A

STATE OF PUNJAB AND ANOTHER

v.

SHAMLAL MURARI & ANR.

October 6, 1975

[V. R. KRISHNA IYER AND A. C. GUPTA, JJ.]

B

Letters Patent Appeals under clause 10—The Punjab and Haryana High Court Rules and Orders, Vol. 5 Chapter 2-C—Rule 3—Core or essence of the Rule—Rule is not mandatory for the purposes of entertaining the Letters Patent Appeal—Breach of the Rule is only an irregularity—Interference, by the Court of Appeal with the discretionary exercise of power should be exceptional and only when there is something perverse or irrational in the exercise of that power.

C Rule 3 of Chapter 2-C, Vol. 5 of the Punjab and Haryana High Court Rules and Orders reads as follows :

> "R. 3 : No appeal under clause 10 of the Letters Patent will be received by the Deputy Registrar unless it is accompanied by three typed copies of the following :
>
> (a) Memorandum of appeal;
>
> (b) Judgment appealed from, and
>
> D (c) Paper book which was before the Judge from whose judgment the appeal is preferred."

While construing the said rule, the Full Bench of the Punjab and Haryana High Court in *Bikram Das* v. *The Financial Commissioner, Revenue, Punjab, Chandigarh and others*, A.I.R. 1975 Punjab and Haryana 1, held that Rule 3 relating to filing of Letters Patent Appeals is mandatory.

E The appellant-State while preferring the Letters Patent Appeal against the orders of the single Judge holding in favour of the respondent that the denial of increments and certain other benefits for failure to pass departmental test for which exemption has been granted to him as bad, filed copies of all the three documents referred to in Rule 3 relating to Letters Patent Appeal, but not three copies of each and with an application for condonation of delay. The Court refused to entertain the appeal (i) following *Bikram Das's* case for non-compliance of Rule 3, and (ii) declining to exercise its discretion as regards the extension of the period of limitation and condonation of delay.

F On appeal, by Special Leave, the State contended :

(i) that the ratio in *Bikram Das's* case of the Full Bench of Punjab and Haryana High Court holding that Rule 3 relating to entertaining of Letters Patent Appeals as mandatory was wrong.

(ii) Reluctance to exercise the discretionary power to condone the delay and extend the period of limitation was not proper, and

G (iii) Denial of the increments and other benefits to a Government servant for failure to pass the departmental test in spite of exemption having been granted to him, was not bad in law.

Dismissing the appeal, the Court,

HELD : (1) The contention that the failure to pass the departmental test by the Government servant concerned after having been put in more than two decades of service cannot stand in the way of his enjoying the benefits of H increments etc., particularly, because he had been accorded exemption, is not correct. [84 G.]

(2) It is true that Rule 3 of the Letters Patent Appeal of the Punjab and Haryana High Court Orders and Rules, Vol. 5, Chapter 2-C, in form, strikes a

mandatory note and, in design, is intended to facilitate plurality of Judges hearing the appeal, equipped with a set of relevant papers. May be, there is force in the view, that certain basic records must be before the Court along with the appeal if the Court is to function satisfactorily in the exercise of its appellate power. In this sense, the needs of the Rule transcend the directory level and may perhaps be considered a mandatory need. [85 D—E].

(3) Even taking a stern view, every minor detail in Rule 3 cannot carry a compulsory or imperative import. Three copies would certainly be a greater advantage, but what is the core of the matter is not the *number* but the presence; and the over emphasis on *three copies* is mistaken. Perhaps, the Rule requires three copies and failure to comply therewith may be an irregularity. What is of the essence of Rule 3 is not that *three* copies should be furnished, but that copies of all the three important documents referred to in that rule shall be produced. The Court, if it thinks it necessitous, exercise its discretion and grant further time for formal compliance with the Rule, if the copies fall short of the requisite number. Where the non-compliance, though procedural, will thwart fair hearing or prejudice doing of justice to parties, the Rule is mandatory. If the breach can be corrected without injury to a just disposal of a case, regulatory requirement should not be enthroned into a dominant desideratum. Since courts are to do justice, not to wreck this end product on technicalities, even what is regarded as mandatory traditionally may perhaps have to be moderated into wholesome directions to be complied with in time or in extended time. [85 F—H].

In the present case, as copies of all the three documents prescribed have been furnished, but not three copies of each, the omission or default is only a breach which can be characterised as an irregularity to be corrected on application by the party fulfilling the condition within time allowed by the Court. To this extent, the view taken by the Punjab High Court in *Bikram Das's* case is not correct. [86 B—C].

Bikram Das v. *The Financial Commissioner, Revenue, Punjab, Chandigarh and Ors.;* A.I.R. 1975 Punjab & Haryana 1, over-ruled partly.

(4) Discretionary exercise of power by a Court can be interfered with by a Court of Appeal only when there is something perverse or irrational in the exercise. In the instant case, there being nothing perverse or irrational, the reluctance in interfering at the appellate level by the High Court by declining to exercise its discretion in condoning the delay in compliance with Rule 3 of the Punjab and Haryana High Court Orders and Rules, Vol. 5, Chapter 2-C is normal and proper. [86 D—E].

OBITER :

(a) Passing petty tests after a petrifying length of dull official service is an odd insistence except in important levels of work. [84 G].

(b) The use of "shall"—a work of slippery semantics—in a rule is not decisive and the context of the statute, the purpose of the prescription, the public injury in the event of neglect of the rule and the conspectus of circumstances bearing on the importance of the condition are considerations before condemning a violation of a rule as fatal. [85 E—F].

(c) Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prrescriptions are the hand-maid and not the mistress, a lubricant, not a resistant in the administration of justice. [85 H, 86 A].

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1415 of 1975.

Appeal by Special Leave from the Judgment and Order dated the 11th September, 1974, of the Punjab and Haryana High Court in Letters Patent Appeal No. 259 of 1974.

A

Kapil Sibal and O. P. Sharma, for the Appellants.

V. C. Mahajan and Mrs. Urmila Sirur for Respondent No. 1.

The Judgment of the Court was delivered by

KRISHNA IYER, J. Having granted special leave we have heard counsel on both sides in this appeal right away on all the points involved—of course, with their consent and preparedness.

B

The State, the appellant, has urged that the High Court's judgment is wrong and our conclusion rests on a consideration of three obstacles in the way of the appellant which we now proceed to dispose of. The facts necessary to appreciate the controversy are minimal and emerge from the brief, though sufficient, discussion that follows. Brevity is not inconsistent with clarity and prolixity is not always or ever a virtue.

C

The first fatal objection to the Government's case stated in the order of the High Court, is the ratio in a Full Bench decision in *Bikram Das* v. *The Financial Commissioner, Revenue, Punjab, Chandigarh and Ors.,*(1) which holds that rule 3 relating to filing of Letters Patent Appeals is *mandatory* which, in this instance, has not been complied with, resulting in the dismissal of the appeal in *limine.* The second obstacle in the way of the appellant is that assuming that r. 3 is directory-*cum*-discretionary, an application for condonation of delay in compliance with r. 3 had been made and the High Court, in division Bench, had declined to exercise its discretion in favour of the appellant. The reluctance in interfering, at the appellate level, with the exercise of the discretion by the High Court is natural and proper. The third point, which is the substantive one on the merits, is as to whether it is just and legal that a Government servant, who has put in 22 long and languishing years of service, should be denied increments and certain other benefits for failure to pass departmental tests for which exemption had been granted to him. The learned single Judge had held that the failure to pass the departmental test should not be a bar to the drawal of the benefits, and since the letters patent appeal was not entertained on the procedural ground we have indicated above, that question did not fall for decision.

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Right away, we may indicate that we are not impressed with the State's contention that the failure to pass the departmental test by the Government servant concerned, after having put in more than two decades of service cannot stand in the way of his enjoying the benefits of increments, etc., particularly because he had been accorded exemption. Passing petty tests after a petrifying length of dull official service is an odd insistence except in important levels of work. That apart, we see no reason to differ from the learned single Judge's finding on this matter. That should put the lid on this appeal but the concern of the State is to set right the law regarding rule 3 above mentioned.

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Counsel for the State contends that a large number of appeals will be affected by the interpretation of r. 3 of the Punjab & Haryana High

(1) A. I. R. 1975 Punjab & Haryana 1.

Court Rules and Orders, Vol. 5, Chap 2-C by the Full Bench in *Bikram Dass* (supra). What is pressed before us is that r. 3 which requires, in terms, that *three* typed copies of (a) the memorandum of appeal, (b) judgment appealed from, and (c) the paper book which was before the Judge from whose judgment the appeal is preferred, is not mandatory, although the Full Bench has chosen to hold that it is obligatory to comply with them if the appeal is to be entertained at all. We do not agree that this fatal consequence should necessarily follow even if there is a minor deviation in fulfilling the requirements of r. 3.

It is appropriate at this stage to extract r. 3 which runs as follows :—

> "3. No appeal under clause 10 of the Letters Patent will be received by the Deputy Registrar unless it is accompanied by three typed copies of the following :—
>
> (a) Memorandum of appeal;
>
> (b) Judgment appealed from, and
>
> (c) Paper book which was before the Judge from whose judgment the appeal is preferred."

It is true that, in form, the rule strikes a mandatory note and, in design, is intended to facilitate a pluarlity of judges hearing the appeal, each equipped with a set of relevant papers. May be, there is force in the view taken by the Full Bench that certain basic records must be before the Court along with the appeal if the Court is to function satisfactorily in the exercise of its appellate power. In this sense, the needs of the rule transcend the directory level and may, perhaps, be considered a mandatory need. The use of 'shall'—a word of slippery semantics—in a rule is not decisive and the context of the statute the purpose of the prescription, the public injury in the event of neglect of the rule and the conspectus of the circumstances bearing on the importance of the condition, have all to be considered before condemning a violation as fatal.

It is obvious that even taking a stern view, every minor detail in r. 3 cannot carry a compulsory or imperative import. After all, what is required for the Judges to dispose of the appeal is the memorandum of appeal plus the judgment and the paper book. Three copies would certainly be a great advantage, but what is the core of the matter is not the number but the presence, and the over-emphasis laid by the Court on *three* copies is, we think, mistaken. Perhaps, the rule requires three copies and failure to comply therewith may be an irregularity. Had no copy been furnished of any one of the three items, the result might have been different. In the present case, copies of all the three documents prescribed, have been furnished but not three copies of each. This omission or default is only a breach which can be characterised as an irregularity to be corrected by condonation on application by the party fulfilling the condition within a time allowed by the Court. We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It

A has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After, all B Courts are to do justice, not to wreck this end product on technicalities. Viewed in this perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time. Be that as it may, and ignoring for a moment the exploration of the true office of procedural conditions, we have no doubt that what is of the essence C of r. 3 is not that *three* copies should be furnished, but that copies of all the three important documents referred to in that rule, shall be produced. We further feel that the Court should, if it thinks it necessitous, exercise its discretion and grant further time for formal compliance with the rule if the copies fall short of the requisite number. In this view and to the extent indicated, we over-rule the decision in *Bikram Dass's* (supra) case.

D The State has yet another hurdle in its way. In the present case, an application for condonation of delay in filing the *three* copies required by r. 3 was made and the Court, in the exercise of its discretion, held that such condonation should not be granted. Discretionary exercise of power by a Court cannot be lightly interfered with by a Court of appeal, and we are loathe, therefore, to upset the order of the E High Court declining to condone the delay, there being nothing perverse or irrational in the exercise. In this view also, the appellant has to lose. For these reasons, the appeal fails and is dismissed. There will be no order as to costs.

S.R. *Appeal dismissed.*