

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

CLAIM PETITION NO. 155/DB/2019

Devesh Nautiyal, s/o Shri Anusuiya Prasad Nautiyal r/o Village Silla Post Office
Patholdhar, District Rudra Prayag.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Education, Dehradun.
2. Mukhya Shikksha Adhikari, Department of Education, Rudra Prayag.
3. Zila Shiksha Adhikari (Prarambhik Shiksha), Rudra Prayag.

.....Respondents.

Present: Sri V.P.Sharma, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: DECEMBER 12, 2019

Justice U.C.Dhyani(Oral)

Since Ld. Counsel for the petitioner has supplied neatly typed copies of Pg. Nos. 38 and 39, therefore, the defect, as pointed out by the Registry, stands removed.

2. By means of present claim petition, petitioner seeks to set aside the impugned order dated 26.02.2019 (Annexure: A-2), appellate order dated 16.11.2019 (Annexure: A-3) and suspension order dated 22.01.2015 (Annexure: A-5), among others.
3. Petitioner is an Assistant Teacher with the respondent department. He was appointed as such in the year 2005. In view of his failing health, he

applied for medical leave. Since such leave was not sanctioned by respondent department, therefore, the petitioner tendered his resignation on 18.02.2019 on medical ground. In between, the petitioner was suspended in January, 2015. The charge sheet was issued and after inquiry, his services were terminated *vide* order dated 26.02.2019 (Annexure: A-1).

4. Feeling aggrieved with the same, petitioner preferred departmental appeal, which was dismissed *vide* order dated 16.11.2019 (Annexure: A-3), as time barred. In between, certain other orders were passed. Faced with no other alternative, the petitioner has filed present claim petition.
5. It is the submission of Ld. Counsel for the petitioner that the departmental appeal of the petitioner was not decided on merits. It was simply dismissed, as time barred. Ld. Counsel for the petitioner submitted that the petitioner should be given an opportunity to contest his departmental appeal, on merits, reserving his right to challenge other orders, in case his appeal is dismissed on merits.
6. Ld. A.P.O. drew the attention of this Tribunal towards sub-rule (4) of Rule 11 of the Uttaranchal (now Uttarakhand) Government Servant (Discipline & Appeal) Rules, 2003, to argue that the appellate authority had no choice but to dismiss the appeal summarily, being filed beyond 90 days. The said provision reads as below:

“11(4): The appeal shall be preferred within 90 days from the date of communication of impugned order. An appeal preferred after the said period shall be dismissed summarily.”
7. We agree with the submission of Ld. A.P.O. that since the departmental appeal filed by the petitioner was filed beyond 90 days, therefore, the appellate authority had no option but to dismiss the appeal, as time barred in view of sub-rule (4) of Rule 11 of the Rules of 2003. But that should not be the end of the road for the petitioner. Nobody can be left remediless, a concept, which is embodied in *maxim ubi jus ibi remedium*.
8. There is yet another aspect of the matter. There is difference between ‘technical justice’ and ‘substantial justice’. The primary function of the Courts is to adjudicate dispute between the parties and to advance

substantial justice. When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred, for, the other side cannot claim to have vested right in injustice being done because of non deliberate act.

9. It will be quite appropriate to quote the observations of Hon'ble Apex Court in *Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others*, (1987)2 SCC 107, herein below for convenience:

“The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-- that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

.....

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

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..... The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned.

And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides. Appeal is allowed accordingly. No costs.”

10. The provisions of the Limitation Act, 1963 shall, *mutatis mutandis* apply to a reference under the U.P. Public Services (Tribunal) Act, 1976. Section 5 of the Limitation Act, 1963 is always applicable to the Appeals and Applications. In the instant case, the appeal has been held to be barred by limitation. It is settled law of the land that every *lis*, as far as possible, should be decided on merits, unless a person sleeps over his or her rights deliberately.
11. Being satisfied with the sufficiency of reasons thus highlighted in support of delay in filing the appeal, coupled with the aforesaid observations of Hon’ble Apex Court, we condone the delay in filing the appeal, in the peculiar facts of the case and direct the appellate authority Respondent No.2 to decide the departmental appeal of the petitioner, on merits, in accordance with law, within a reasonable time.
12. The appellate order dated 16.11.2019 (Annexure: A-3) passed by Respondent No.2 is set aside.
13. The claim petition thus stands disposed of at the admission stage. In the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 12, 2019
DEHRADUN

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