MOHD. AYUB

v.

STATE OF U.P. AND OTHERS

(Civil Appeal No. 8200 of 2009)

NOVEMBER 20, 2009

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

General Clauses Act, 1897 – s. 10 – Computation of time – Gazetted holiday on the last date of submitting application for the post alongwith medical certificate – Submission of application on the last date, however medical certificate on the next day – Non-consideration of application – Correctness of – Held: Party prevented from doing an act by some circumstances beyond his control can do so at the first subsequent opportunity – Object is to enable a person to do what he could have done on a holiday on the next working day – Candidate could not obtain medical certificate since last day was a Gazetted holiday and previous days were also holidays – He obtained medical certificate the next day and submitted it on that day itself – Hence, application to be considered in view of s. 10 and the principle of equity – Equity.

For the post of Armourer, the last date of submitting the application along with the medical certificate was 14.04.2003 Appellant submitted his application for the said post on 14.04.2003 but the medical certificate was submitted on 15.04.2003. Appellant's application was not considered. He filed a writ petition. He stated that 14.04.2003 was a gazetted holiday and previous days were also holidays and as such he could not get the medical certificate by 14.04.2003. Single Judge of High Court dismissed the petition. Division Bench of High Court upheld the same. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. There is a general principle that a party,

A **prevented from doing an act for some reasons beyond his control, can do so at the first subsequent opportunity. The underlying object of s.10 of the General Clauses Act, 1897 is to enable a person to do what he should have done in a holiday, on the next working day. The said principle is**
B **based on doctrine that law does not compel the performance of an impossibility. [Para 15] [1101-B-D]**

Huda and another v. Dr. Babeswar Kanhar and another **(2005) 1 SCC 191 – relied on.**

C *(H.H. Raja) Harinder Singh v. S. Karnail Singh and others* **AIR 1957 SC 271;** *Ghaganti Satyanarayana and others v. State of Andhra Pradesh* **(1986) 3 SCC 141;** *N. Sureya Reddy v. State of Orissa* **1985 Cri LJ 939 (Ori);** *Hossein Ally v. Donzelle* **ILR (1880) 5 Cal 906, referred to.**

D **2.1. The last date of submitting the application along with medical certificate was 14th of April, 2003, which was a gazetted holiday on account of Ambedkar Jayanti. The application of the applicant was incomplete only because it did not contain the medical certificate. The explanation**
E **of the appellant is that in view of the 14th April being a holiday and the previous days were also holidays, he could not obtain the medical certificate and he obtained it on the very next day i.e. 15th April and submitted it on that day itself. In these circumstances, his application should have been considered on merit in view of the principles**
F **laid down in s. 10 of the General Clauses Act, 1897. [Paras 9 and 10] [1100-A-C]**

2.2. Both the Single Judge and the Appellate Bench of the High Court failed to take into consideration the
G **provision of s. 10 of the Act and the principles of equity which are embodied in the said provision. The decisions of the Single Judge and that of the Division Bench of the High Court are not based on sound principles. The order of the Single Bench and Division Bench is quashed as also the order dated 02.07.2003 passed by the respondent**
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No.3-DIG, PAC Barriely section. The application filed by the appellant on the post of Constable Amorer Course is valid and should be considered as valid and the respondents are directed to take steps on the same in accordance with law. [Paras 7, 16 and 17] [1099-D; 1101-E-G]

Case Law Reference:

AIR 1957 SC 271	**Referred to.**	**Para 11**
(1986) 3 SCC 141	**Referred to.**	**Para 13**
1985 Cri LJ 939	**Referred to.**	**Para 14**
(2005) 1 SCC 191	**Relied on.**	**Para 15**
ILR (1880) 5 Cal 906	**Referred to.**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8200 of 2009.

From the Judgment & Order dated 9.9.2008 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow U.P. in Special Appeal No. 513 (SB) of 2008.

B.P. Singh, Dhakray, R.K. Singh, Shakti Singh Dhakray, Dr. Kailash Chand for the Appellant.

S.B. Upadhyay, S.K. Dwivedi, AAG, Manoj Kumar Dwivedi, Gunnam Venkateswara Rao for the Respondents.

The Judgment of the Court was delivered by

GANGULY, J.

Leave granted.

1. This appeal is directed against the judgment and order dated 09.09.2008 passed by the Division Bench of High Court of Allahabad, Lucknow Bench, Lucknow in Special Appeal No. 513 (S/S) 2008 whereby the learned Judges of the Division Bench were pleased to affirm the view taken by the Learned Single Judge in judgment and order dated 18.08.2008 by which the Writ Petition No. 5554 (S/S) of 2003 filed by the appellant was dismissed.

A 2. The material facts of the case are that information was circulated by the Commandant IInd battalion, PAC Sitapur, 4th Respondent, on 10.04.2003 to all the Branch Incharge/ Commandant to make available the nominations of the constable having certain qualifications for the post of Armourer (herein after B referred as said post). It was made clear that applications of the interested candidates will be made available to the Head Office by 14.04.2003 and no application sent thereafter will be considered.

3. It was also mentioned therein that a medical certificate C from the Chief Medical Officer as per category A was required to be sent along with the application and no application would be accepted without the medical certificate.

4. The appellant submitted his application along with educational qualification on 14.04.2003. The medical certificate D admittedly was not attached with this application dated 14.04.2003 but the medical certificate was submitted on 15.04.2003. In his Writ Petition, the appellant stated that there was a gazetted holiday on account of Ramnavami on 11th April, 12th April was closed for second Saturday, Sunday was on 13th E April and Ambedkar Jayanti was on 14th April. As such from 11th April to 14th April 2003, the appellant could not get the medical certificate. He got the medical certificate on 15.04.2003 and submitted the same on 15.04.2003 itself. The appellant further stated that his name was not considered because he F submitted his application on 14.04.2003 along with the educational certificates. However, even though he submitted his medical certificates on the next available day i.e. 15.04.2003, even then his application was not considered.

5. Aggrieved by this action of the respondent the appellant G filed a writ petition No.2657 (SS) of 2003 before the High Court. The Hon'ble High Court vide its order dated 14.05.2003 directed the Respondent No.3-DIG, PAC Barriely section to pass a speaking order on the representation filed by the appellant. The substance of the said order is that since the appellant submitted H his application with the educational qualifications on 14.04.2003

but submitted the medical certificate on 15.04.2003, the same could not be considered for the post of Armourer for non-production of medical certificate. It was stated in the impugned order of Respondent No. 2 dated 02.07.2003 the appellant is himself responsible for the delay in submission and as such his application is liable to be dismissed.

6. Challenging the said order dated 02.07.2003, the appellant filed another writ petition no. 5554 (S/S) of 2003. The said writ petition was also rejected on the same grounds on which the representation of the appellant was dismissed. The Appellate Bench of the High Court also took the same view and dismissed the appeal by affirming the decision taken by the learned Single Judge.

7. It appears that both the learned Single Judge and the Appellate Bench of the High Court failed to take into consideration the provision of Section 10 of General Clauses Act and the principles of equity which are embodied in the said provision.

8. The provisions of Section 10 of General Clauses Act are set out below:-

> "10. *Computation of time.* – (1) Where, by any Central Act or regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:
>
> Provided that nothing in this Section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.
>
> (2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

A 9. It is common ground that the last date of submitting the application along with medical certificate was 14th of April, 2003, which was a gazetted holiday on account of Ambedkar Jayanti. The application of the applicant was incomplete only because it did not contain the medical certificate. The B explanation of the appellant is that in view of the 14th April being a holiday and the previous days were also holidays, he could not obtain the medical certificate and he obtained it on the very next day i.e. 15th April and submitted it on that day itself.

10. In these circumstances, his application should have C been considered on merit in view of the principles laid down in Section 10 of General Clauses Act.

11. Section 10 of the General Clauses Act has come up for consideration in various cases before this Court and also different High Courts. In the case of *(H.H. Raja) Harinder Singh* D *v. S. Karnail Singh and others,* AIR 1957 SC 271, a four-Judge Bench of this Court explained the object of Section 10 very lucidly. The learned Judges have held as under:-

> "...Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that period E expires on a holiday, then according to the section the Act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed and that period F should expire on a holiday." (Page 273 of the report)

12. The decision in the case of *Harinder Singh* (supra) was rendered in the context of an election dispute but the general principles explained therein apply to all cases.

G 13. Even while construing the provisions of Section 167 of Criminal Procedure Code, 1961, this Court accepted the same interpretation in respect of Section 10 of the General Clauses Act. [See *Ghaganti Satyanarayana and others v. State of Andhra Pradesh,* (1986) 3 SCC 141. (para 30 page 154 of the report)].

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14. The learned Judges in *Chaganti* (supra) accepted the interpretation of Section 10 in the case of *N. Sureya Reddy v. State of Orissa,* 1985 Cri LJ 939 (Ori), and held that the principle enunciated in Section 10 of General Clauses Act should be invoked on consideration of justice and expediency. A

15. Rather recently in the case of *Huda and another v. Dr. Babeswar Kanhar and another,* (2005) 1 SCC 191, this Court held that there is a general principle that a party, prevented from doing an act for some reasons beyond his control, can do so at the first subsequent opportunity. The learned Judges further elaborated by saying that the underlying object of Section 10 is to enable a person to do what he should have done in a holiday, on the next working day. The learned Judges held that the said principle is based on doctrine that law does not compel the performance of an impossibility. In saying so, the learned Judges relied on an old decision of Calcutta High Court in the case of *Hossein Ally v. Donzelle,* ILR (1880) 5 Cal 906. This Court is in respectful agreement with the aforesaid principles. B C D

16. Therefore, this Court holds that the decisions of the learned Single Judge and that of the Division Bench of the High Court, which have been impugned before us are not based on sound principles. The order of the Single Bench dated 18.8.2008 is quashed as also the order dated 02.07.2003 passed by the respondent No.3-DIG, PAC Barriely section. Accordingly, the order of the Division Bench dated 9.9.2008 is also quashed. E

17. The application filed by the appellant on the post of Constable Amorer Course is valid and should be considered as valid and the respondents are directed to take steps on the same in accordance with law and within a period of six weeks from the date of service of this order upon them. F

18. The appeal is thus allowed. There shall be no order as to costs. G

N.J. Appeal allowed.

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