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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 42/2013 and CM Nos. 796/2013 (stay), 797/2013 (exemption), 798/2013 (filing additional documents) and 799/2013 (delay in filing 424 days) and Caveat No. 38/2013

UNION OF INDIA ..... Appellant
Through: Mr Rajeeve Mehra, ASG with
Mr Sachin Datta, CGSE

versus

MANJIT SINGH & ORS. ..... Respondents
Through: Ms Jyoti Singh, Sr Adv with
Mr Sanjeev Kumar and Ms Tinu and Ms Sahila
Lamba, Advs.

AND

\+ LPA 43/2013 and CM No. 800/2013 (stay), 801/2013 (exemption), 802/2013 (Placing on record additional documents) and 803/2013 (delay of 1 day)

UNION OF INDIA ..... Appellant
Through: Mr Rajeeve Mehra, ASG with
Mr Sachin Datta, CGSE

versus

MANJIT SINGH & ORS. ..... Respondents
Through: Ms Jyoti Singh, Sr Adv with
Mr Sanjeev Kumar and Ms Tinu and Ms Sahila
Lamba, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN

O R D E R

% **15.01.2013**

WP(C) No. 2764/2001 was filed by Technical Assistants working in Indian Institute of Technology, Delhi, seeking a direction to the said Institute and Union of India, to grant to them, pay scales of Rs 1640-2900/- (pre-revised), in terms of the recommendations of the Fourth Pay Commission, with effect from 01.01.1986. The writ petition was allowed vide impugned order dated 13.09.2011. Review Petition No. 637/2012 was filed by the appellant-Union of India on 13.09.2012, seeking recall of the order dated 13.09.2011. The said Review Petition was accompanied by CM No. 17923/2012, seeking condonation of delay in filing the Review Petition. The learned Single Judge vide order dated 02.11.2012 summarily dismissed CM No. 17923/2012 relying upon the decision of Supreme Court in ***Office of the Chief Post Master General & Ors. v. Living Media India Limited and Anr.*** *2012(2) SCALE 782*.

2. LPA No. 42/2013 is directed against the judgment dated 13.09.2011,

allowing the writ petition, whereas LPA No. 43/2013 is directed against the order dated 02.11.2012, dismissing the review petition filed by the appellant. In LPA No. 42/2013, an application being CM No 799/2013 has been filed seeking condonation of delay of 424 days in filing the appeal. In LPA No. 43/2013, CM No. 803/2013 has been filed seeking condonation of delay of one day in filing the said appeal.

3. Since the appellant has not placed on record the copy of CM No. 17923/2012, seeking condonation of delay in filing Review Petition No. 637/2012, we are unable to take note of the grounds given in the said application for condonation of delay in filing the review petition. The learned counsel appearing for the respondents, however, submits that no detailed reasons were given in the said application explaining the delay in filing the review petition.

4. It is stated in CM No. 799/2013, seeking condonation of delay in filing LPA No. 42/2013, that the certified copy of the judgment dated 13.09.2011 was forwarded by IIT, Delhi to the appellant Union of India vide letter dated 26.09.2011 and was received by Department of Higher Education on 10.10.2011. Thus, this is an admitted position that the copy of

the judgment dated 13.09.2011 had been received by the appellant by 10.10.2011. It is further stated in the application that after receipt of the copy of the order, the Department initiated the process of examination of the case and on 07.10.2011, letters were addressed to all IITs, except IIT, Delhi, requesting them to make available the copies of Ministry's order, if any and the Institutes' internal orders, allowing to the Technical Assistants, the pre revised pay scales of 1640-2900/- with effect from 01.01.1986. IIT, Delhi was also requested to indicate the number of employees who would be covered by the judgment dated 13.09.2011. It is further stated that during scrutiny of the available record, it transpired that the IIT Council had on 21.05.2002 approved the higher pay scale of Rs 5500-9000 to the Technical Assistants, but, following the decision of a Division Bench of this Court, it was decided, in the meeting held on 07.09.2003, to withdraw the said pay scales. According to the appellant, efforts were then made to retrieve the file relating to 38th Meeting of IIT Council, so as to ascertain the background which led to the taking of the decision dated 07.09.2003, but, the relevant file has not been traced till date. A scanned copy of the relevant agenda note was obtained from IIT, Kanpur only on 22.08.2012, though even the said

note did not elaborate the background pertaining to the said proposal. The Department also took up the matter separately with IIT, Kharagpur and IIT, Madras on 10.02.2012, asking them to explain how they were paying higher pay scales, despite the decision of the Council to withdraw the same. It is stated in the application that after information pertaining to the grant of higher pay scales and withdrawal of the same emerged and the responses from IITs were received, a self-contained note was submitted to the Secretary on 21.08.2012, suggesting filing of a review petition. The proposal having been concurred on 22.08.2012, the Ministry of Law & Justice was requested on 03.09.2012 to engage Additional Solicitor General and necessary approval was accorded by them on 07.09.2012. Subsequently, the Department held conferences with the Government counsel and the Additional Solicitor General, culminating into filing of the Review Petition on 11.09.2012.

5. In ***Office of the Chief Post Master General & Ors.*** *(supra),* after reviewing its earlier decisions on the subject, *inter alia,* held as under:-

> "12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot

claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and

> should not be swirled for the benefit of a few.
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> Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

6. In the case before us, it was admitted, during the course of arguments that the appellant-Union of India was a party to the writ petition and had also filed a counter-affidavit. Therefore, there must be a file maintained by concerned Department as well as a file by the counsel who was representing the appellant in the writ petition. Admittedly, there was no representation on behalf of the appellant when the writ petition was decided on 13.09.2011. The application is conspicuously silent as to why there was no representation on its behalf at the time of final hearing of the said writ petition, and what happened to the file of the Department and the file of the Council.

7. Admittedly, the copy of the impugned judgment dated 13.09.2011 had been received by the concerned Department on 10.10.2011, though the averment made in para 6 of the application that on 07th October itself, the

Department had addressed letters to all IITs, except Delhi, requesting them to make available copies of Ministry's order and the Institutes' internal orders with respect to grant of pre-revised pay scale of Rs Rs 1640-2900/- to the Technical Assistants indicates that the appellant was in know of the order even on 7th October, 2011. We see no reason as to why the appellant could not have taken out the file maintained in the concerned Department with respect to the aforesaid writ petition or could not have been retrieved the Court file from the counsel who was representing Department in the Writ Court.

8. If the appellant wanted to gather material and information from various IITs, including IIT, Delhi that could easily have been done within a few days of receipt of the copy of the order dated 13.11.2011. The appellant has all means of communications such as fax/e-mail/postal communication/telephone available to it and, therefore, if the record sought from the IITs was not sent by them immediately after the letter dated 07.10.2011 was addressed to them, the concerned officers should have been pursued the matter with the directors or other senior officers of the IITs by

contacting them on telephone and/or e-mail/fax and impressed upon them to send the requisite information/record, without any delay since the prescribed period of limitation was only one month irrespective of whether the appellant had to file an Intra-Court appeal or a review petition against the impugned order dated 13.09.2011. The application is silent as to the efforts, if any, made by the concerned officers after 07.10.2011, and before sending the reminder dated 24.10.2011, as also the efforts, if any, when the reminder to IITs also did not yield the desire result to obtain the relevant information/record from the IITs.

9. We also take note of the fact that the application does not disclose when the information sought vide letter dated 07.10.2011 and reminder dated 24.10.2011 was received by the appellant from the IITs. There is a time lag of about 10 months between 07.10.2011 when communication was sent to IITs and 22.08.2012 when a proposal was submitted to seek review of the order dated 13.09.2011. It was, therefore, necessary for the appellant to disclose in the application as to exactly when the requisite information from IITs was received by the concerned Department, so that the time lag from receipt of information and submitting of the proposal dated 22.08.2012

could be verified. Therefore, there is a failure on the part of the appellant to explain the delay between October, 2011 when the communications were sent to IIT and August, 2012 when the proposal was submitted seeking permission to file review of the judgment dated 13.9.2011.

It has been stated in the application that a scanned copy of the agenda note for the meeting held on 07.09.2003 could be obtained from IIT, Kanpur only on 22.08.2012. The application does not disclose why the file containing the relevant agenda note could not be traced prior to 22.08.2012. In any case, nothing prevented the concerned officers from obtaining soon after October, 2011, the scanned agenda note which, they bothered to obtain from IIT, Kanpur only on 22.08.2012.

10. For the reasons stated hereinabove, we are of the view that there has been utter failure on the part of the appellant to explain the inordinate delay in filing the review petition as also LPA No. 42/2012, impugning the order dated 13.09.2011. We accordingly dismiss CM No. 799/2013, seeking condonation of delay in filing LPA No. 42/2013. As a consequence thereof, LPA No. 42/2013 and the pending applications in the said LPA are also dismissed.

11. Since we are of the view that the appellant did not explain to the learned Single Judge the delay in seeking review of the judgment dated 13.09.2011, the learned Single Judge was fully justified, considering the view taken by Supreme Court in ***Office of the Chief Post Master General*** *(supra)*, in dismissing the application seeking condonation of delay in filing the review petition.

12. We, therefore, find no merit in LPA No. 43/2013, challenging the order of the learned Single Judge dated 02.11.2012, dismissing the CM No. 17923/2012 and Review Petition No. 637/2012. Consequently, LPA No. 43/2013 and other pending applications in the said LPA are also dismissed. There is no order as to costs.

CHIEF JUSTICE

V.K. JAIN, J

JANUARY 15, 2013
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