

ishq Mohd. Vs. State

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Court : Rajasthan

Decided On : Jan-15-1992

Reported in : 1992(1)WLN18

Judge : K.C. Agrawal, C.J.

Appeal No. : D.B.C.SPL. Appeal No. 678 of 1982

Appellant : ishq Mohd.

Respondent : State

Disposition : Appeal dismissed

Judgement :

K.C. Agrawal, C.J.

1. This appeal is directed against the judgment of learned Single Judge, dismissing the writ petition of the appellant holding the same to have no merits.

2. On 22.11.75 the appellant was served with a chargesheet and statement of allegations. Thereafter, an enquiry was conducted against him, followed by a show cause notice which was served on 25.4.78. the appellant gave a reply. The disciplinary authority found the charges established against him, on the basis of his statements which were recorded on 18.12.78 and after perusal of document. He was thereafter, dismissed from service as per the show cause notice. He filed

an appeal against the order of punishment dated 28.5.79. The appeal was time barred by 18 days. The appeal was dismissed on August 2, 1980 on the ground of limitation. Against the said order, the petitioner came to this Court by means of a writ petition. The learned Single Judge held that delay in filing the appeal under Rule 23 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 having not been explained, there could be no interference under Article 226 of the Constitution. He held that the finding of the appellate authority that the appeal was belated and there was no cause given for condonation of the same was correct. Against the said order the present appeal has been filed.

3. We have heard learned Counsel for the appellant who contended that the learned Single Judge has erred in taking a pedantic view of limitation and not a liberal view which is the trend of the order these days. He urged that had he taken a liberal view the writ petition should have been allowed and the appellate order set aside. For the submission made, the learned Counsel relied on Collector, Land Acquisition Anantnag, and Anr. v. Mst. Katiji and Ors. : (1987)ILLJ500SC . It is true that the Supreme Court has deprecated the tendency of taking a view with regard to the matter of condonation of delay. But it has also observed that where there is a deliberate mistake the plea of limitation could be invoked as against such a person.

4. In the instant case, the learned Single Judge held, and in our opinion rightly, that all the papers which were required by the appellant were in his hands much before limitation and that he deliberately chose not to file the appeal within limitation.

5. Counsel for the appellant urged that as the copy of the enquiry report had not been given to him, he could not prepared the memo of appeal and file the same within time. That does not appear to be correct, Even this report was received by him on August 23 1979, and he could file the appeal if he so desired, within limitation. But he acted negligently, for Which there was no explanation. The learned Single Judge, therefore, was right in dismissing the writ petition.

6. Further more, we are sitting in appeal and we cannot get aside the judgment of the learned Single Judge unless we are satisfied that the same suffers from an

error which requires interference by us. In this case, the learned Single Judge took in to account all relevant facts and then dismissed the writ petition. We agree with him.

The appeal is dismissed.

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