

(2006) 04 AHC CK 0262

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition. No. 1573 (S/B) of 2005

Surya Lal Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** April 4, 2006**Acts Referred:**

- Limitation Act, 1963 - Section 4, 5(1)(b)
- Uttar Pradesh Public Services (Tribunal) Act, 1976 - Section 5(1)(b)(ii)

**Citation:** (2006) 7 AWC 7463**Hon'ble Judges:** Rajiv Sharma, J; Pradeep Kant, J**Bench:** Division Bench**Advocate:** S.K. Banerjee, for the Appellant; C.S.C., for the Respondent**Final Decision:** Dismissed

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**Judgement**

Pradeep Kant and Rajiv Sharma, JJ.

We have heard learned Counsel for the Petitioner, Sri S.K. Banerjee, on merits.

2. The Petitioner had applied for voluntary retirement and his prayer was accepted by the State on 4th July, 2003. The Petitioner filed a claim petition before the State Public Services Tribunal, Lucknow on 31st December, 2004 challenging the aforesaid order on the ground that though he has been retired voluntarily vide order dated 4th July, 2003 with effect from 30.6.2003 but, in fact, before passing of the aforesaid order, he had moved an application for withdrawing of his option of voluntary retirement, which has not been considered.

3. The State contested the matter and also filed objection saving that before passing of the aforesaid order dated 4th July, 2003, the Petitioner had repeatedly made applications seeking his voluntary retirement. Various reminders of the Petitioner were also placed before the Tribunal and, on that basis, the said order was passed. It was the specific case of the State that no application for withdrawal of option of

the Petitioner was available on record and such a document, was a false document. Besides the aforesaid factual averments, the State asserted that the claim petition was barred by limitation, as prescribed limitation is of one year only from the date when the cause of action, had accrued.

4. Sri S.K. Banerjee, before us, challenging the aforesaid order submitted that since the Petitioner has made representation against the order dated 4th July, 2003, which remained pending till the filing of the claim petition, therefore, the claim petition could not be dismissed as barred by limitation.

5. Section 5(1)(b) of the U.P. Public Services (Tribunal) Act, 1976 prescribes that the provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to reference u/s 4 as if a reference were a suit filed in civil court so, however, that--

(i) notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year;

(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 ending 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:

Provided that any reference for which the period of limitation prescribed by the Limitation Act, 1963 is more than one year, a reference u/s 4 may be made within the period prescribed by that Act, or within one year next after the commencement of the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985 whichever period expires earlier.

Provided further that nothing in this clause as substituted by the Uttar Pradesh Public Services (Tribunal) (Amendment) Act, 1985, shall affect any reference made before and pending at the commencement of the said Act.

6. Sub-clause (ii) of Section 5(1)(b) excludes the period consumed during which representation, appeal, revision or any other petition (not being a memorial to the Governor) remains pending till the date when the public servant acquires knowledge of the final order passed on the said appeal or revision which has been made, according to the rules, as the case may be. The representation, appeal, revision or any other petition has to be filed in accordance with the rules or orders regulating his conditions of service. Every representation, thus, made against every order would not extend the period of limitation in the matter of filing of claim petition unless the said representation is made in accordance with the rules or orders regulating the conditions of service of the public servant.

7. Learned Counsel for the Petitioner has not been able to indicate any provision under the service rules or any order governing the service condition which provides

the filing of the representation against the order of voluntary retirement which has been passed on the own request of the Petitioner. In the entire body of the petition, it has not been stated that how the claim petition was within limitation. The plea that his last representation was pending since December, 2004, would not extend the period of limitation unless the Petitioner pleads and proves that the representation was made under some service rule or order governing his service conditions. The fact that Section 5(1)(b) applies the provisions of Limitation Act and a reference u/s 4 has been described as a suit filed in civil court, thus unless there is a specific provision in Limitation Act for condoning the delay in filing the suit, the delay in filing the claim petition beyond limitation prescribed can neither be condoned by the Tribunal nor it can be entertained.

8. We do not find any illegality in the order impugned.

9. The writ petition is dismissed.