

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(WA) No. 17 of 2023

Ref:- WA No. of 2023

1. The State of Manipur represented by the Commissioner of Education (S), Government of Manipur, Manipur Secretariat, P.O. & P.S. Imphal, Imphal West District, Manipur- 795001.
2. The Director of Education (S), Government of Manipur, having its office at Lamphelpat, P.O. & P.S. Lamphel, Imphal Wet District, Manipur – 795004.

.....Applicants

-Versus-

1. Shri Gurumayum Sanayaima Sharma, aged about 58 years, S/o (L) G. Radhamohon Sharma, a resident of Kontha Ahallup Mamang Leikai, P.O. Mantripukhri, P.S. Heingang, Imphal East District, Manipur.

.....Respondent

BEFORE

**HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the Applicants :: Mrs. Ch. Sundari, GA

For the Respondents :: Mrs. G. Pushpa, Advocate

Date of Hearing and
reserving Judgment & Order :: 27.02.2023

Date of Judgment & Order :: **13.03.2023**

JUDGMENT AND ORDER

(CAV)

(M.V. Muralidaran, Acting CJ)

Heard Mrs. Ch. Sundari, learned Government Advocate for the applicants and Mrs. G. Pushpa, the learned counsel for the first respondent.

2. This petition has been filed by the petitioners under Section 5 of the Limitation Act read with Rule 3(2) of Chapter IV-A as well as Rule 2 of Chapter-VII of the High Court of Manipur Rules, 2019 to condone the delay of 41 days in filing the writ appeal against the order dated 6.6.2022 made in WP(C) No.34 of 2020.

3. Mrs. Ch. Sundari, the learned Government Advocate submitted that as against the order dated 6.6.2022 passed in WP (C) No.34 of 2020, the petitioners have filed writ appeal along with delay condonation petition and after condoning the delay, the writ appeal was numbered as W.A.No.117 of 2022. When the writ appeal was listed on 24.1.2023, the learned Government counsel, finding some technical defect in the memo of appeal, sought permission of this Court to withdraw the writ appeal with liberty to file a fresh appeal. Accepting the prayer of the Government counsel, this Court dismissed W.A.No.117 of

2022 with liberty as prayed for by the petitioners. He would submit that after obtaining the certified copy of the order passed in the writ petition, the petitioners have filed fresh writ appeal with a delay of 41 days excluding the time taken in pursuing W.A.No.117 of 2022.

4. The learned Government Advocate further submitted that the delay of 41 days is neither wilful nor wanton. Further, the Court should take a lenient view as the State represents collective cause of the community and if the delay is condoned and the appeal is numbered, no prejudice would be caused to the private respondent and on the other hand, if the delay is not condoned, the petitioners would be put to irreparable loss and damage. Thus, a prayer has been made to condone the delay of 41 days in filing the writ appeal.

5. Per contra, Mrs. G. Pushpa, the learned counsel for the respondent submitted that the total number of days as per the petition is 41 days and the same being wrong and not admissible as per the order dated 24.1.2023 passed by this Court in W.A.No.117 of 2022. He would submit that the mistakes committed due to the carelessness and inadvertency of the counsel for the petitioners has caused irreparable loss to the respondent who is a retired Government employee of the

Government of Manipur and who has been discriminated by the inaction of the Government without making any payment of his monthly salary since the year 2016 and the arrear salary since the year 2012 and the same is still continuing.

6. The learned counsel for the respondent further submitted that only this time with respect to the order dated 6.6.2022 passed in W.P.(C) No.34 of 2020, the petitioners have preferred the appeal to deny the rights and liabilities accrued to the respondent by suppressing the factum of the order dated 11.3.2019 passed in W.P.(C) No.847 of 2018 against which no appeal has been preferred and allowed to attain finality. The process of filing the instant writ appeal is only to delay the matter of the respondent with an ill intention to make him suffer more. Thus, a prayer has been made to dismiss the petition.

7. We have considered the rival submissions and also perused the materials available on record.

8. The respondent herein has filed W.P.(C) No.34 of 2020 to set aside the order dated 4.11.2019 passed by the Director, Education(S), Government of Manipur and also the order dated 9.12.2019 passed by the Commissioner, Education(S), Government of Manipur and to implement the

order passed in W.P.(C) No.847 of 2018. After hearing both sides, the learned Single Judge, by the order dated 6.6.2022, allowed the writ petition.

9. There is no dispute that as against the order dated 6.6.2022 passed in W.P.(C) No.34 of 2020, the State Government has preferred writ appeal with application to condone the delay. After condoning the delay by this Court, the appeal has been numbered as W.A.No.117 of 2022. When the writ appeal was listed on 24.1.2023, the learned State counsel sought permission of the Court to withdraw the writ appeal with liberty to file a fresh one. By the order dated 24.1.2023, W.A.No.117 of 2022 came to be dismissed as withdrawn with liberty as prayed for by the petitioners. Thereafter, the petitioners have filed the fresh writ appeal with an application to condone the admitted delay of 41 days in filing the writ appeal.

10. According to the learned Government Advocate, the total delay from the date of order in the writ petition till the filing of the present appeal comes to 234 days and after deducting the statutory period of 30 days and the time taken in pursuing W.A.No.117 of 2022 i.e. 160 days and also 3 days' time taken for obtaining the certified copy of the order, there is a delay of 41 days and such a shorter delay is neither wilful nor wanton.

11. The respondent stated that W.A.No.117 of 2022 was pending before this Court till 24.1.2023 though the same was filed on 17.8.2022. In fact, W.A.No.117 of 2022 was filed with a delay of more than 5 months and the time spent in pursuing W.A.No.117 of 2022 cannot be excluded.

12. The point that arises for consideration is whether the time taken in pursuing W.A.No.117 of 2022 is to be excluded or not while computing the delay. As stated supra, W.A.No.117 of 2022 has been filed against the order dated 6.6.2022 passed in W.P.(C) No.34 of 2020 with a delay of 33 days and the said delay was condoned by this Court by the order dated 21.11.2022 in MC (WA) No.152 of 2022. After numbering the writ appeal, finding some technical defects in the memo of appeal, the State counsel, on instructions, withdrawn the appeal with liberty to file a fresh appeal. For proper appreciation, the order dated 24.1.2023 passed in W.A.No.117 of 2022 is quoted hereunder:

“Ms. G. Pushpa, learned counsel, appears for the respondent in the appeal as well as in the miscellaneous case.

Ms. Ch. Sundari, learned Government Advocate, appearing for the appellants/applicants, seeks leave to withdraw the appeal and miscellaneous case

reserving liberty to the appellants/applicants to file an appeal afresh with a miscellaneous case in accordance with due procedure.

Leave granted.

WA No.117 of 2022 and MC (WA) No.198 of 2022 are accordingly dismissed as withdrawn with the liberty aforesaid.

No order as to costs.”

13. It appears that the petitioners have applied the certified copy of the order on 24.1.2023 and after obtaining the certified copy, filed the writ appeal on 27.1.2023. Since W.A.No.117 of 2022 has been preferred against the order dated 6.6.2022 passed in W.P.(C) No.34 of 2020 and was kept pending for nearly 160 days, there is no hard and fast rule to deny the exclusion of the time taken in pursuing W.A.No.117 of 2022 as prayed for by the petitioners. This Court also while permitting to withdraw W.A.No.117 of 2022, granted liberty to the petitioners to file a fresh writ appeal. In such scenario, the cause for the delay of 41 days, after deducting the period spent in pursuing W.A.No.117 of 2022, shown by the petitioners is satisfactory and such delay of 41 is not deliberate and wanton and only on bona fide reasons. In the facts and circumstances of the present case, the time spent in pursuing the W.A.No.117 of 2022 is to be taken

as "sufficient cause" for condoning the delay in filing the writ appeal.

14. The expression "sufficient cause" in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bona fides is not imputable to the party seeking condonation of delay. Law of limitation has been enacted to serve the interests of justice and not to defeat it.

15. In ***N.Balakrishnan v. M.Krishnamurthy, (1998) 7 SCC 123***, the Hon'ble Supreme Court held that length of delay is no matter, acceptability of explanation is the only criterion. Thus, the acceptability of explanation for the delay is the sole criterion and length of delay is not relevant, in the absence of anything showing mala fide or deliberate delay as a dilatory tactic, the Court should condone the delay.

16. It is well settled that Section 5 of the Limitation Act gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as

to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant.

17. The delaying tactics stated by the respondent against the petitioners is that they have challenged the order dated 6.6.2022 passed in W.P.(C) No.34 of 2020 alone and no appeal against the order dated 11.3.2019 passed in W.P.(C) No.847 of 2018 has been preferred. Thus, the process for filing the present writ appeal is only to delay the matter of the respondent with an ill intention to make him suffer more cannot be countenanced.

18. We are convinced that when the substantial justice is pitted against the technical consideration, then substantial justice deserves to be given preference over the latter, which cannot claim to have vested injustice to be done because of non-deliberate delay, in particular. Thus, in the present facts and circumstances of the case, it can be safely presumed that the petitioners had considerable and sufficient reasons for the delay, in filing the writ appeal.

19. That apart, the approach of the Court should be liberal, pragmatic, justice-oriented and non-pedantic, while dealing with an application for condonation of delay. Applying

the principles laid down by the Hon'ble Supreme Court, we are of the view that the cause for the delay has been sufficiently explained by the petitioners and we have satisfied with the reasons for the delay.

20. Admittedly, refusal to condone the delay would result foreclosing a suitor from putting forth his cause and there is no presumption that delay in approaching the Court is always deliberate. Therefore, if the delay is condoned and the writ appeal is numbered, no prejudice would be caused to the respondent. On the other hand, if the delay of 41 days after exclusion of the period spent in pursuing W.A.No.117 of 2022 or total 234 days is not condoned, the petitioners would be put to irreparable loss.

21. For the foregoing reasons, MC (WA) No.17 of 2023 is allowed and the delay of 41 days in filing the writ appeal against the order dated 6.6.2022 passed in W.P.(C) No.34 of 2020 is condoned. The Registry is directed to number the writ appeal, if it is otherwise in order.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Sushil