

Executive Engineer and anr. Vs. Naik Alam Paswal and anr.

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Court : Jammu and Kashmir

Decided On : Jul-31-2003

Reported in : 2004(1)JKJ145

Judge : Muzaffar Jan, J.

Acts : Limitation Act - Section 5

Appeal No. : CPM. No. 9/2003

Appellant : Executive Engineer and anr.

Respondent : Naik Alam Paswal and anr.

Advocate for Def. : Nemo

Advocate for Pet/Ap. : I. Sofi, Adv.

Disposition : Application dismissed

Judgement :

Muzaffar Jan, J.

1. Application has been submitted praying for condonation of delay of 105 days in filing the review petition against the order dated 6.9.2002.

2. It seems that claim petition was filed before the Commissioner. Under Workman Compensation Act, Assistant Labour Commissioner, Kupwara, by non-applicant No. 1. The claim petition was considered on merits and allowed. The award came to be challenged by the present applicants in CIA No. 49 of 2002. As there was no representation on behalf of the applicants and it was observed that, the award amount has not been deposited, the appeal was dismissed vide order dated 6.9.2002. The present application, seeking condonation of delay, has been submitted praying to condone the delay to enable the applicants to file review petition against the order of dismissal dated 6.9.2002.

3. The main submissions made in the application are, that the applicants had engaged the services of Mr. A. M. Watali, Government Advocate, who did not inform the applicants about the dismissal of the appeal and as such the applicants were under a bonafide impression that, since Mr. Watali has been appointed as Government Counsel, he would pursue the appeal. It is further submitted that the applicants acquired the knowledge of dismissal when he came to know about the withdrawal of the award amount from the office of non-applicant No. 2 in the first week of November, 2002 and immediately applied for certified copy of the order. After obtaining the certified copy of the order of dismissal dated 6.9.2002, applicants filed the present application seeking condonation of delay. It is further submitted that the delay has been due to lapse of the counsel, and not the applicants, who were engaged in Assembly Elections in the months of September and October, 2002. It is further submitted that, since the award amount had been deposited with the Assistant Labour Commissioner and a direction vide order dated 26.2.2002 had been passed that the amount deposited with the Labour Commissioner shall be deposited with the Registry of this Court, therefore, the appeal could not have been dismissed on 6.9.2002. On these submissions, it is prayed, that the application for condonation of delay be allowed.

4. Heard learned counsel for the applicants.

5. The submission of learned counsel for the petitioner that the delay has been caused because of negligence of Mr. A.M.Watali, Advocate, who did not inform the applicants about the date of dismissal and on this ground the delay be condoned,

cannot be accepted for multiple reasons.

6. Admittedly the presence of Mr. Watali, as counsel for the applicants as shown in an earlier order but there is not affidavit filed by Mr. Watali to substantiate the pleas taken in the application regarding the non-communication of the information of the date of dismissal of the appeal. Therefore, the plea, that the counsel did not inform the applicants about the date of dismissal of the appeal is rejected. The applicants have stated that they got the knowledge of dismissal of appeal from the office of respondent No. 2, in the first week of November, 2002. The applicants have not revealed the source of the knowledge or the details of date of communication of the said information. The applicants, who are expected to defend, cases filed against the State as responsible Government officers, seem to shift their responsibility to the counsel, which explanation cannot be accepted. When a case is filed against the State it is the duty of the officers, holding charge of the office to defend the claim effectively by maintaining a proper record of the case file, with all duplicate documents, and to record the progress of the case on each date of hearing in order to keep an effective track of the progress of the case. The officers are duty bound to ensure that there is no lapse on their part to defend the case filed against the State. These measures are essential because the Advocates are neither agents nor assistants of the official litigants and are not required to approach their clients, in their offices, or residences to inform them about the progress of the litigation. In official litigation, the concerned Engineers must follow the case with same seriousness as they normally follow the progress of construction and issuance of Bills to the contractors. The submission of the applicants that, since they had entrusted the case to Mr. A. M. Watali, Government Advocate, therefore, under law, they are exonerated and exempted even to find out the progress of the case, if accepted, would lay a bad precedent and encourage laxity, dereliction and casualness in the Government departments, to defend the cases filed against the State. The submission on this ground is rejected.

7. Since the State has not made out a case to explain the delay of 105 days with sufficient cause and it is otherwise not shown that as against poor labour claiming wages, the State, with its huge resources and State machinery, would suffer

irreparable loss and a meritorious case would be thrown out causing failure and miscarriage of justice, the application seeking condonation of delay merits to be rejected.

8. The application is without any merit and is accordingly dismissed.

9. The State is at liberty to take action against the officers who are found negligent to pursue the claims before Labour Court and also appeal filed in this Court and if the State desires, the recovery of liability amount can be made from the personnel assets of the defaulting officers. Copy of this order be sent to the Chief Secretary Commissioner Secretary to Government Public Works department for follow up action.

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