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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH, LUCKNOW.

Q.A. N<sup>o</sup>. 99/90(L)

Hari Nath

Applicant

versus

Union of India & others

Respondents.

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. M.Y. Priolkar, A.M.

(Hon. Mr. Justice K. Nath, V.C.)

This application under section 19 of the Administrative Tribunals Act, 1985 is for reinstatement of the applicant with back wages and continuity of service, and has been opposed inter alia on the ground bar of limitation. We have heard Shri J.N. Srivastava for the applicant and Dr. Dinesh Chandra for the respondents. We have also considered the application dated 10.5.90 for condonation of delay made under section 14 of the Limitation Act.

The applicant was engaged as daily rated casual labour in the office of respondent No. 2, Director, of Census at Lucknow sometime in July, 1979. He was ceased from work on 23.7.85. This application under section 19 of the Administrative Tribunals Act, 1985 was filed on 2.4.90.

The explanation for delay set forth in the application under section 14 of the Limitation Act is that he had filed a writ petition in the Hon'ble

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High Court of Judicature at Allahabad, Lucknow Bench in the year 1986 which was dismissed on the ground that the Hon'ble High Court had no jurisdiction. He, thereafter, moved an application to the Assistant Labour Commissioner (Central) at Lucknow for settlement of the dispute on the ground that the Census Department of the Govt. of India was an 'Industry', that the applicant was a 'workman' within the meaning of Industrial Disputes Act and that since the applicant's termination was accomplished <sup>contrary to</sup> the manner prescribed under section 25 F of the Industrial Disputes Act, the termination was invalid. That question seems to have remained pending before the Assistant Labour Commissioner and ultimately, the Government communicated a decision by a letter dated 28.8.89 (Annexure A-2) that for reasons recorded on the reverse of the letter there was no *prima facie* case for referring the matter to Industrial Tribunal. The letter Annexure A-2 refers to the letter dated 27.12.88 of the Assistant Labour Commissioner (Annexure A-1). Annexure A-1 mentions that the functions of the Registrar General's under the Census Act of 1948 as also under the Registration of Births and Deaths 1969 are statutory functions and the Census department is a department of the Central Govt. performing the sovereign functions, hence could not be an industry within the meaning of Industrial Disputes Act.

The stand taken by the applicant <sup>is</sup> that on account of erroneous advice the case was filed before the Hon'ble High Court and when the High Court dismissed the case for lack of jurisdiction, the case was taken up before the Assistant Labour Commissioner under the Industrial Disputes Act because there was a decision of the Rajasthan High Court

which held the Census Department to be an Industry.

It is, however, stated in the application under section 14 of the Limitation Act that the operation of the judgment was stayed by the Hon. Supreme Court of India but the information of stay was received by the applicant on 28.8.89, hence the delay in filing this application deserves to be condoned.

In the first place, we are not at all satisfied that the error was bonafide ~~xxx~~ in filing the writ petition before the High Court in the year 1986 when the Administrative Tribunals Act, had already come into force on 1.11.1985. It is a patent case of lack of jurisdiction and one can not be heard to say that this patent lack of jurisdiction specified in the statute was erroneously appreciated by the counsel. It must be shown that the lawyer's error itself is bonafide; every error of a lawyer does not give a ground of bonafide of the litigant.

In the second place, we do not think that the decision of the High Court of Rajasthan on the question of Census Department being an Industry should be relied upon, especially in view of the stay order issued by the Hon. Supreme Court. Further, the jurisdiction, which is exercised by the Tribunal is not subject to the views of any High Court; it is only subject to the orders of the Supreme Court. We do not think therefore, that the so called error in moving the Assistant Labour Commissioner, should be proper ground for condoning the delay in the present case. The application must be dismissed as barred by time.

However, before we part with this case, we may mention that a preliminary objection taken by the respondents is that the applicant did not pursue the alternative remedy of representation. We think that in view of the fact that

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the applicant had worked with the department for almost six years before he was terminated in 1985, the respondents may consider re-engagement of the applicant <sup>fresh</sup> on compassionate grounds if the applicant makes a representation to that effect within a period of one month from the Date of receipt of a copy of this judgment. If a representation is made, the respondents may dispose it of as early as possible say within 3 months from the date of receipt thereof.

With the above observations, this application is dismissed.

A.M.

V.C.

Lucknow Dated: 12.11.90