
(1989) 03 AHC CK 0022

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 356 of 1987

State of U.P.& Others

APPELLANT

Vs

Ishwar Giri Goswami & Another

RESPONDENT

Date of Decision: March 8, 1989

Hon'ble Judges: B.L.Loomba, J

Final Decision: Allowed

Judgement

B.L. Loomba, J.

State of U.P. has come up under Article 226 of the Constitution of India to challenge the correctness and validity of the judgment and order of the U.P. Public Services Tribunal dated 17986 whereby the claim petition of oppositparty no. 1 Ishwar Giri Goswami filed before it was allowed and the order of termination dated 10871 passed against him was quashed.

2. Oppositparty no. 1 Ishwar Giri Goswami was appointed as Consolidator by order dated 201056 of Director of Consolidation U.P. In due course he was promoted as Assistant Consolidation Officer. His services were terminated by a simplicitor order of termination dated 10871 on one month"s notice stating that his services were no more required. Oppositparty no. 1, Goswami, filed claim petition against this order of termination on 2782. i.e. after over 11 years of the order of termination. The limitation for filing a claim petition before the Tribunal under section 4 of the U.P. Public Services (Tribunals) Act, 1976 was three years as provided under section 5(1) (b) of the Act, as it stood at the time when the claim petition was filed.

3. The limitation was sought to be saved on the ground that he made a representation against the order of termination on 17871 and was thereafter sending reminders and eventually a notice under section 80 CPC was served and when no reply was received, he filed his claim petition to challenge the termination order. The grounds of challenge raised were that the petitioner had put in satisfactory services of over 15 years and he was holding the post of Assistant Consolidation Officer in a substantive capacity and his services could not be

terminated by giving one month's notice. It was also stated that while persons junior to him were retained he was terminated and that the impugned order of termination was in fact by way of punishment.

4. On behalf of the State the contest was raised on the ground that the Consolidation Department itself was a temporary department and that the petitioner continued to be a temporary government servant and his services were liable to termination on one month's notice on either side. It was also stated that all the employees were working on temporary basis. It was pleaded that the petitioner was terminated because his work was found to be unsatisfactory. He was awarded adverse entry for the period 26366 to 31367 and again for the period 15769 to 31770. He was found negligent in not allotting chaks to asamis of the Gaon Sabha and he was also found negligent for ignoring departmental instructions regarding the chak carving. The reputation of the claimant was also stated to be bad though in the absence of specific complaint and evidence his integrity was certified. Plea of the claim being barred by time was also raised stating that the representation of the petitioner, the correct date whereof was 16371, was duly considered and rejected and intimation of the rejection thereof was sent to the claimant through letter No. 41/62/711 dated 9572. It was denied that any reminders were received in the Government. The receipt of the notice under section 80 CPC was also denied. The review petition of claimant's wife dated 24879 addressed to the Director Chief Minister/Revenue Minister was accepted to have been received and the same was stated to have been considered and rejected. It was pleaded that the impugned order being a simplicitor order of termination no appeal or representation could, under the rules, lie against it and, as such, the cause of action for filing the claim petition arose to the claimant when the order was passed and, as such, the claim petition was highly belated and barred by time.

5. The learned Tribunal ruled out the plea as to limitation with the finding that the claimant did not receive any intimation as to the rejection of his representation and that the starting point of limitation was 301079 when the intimation about the rejection of the review petition submitted by claimant's wife was received and the claim petition having been filed on 27882 was within time.

6, On the merits of the matter it was found that the department failed to establish that adverse entries recorded in the character roll were ever communicated to the claimant and he having been promoted to the post of Assistant Consolidation Officer his services could not be terminated on one month's notice when the post was available and persons junior to him were admittedly continuing.

7. The validity of the judgment and order of the Services Tribunal has been challenged before this court, on three grounds. Firstly, on the ground that his claim petition was clearly barred by limitation. Secondly, that the termination order was passed because of the work and conduct of the claimant being unsatisfactory and thirdly, that the claim petition was cognizable by the Tribunal consisting of the

Chairman and the Member and it was not legally possible for one member to dispose of the claim petition. In other words, the plea of want of jurisdiction is also raised.

8. Coming first to the point of limitation. The claim petition was obviously filed after a long time of over 11 years from the date on which the termination order was passed. As is mentioned already, the limitation is sought to be saved because of the pendency of the representation. Relevant provision referred to save limitation as contained in section 5 (1) (b) (ii) of U.P. Public Services (Tribunals) Act, 1976 is in the following terms:

❖(ii) in computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and pending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded.❖

9. Section 5(1) (b) was amended by Amending Act (U.P. Act No. XII of 85) with effect from 2811985, the period of limitation prescribed under the amended, provisions for filing a claim petition under section 4 of the Act was one year. It was provided that in computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service and ending with the date on which such public servant has knowledge of such representation, appeal, revision or petition, as the case may be, shall be excluded. This provision is, however, not applicable because the claim petition was filed in the year 1982 i.e. prior to this amendment. The relevant provision as applicable at the time of filing of the claim petition as contained in section 5(1) (b) was in the following terms:

❖(b) The provisions of the Limitation Act, 1963 shall apply to all reference under section 4, as if a reference were a suit or application filed in the Civil Court.❖

The suit to challenge the order of termination in Civil Court as per this provision could be filed within three years from the date of the order and it is for this very reason that the learned Tribunal considered the claim to be within three years taking the date of starting of the period of limitation to be 301079 when the order rejecting the representation of the claimant's wife was passed. A copy of the letter dated 30101979 of the Consolidation Commissioner addressed to Smt. Kamla Devi Goswami, wife of the claimant was filed as Annexure4 to the claim petition. It was mentioned that the representation was considered and rejected by the Dy. Chief Minister. This rejection was communicated with reference to the representation of the claimant's wife dated. 24879 Learned Tribunal, as it appears, considered that time from the date when the representation of the petitioner was made and the

date when the representation of the claimant's wife was rejected by order dated 301079 merited exclusion. On appraisal of the factual position I am of the view that the decision of the learned Tribunal on this point is clearly erroneous and difficult to be upheld. The fact that the claimant submitted a representation dated 16871 is not disputed. However, according to the counteraffidavit filed on behalf of the State by Rajendra Singh, Assistant Consolidation Officer, working in the office of the Consolidation Officer, working in the office of the Consolidation Commissioner, this representation was rejected in May, 1972 and intimation was sent to the claimant at his given address by letter no, 41/62/711 dated 9572. In the rejoinderaffidavit it was denied that the claimant received any intimation of the rejection. It appears that the claimant has subsequently been sending some fresh representations or reminders but that itself cannot lead to the conclusion that the representation remained pending and was not rejected in May, 1972 as asserted in positive terms in the written statement filed on behalf of the State. It appears that the learned Tribunal afforded an opportunity to the State to produce relevant file to show that the said letter dated 9572 was dispatched. This file, however, was reported to have, in the meantime, been weeded out. Written statement was filed in November, 1932 while the required file was summoned in July, 1986 when the matter was heard and the file was reported to have been weeded out. The orders of the Tribunal dated 1886 and 301086 are reproduced in the counteraffidavit filed by Goswami dated 3387 before this court. It appears that the relevant file was weeded out between 1982 and 1986. There is no reason to disbelieve the positive affidavit filed on behalf of the State on this point which carries the number and date (9572) through which intimation about rejection of the representation of the claimant was sent. There is no reason why this statement could be falsely made by the Assistant Consolidation Officer posted in the office of Consolidation Commissioner who filed affidavit to support the contents of the written statement filed on behalf of the State.

10. Even otherwise, the plea that the claimant waited from 1971 to 1979 for disposal of his representation before he could think of seeking his legal remedy against the impugned order, appears unbelievable. Even if it is accepted that the claimant has been sending reminders regarding his representation that hardly can be taken as a valid explanation for the inordinate delay in filing the claim petition. The services Tribunals were established in the year 1976 under the U.P. Public Services (Tribunals) Act, 1976 and prior to that civil suit to challenge the termination could be filed in the Civil Court. Learned counsel for respondent Goswami was unable to refer to any provision whereunder a representation could be filed against a simplicitor order of termination. Mention has been made only to paragraph 376 of the Manual of Government Orders. This paragraph is contained in Chapter XXII titled ♦Memorials♦. In this way, only a memorial could be filed before the Governor against the order of termination in the absence of any provision in the Civil Services (Classification, Control & Appeal) Rules or relevant service rules for filing any appeal or representation. The forum of memorial cannot be taken to extend period of

limitation. Mere submitting of such memorial followed by reminders cannot be taken to provide a sufficient basis for extending the period of limitation which expired in August, 1974. If the claimant did not receive any intimation as regards the disposal of his representation within a reasonable time this provided a definite cause of action for him to choose legal remedy. Law does not permit the exclusion of the period during which such representation or reminders are submitted in computing the prescribed period of limitation.

11. According to the claimant a notice under section 80 CPC was sent on 16779. The receipt of such notice is denied on behalf of the State. Even accepting the assertion of the claimant that he served notice under section 80 CPC in July, 1979 he ought to have filed his claim when he did not receive reply to such notice within a reasonable period. No claim was filed within a period of three years even from the date on which the notice under section 80 CPC was served, the claim petition having been filed on 27882. The representation sent by the wife of the respondent cannot in any way extend the period of limitation under the Limitation Act.

12. In the facts and circumstances as appearing on record the claim petition before the Services Tribunal was highly belated and the pleas raised to save the limitation were wrongly and erroneously accepted by the learned Tribunal.

13. Even on merits the findings of the learned Tribunal are difficult to be upheld. According to the counteraffidavit filed on behalf of the State the services of the claimant were terminated as his work was found to be unsatisfactory. The learned Standing counsel placed before me the relevant service record of the claimant and the nothings on the basis of which the decision to terminate the services revealed that a report of vigilance establishment in respect of the enquiry against respondent Ishwar Giri Goswami was received. According to the secret enquiry several instances of misconduct came to be revealed. The Dy. Director of Consolidation also recorded that tenure holders of a particular village raised serious allegations against the respondent and his work was found thoroughly unsatisfactory. Even accepting that adverse entries were not communicated to him, the fact remains that the order of termination was passed on the ground of unsatisfactory work of the respondent. The order did not appear to have been passed mala fide and without any basis. The record placed before me also carries copy of the office memorandum dated 9572 whereby rejection of the representation of the claimant dated 16181 was sent.

14. Since the two grounds set to challenge the judgment and order of the Service Tribunal prevail it appears unnecessary to go into the challenge on the basis of jurisdiction of the single member of the Tribunal to have decided the claim petition.

15. The writ petition, accordingly, merits to be allowed and is hereby allowed. The judgment and order of the Services Tribunal dated 17986 are quashed and the claim petition of the respondent before the Services Tribunal stands rejected. Parties shall bear their costs in this writ petition as also in the proceedings before the Services

Tribunal.

(Petition allowed)