

(8) Consequently, I hold that the judgment and decree of the High Court of Judicature at Lahore, Exhibits P. 30 and P. 31 were admissible in evidence and were rightly so admitted by the learned trial Court.

(9) I, therefore, allow S. A. O. No. 58 of 1986 and set aside the judgment dated 15th April, 1986 and direct the learned Additional District Judge to decide the appeal on merits by duly taking into account the copies of the judgment and decree Exhibit P. 30 and P. 31 which were rightly admitted into evidence. S. A. O. No. 47 of 1986 being without merit is dismissed. The parties are, however, left to bear their own costs.

(10) The parties, through their counsel, are directed to appear before the learned Additional District Judge, Patiala, on 25th September, 1987 when he shall take further proceedings in the appeal in accordance with law. The record of the trial Court which was requisitioned from it should be sent to the Court of learned Additional District Judge to facilitate the disposal of the appeal by him under advice to the trial Court.

S. C. K.

Before H. N. Seth, C.J. and M. S. Liberhan, J.

KRANTI KUMAR CHOPRA,—*Applicant.*

versus

GOVERNMENT OF INDIA and others,—*Respondents.*

*Civil Misc. No. 1491 of 1986 in
Civil Writ Petition No. 738 of 1979.*

June 5, 1987.

Constitution of India, 1950—Article 226—Limitation Act XXXVI of 1963—Section 5—Court dismissing application for review of order passed in writ proceedings both on merits as well as being belated—Where such order not set aside by a competent court—High Court—Whether has jurisdiction in subsequent proceedings to decide an application for condoning delay in presenting review application.

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Held, that the review application had been dismissed by this Court for two reasons (1) the application was barred by time and (2) that on merits no case has been made out for reviewing the earlier order. Had the said application been, in the absence of an application for condoning the delay in presenting the same, dismissed merely on the ground that it was barred by time it might have been possible for the applicant to urge with certain amount of feasibility that as the Court had in the absence of proper explanation declined to entertain the review application on the ground that it was belated it can entertain the same even now if it finds the explanation for the delay now being offered to be apt. But where review application has been dismissed not merely on the ground that it was barred by time but also on the ground that even on merits no case for review had been made out. Mere consideration of request for condoning the delay in presenting the same would in our opinion, serve no useful purpose. Even if the explanation offered by the applicant is accepted it will not be possible for this Court to upset the finding arrived at by it earlier, namely, that on merits no case for review of the order had been made out. This Court cannot interfere with the order passed by the learned Single Judge dismissing the review application on the merits and take a stand contrary to it as it has neither appellate nor supervisory jurisdiction in respect of that order, which still stands. Therefore, it has to be held that it would be futile to consider the request for condoning the delay in presenting the review application.

(Paras 12 and 13).

Application for condonation of delay under section 5 Limitation Act read with 151 C.P.C. in review application 73—83 in Civil Writ Petition No. 738—79 as observed by the Hon'ble S.C. of India in S.L.P. 10142 of 1984 decided on 3rd March, 1986 praying that in the light of the order of the Hon'ble S.C. of India dated 3rd March 1986, the delay may kindly be condoned if any and the decision be made on merits after admitting the case.

S. C. Sibal, Advocate with K. R. Chaudhry, Advocate, for the Petitioner.

S. S. Nijjar, Bar-at-Law, for Respondent No. 2 & 3.

JUDGMENT

H. N. Seth, C.J.

(1) By this application under section 5 of the Limitation Act, the applicant Kranti Kumar Chopra prays that the delay in filing Review Petition No. 73 of 1983 in C.W.P. No. 738 of 1979, dismissed by this Court *in limine* on April 24, 1979, be condoned and after admitting the writ petition, the same be decided on merits.

(2) Briefly stated, the facts giving rise to this application are that the applicant, an employee (Daftri) of the Punjab National Bank, wanted to raise an industrial dispute concerning his non-promotion as a clerk. The Government of India,—*vide* order dated January 12, 1978, declined to refer the said dispute for adjudication. Aggrieved, the applicant filed C.W.P. No. 738 of 1979, before this Court on March 2, 1979, and *inter alia*, made a prayer that order dated January 12, 1978, passed by the Government be quashed and an appropriate order regarding his promotion as a Clerk be also made.

(3) When the petition came up for motion hearing before a Bench of this Court on March 5, 1979, Learned counsel appearing for the applicant stated that an identical point as in Civil Writ No. 630 of 1979 was involved in the case and that the relief claimed therein was also the same. Accordingly, the Bench directed that notice of motion be given for March 7, 1979. After a few adjournments, the case was listed for orders on April 6, 1979, when the Court passed the following order:—

“The learned counsel for the respondent has pointed out that Civil Writ Petition No. 630 of 1979, upon which reliance had been placed by the petitioner, stands dismissed.

To come up now for arguments on April 24, 1979, as requested by the learned counsel for the respondent.”

On April 24, 1979, the Bench dismissed the writ petition by the following order:—

“At the motion stage, learned counsel for the petitioner contended that ‘an identical point as in Civil Writ No. 630/1979 is involved in this case and the prayer is also the same’. Now that C.W.P. No. 630/1979 has been dismissed, this writ petition also fails and is hereby dismissed. There will be no order as to costs.”

Thereafter, the applicant approached the Supreme Court for permission to file an appeal against the aforementioned order (S.L.P. No. 3423 of 1980). However, the Supreme Court by its order dated March 21, 1983 permitted the applicant to withdraw the special leave petition so as to enable him to approach this Court by way of review.

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(4) The applicant filed Review Application No. 73 of 1983, before this Court on May 3, 1983, praying that the order dated April 24, 1979, be reviewed and the petition be admitted for hearing. In this application, he alleged that he had filed three writ petitions before this Court, namely, C.W.P. No. 534 of 1979, C.W.P. No. 630 of 1979 and C.W.P. No. 738 of 1979. C.W.P. No. 534 of 1979 was directed against the order passed by the Labour Court, Chandigarh, in proceedings under section 33(c)(2) of the Industrial Disputes Act, wherein he had claimed officiating allowance for working as a Clerk. The said petition was, after issue of notice of motion, dismissed on March 28, 1979. C.W.P. No. 630 of 1979, was directed against the order of the Labour Court, Chandigarh made under section 33(c)(2) of the Industrial Disputes Act in respect of applicant's claim for overtime wages. This petition was also, after issue of notice of motion, dismissed on March 28, 1979. So far as C.W.P. No. 738 of 1979 (subject-matter of present proceedings) is concerned, the applicant had in the petition claimed that he was entitled to be promoted as Clerk with effect from the year 1975. The petition was, as already mentioned above, dismissed by order dated April 24, 1979 (quoted above). The applicant then approached the Supreme Court of India by way of special leave petition, which was, by means of order dated March 21, 1983, permitted by that Court to be withdrawn so as to enable him to file review application before the High Court. Accordingly, the applicant filed review application before this Court, in which, apart from stating the reasons why he claimed that action of the respondent in not treating him as having been promoted as Clerk was erroneous, the only other reason brought out in paragraph 15 of the application, for claiming review of the order dated April 24, 1979, had been stated thus:—

“That the present is a fit case for review by this Hon'ble Court as earlier writ petitions dismissed were pertaining to officiating allowance and overtime wages and that has no relevancy with the present case.”

In this application, the applicant neither explained the circumstances in which his counsel had, on April 6, 1979 (at the time of motion hearing) stated before the Court that the point involved in the petition as also the prayer made therein was the same as in C.W.P. No. 630 of 1979, nor did he state that on April 24, 1979, when the petition was dismissed, he had pressed the petition before the

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Court and had brought it to its notice that the points in controversy in C.W.P. No. 630 of 1979, were quite different from those involved in the present petition and that despite this fact having been brought to the notice of the Court, the petition was dismissed on the ground that similar petition (No. 630 of 1979) already stood dismissed.

(5) It may, at this stage, be noticed that when the applicant presented the review application before the Court on May 3, 1983, the office put up an objection requiring him to explain as to how the review application could be said to have been filed within limitation. The applicant explained this by making the following endorsement below the office report:—

“The review petition is filed,—*vide* Supreme Court order dated 21st March, 1983.”

After notice to the respondent, the review application came up for hearing before Surinder Singh, J. The respondent appeared before the Court and, *inter alia*, raised an objection to the effect that the review application was liable to be rejected as it had been filed beyond the period of limitation prescribed therefor. He pointed out that whereas the order sought to be reviewed had been passed on April 24, 1979, the review application was made only on May 3, 1983, i.e., after a lapse of about four years. The stand taken on behalf of the applicant, however, was that, in the circumstances, review application could be filed within 30 days of the order of the Supreme Court dated March 21, 1983. After accounting for the time required for obtaining copies of the Supreme Court's order, which in this case was applied on March 21, 1983, and was delivered on April 5, 1983, the review application had been filed within time. The learned Judge did not accept the submission that in the present case the period of limitation for filing review application was to commence from the date of the order of the Supreme Court permitting the applicant to withdraw the special leave petition. He pointed out that as the Supreme Court had merely permitted the applicant to withdraw his special leave petition, it was in the circumstances not necessary for the applicant to obtain a certified copy of that order and the time spent in obtaining the same could not be excluded in computing the period of limitation prescribed for moving a review application. He also did not read any implication or direction in the Supreme Court's order to the effect that the review application was to be entertained even if the same was

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barred by time. In the result, the learned Judge held that as the applicant did not make any application seeking condonation of delay in filing the review application, the same deserved to be dismissed as barred by time.

(6) However, the learned Single Judge did not content himself by dismissing the review application merely on the ground of limitation. He also went into the merits of the question as to whether or not a case had been made out for reviewing the order dated April 24, 1979, and held that the order dated April 24, 1979, dismissing the writ petition was, in the circumstances, quite correct and that no ground for reviewing the same had been made out. In other words, the learned Judge ruled that even if the review application was taken to have been filed within limitation, the same deserved to be rejected on merits as well. In the result, the learned Judge (Surinder Singh, J.) dismissed the review application filed by the applicant,—*vide* his order dated May 23, 1984.

(7) Aggrieved, the applicant once again approached the Supreme Court for granting leave to him to file an appeal against the order of this Court dated May 23, 1984 (S.L.P. No. 10142 of 1984) and once again, when the special leave petition came up for *ex parte* orders, the applicant sought permission of the Court to withdraw the same. Accordingly, the Supreme Court made the following order on March 3, 1986:—

“Special leave petition is allowed to be withdrawn with liberty to the petitioner to move the High Court again for purposes of moving an application for condonation of delay if so advised which application will be considered by the High Court on merits in accordance with law.”

Thereafter, the applicant filed the present application seeking condonation of delay in presenting the review application dated May 3, 1984, which, as already stated, stands disposed of as per orders of Surinder Singh, J., dated May 23, 1983.

(8) Before dealing with question as to whether the applicant has made out a case for condoning the delay in presenting Review Application (No. 73 of 1983) dated May 3, 1983, it will be convenient to clearly appreciate the implications of the order of the Supreme Court dated March 3, 1986.

(9) Learned counsel for the applicant contended that as a result of Supreme Court's order, the order passed by Surinder Singh, J. on May 23, 1984, stands set aside and applicant's application praying for review of the Court's order dated April 24, 1979, by which the writ petition had been dismissed, becomes pending. The Supreme Court has allowed the applicant to move an application for condoning the delay for presenting the said application and has directed the High Court to consider that application on merits. Clear implication of Supreme Court's order is that in case the High Court feels satisfied with applicant's explanation for condoning the delay in presenting the review application, it should condone the same and thereafter proceed to consider whether or not a case for review of the order dated April 24, 1979, dismissing the writ petition filed by the applicant has been made out.

(10) After giving our careful consideration to the submission made by learned counsel for the petitioner, we are unable to accept the same. Being aggrieved by this Court's order dated May 23, 1984, the applicant approached the Supreme Court seeking its leave to file appeal against that order (S. L. P. No. 10142 of 1984). As the said leave petition came up for *ex parte* orders, before the Supreme Court, the applicant sought its permission to withdraw the same, so that he may once again approach the High Court by filing an application praying for condonation of delay in presenting the review application dismissed by it, *inter alia*, on the ground that it was barred by time. The Supreme Court acceded to his request and permitted him to withdraw the special leave petition. Withdrawal of the application, seeking permission of the Supreme Court to file an appeal against this Court's order dated May 23, 1984, cannot possibly result in the setting aside of the said order. It only means that the applicant did not, for the redress of his grievances, seek intervention of the Supreme Court and that he would, for this purpose approach the High Court. It cannot be postulated that the Supreme Court, while permitting the applicant to withdraw his request for intervention, had in fact intervened in the matter and had set aside the order sought to be appealed against, and that too without hearing the affected parties. Use of the words "Special leave petition is allowed to be withdrawn with liberty to the petitioner to move the High Court again for purpose of making an application for condoning the delay if so advised....." clearly indicates that the Supreme Court did not require the applicant to move any application for condoning the delay in presenting the review application. It left it to him to decide as to whether or not

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he would, after having withdrawn his request for intervention by the Supreme Court, move such an application before the High Court. In the context, what the further direction in the order "..... which application will be considered by the High Court on merits in accordance with law," means is that in case the applicant makes an application for condoning the delay in presenting review application (No. 73 of 1983) dated May 3, 1983, the High Court shall, after considering the merits of the submissions made by the parties, decide the same in accordance with law.

(11) In our opinion, the principal question that arises for our consideration in this case is :—

“Whether, so long as the order of the Court dated May 23, 1984, dismissing Review “Application No. 73 of 1983 (application seeking review of the order dated April 24, 1979), stands and has not been set aside by a competent Court, is it open to this Court to, at this stage, pass any order on the application for condoning the delay in presenting the same ?”

Of course, the second question whether the applicant has made out a case for condoning the delay in presenting the review application will arise only if the main question is answered in the affirmative.

(12) As already stated, Review Application No. 73 of 1983, had been dismissed by this Court on May, 23, 1984, for two reasons: (1) the application was barred by time and (2) that on merits, no case had been made out for reviewing the order dated April 24, 1979. Had the said application been, in the absence of an application for condoning the delay in presenting the same, dismissed merely on the ground that it was barred by time, it might have been, in such a case, possible for the applicant to, with certain amount of feasibility, urged that as the Court had, in the absence of proper explanation declined to entertain the review application on the ground that it was belated, it can entertain the same even now if it finds the explanation for the delay now being offered, to be apt. But then, in a case, like the present, where the review application has been dismissed not only on the ground that it was barred by time but also on the ground that even on merits, no case for review had been made out, mere consideration of a request for condoning the delay

in presenting the same would, in our opinion, serve no useful purpose. Even if the explanation offered by the applicant for delay in presenting the review application is accepted, it will not be possible for this Court to upset the finding arrived at by it earlier, namely, that on merits no case for review of the order had been made out. This Court cannot interfere with the order dated May 23, 1984, and take a stand contrary to it as it has neither appellate nor supervisory jurisdiction in respect of that order, which, as already indicated, still stands. The present one certainly is not an application for review of the order dated May 23, 1984, and even if it had been so, it is very doubtful if it would be maintainable. In these circumstances, it would be futile to consider whether the applicant has succeeded in making out a case for condoning the delay in presenting the review application.

(13) In the result, we are of the opinion that so long as the order dated May 23, 1984, stands, it would be futile to consider the applicant's request for condoning the delay in presenting the review application No. 73 of 1983. This application, therefore, fails and is rejected.

R.N.R.

A.C