a confirmed employee working in the post of Executive Procurement Officer with effect from 10th November, 1990 in respondent No.1 Organisation. He had successfully completed the period of probation of six months. The service of the petitioner was terminated vide letter dated 31st March, 1993, in terms of Clause 18 of the Offer of Appointment dated 4th April, 1990. The termination letter simply stated that 'in terms of Clause-18 of the said Offer of Appointment, your services are not required by this Project and the same are terminated with immediate effect. Cheque No.346887 dated 31st March 1993 for Rs.4850.50 paisa drawn on Punjab National Bank, Lawrence Road Branch is enclosed herewith as one month's salary in lieu of one month's notice period.'

5. Clause-18 of the Offer of Appointment dated 4th April, 1990 is as under:-

'You shall have to give one month's notice in writing or to make payment of amount equivalent to one month salary in lieu thereof, if you desire to leave the service of the Project after your confirmation and the management shall also likewise terminate your services by giving one month's notice or one month's salary in lieu thereof.'

6. In pursuance of Section 48 of the [National Dairy Development Board Act, 1987](#), the Board has made regulations which are called Fruit and Vegetable Project Officers (Conduct, Discipline and Appeal) Regulations 1991. Regulation 44 deals with termination of service and is reproduced as under:-

'The services of an officer may be terminated after giving him one month's notice or on payment of salary (basic pay, D.A.) in lieu of the notice period, provided that in case where the officer is found guilty of misconduct, his services may be terminated by dismissal or discharge in accordance with the procedure laid down under these Regulations.'

7. The appellant has challenged the validity of Regulation 44 as well as Clause 18 of the Offer of Appointment.

8. The main grievance of the appellant is that he was a confirmed employee and his services could not have been terminated in such a summary manner. The learned Single Judge after discussing the legal position in this behalf came to the conclusion that Regulation 44 is arbitrary, discriminatory and violative of principles of natural justice. The impugned order of termination based on Clause 18 and the Offer of Appointment which in terms is based on Regulation 44 referred to above was held to be illegal and invalid. On the question of relief, the learned Single Judge felt that since the appellant has lost the confidence of the employer, it would not be appropriate to direct his reinstatement in service. The learned Single Judge ordered payment of compensation in a sum of Rs.4,00,000/- to the appellant in lieu of reinstatement in service. The appellant is aggrieved of this part of the judgment.

9. The thrust of the argument of the learned counsel for the appellant is that when the relevant Regulation was found to be illegal and invalid the appellant ought to have been reinstated in service. The reason for not reinstating him in service being loss of confidence of the employer, suggested that the appellant's integrity was in doubt and therefore, this cast a stigma on the appellant. For this the respondent should have been directed to hold a disciplinary enquiry in accordance with the rules and without reaching a finding based on an enquiry in this behalf an inference of lack of integrity on the part of appellant ought not to have been drawn. In this behalf the learned Single Judge observed:-

'The petitioner was working with the respondent as an Executive (Procurement). The job of the petitioner admittedly, involved purchase of various items of fruits and vegetables worth lacs of rupees every month. The respondent has taken up the stand that there are allegations of misappropriation against the petitioner and that it is a case of lack of integrity on the part of the petitioner. In my considered opinion, absolute and unquestionable integrity is crucial to the job that the petitioner was performing. The respondent has also referred to the complaints/reports received against the petitioner from various sources which were enquired into by the respondent No.1 entrusting the matter of investigation to an independent outside investigating agency. It is also stated that the said investigating agency submitted a report on 15th January, 1993 which is placed on record and annexed as Annexure R3/3. The said report does not speak well of the petitioner. In a job of Executive (Procurement) which the petitioner was performing at the time of termination of his services and to which post he is to be reinstated, if so ordered by this court, calls for absolute and unquestionable integrity. Trust and confidence of the management on the person holding the said post is one of the vital and important factors. The report submitted by the investigation agency prima facie points out certain misdeeds and does not speak well of the petitioner. It cannot be said that the apprehension of the respondent is misplaced or ill founded. In the present case, even if an order is passed for reinstatement of the petitioner, liberty will have to be given to the respondent to initiate a department enquiry against the petitioner for the misconduct alleged against him in the counter affidavit, and therefore the matter would not end with the reinstatement of the petitioner in service. Taking all these

factors into consideration, I do not consider it to be a fit case where the petitioner should be ordered to be reinstatement in service and instead I feel that payment of adequate compensation to the petitioner in lieu of his services would advance the cause and interest of justice.'

10. We find that the above observations of the learned Single Judge are fully apt in the facts of the case besides being in consonance with law. We see no reason to interfere with the impugned decision of the learned Single Judge. This appeal is dismissed in limine.

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