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

MC(W.A.) No.43 of 2023
(Ref:- W.A. No... of 2023)
(Ref:- W.P.(C) No.1057 of 2018)

1. The State of Manipur represented by the Commissioner (University & Higher Education), Government of Manipur, Secretariat New Building, Babupara, PO & PS Imphal West, Imphal West District, Manipur – 795001.
2. The Commissioner/Secretary, Department of Finance, Government of Manipur, Secretariat New Building, Babupara, PO & PS Imphal West, Imphal West District, Manipur – 795001.
3. The Director, University and Higher Education, Government of Manipur, Neitaipat Chuthek, Imphal, PO & PS Imphal, Imphal West District, Manipur – 795001.

..... Applicant/s

– Versus –

1. The Governing Body, Mayai Lambi College, Yumnam Huidrom, represented by its Secretary, Shri L. Prakash Singh about 56 years, S/o (L) Nipamacha Singh, R/o Yumnam Huidrom, PO & PS Wangoi, Imphal West District, Manipur – 795009.
2. The Governing Body, Thambal Marik Lambi College, Oinam, Bishenpur District, Re. by its Secretary, Shri W. Debit Singh aged

about 50 years, S/o W. Mangi Singh, R/o Oinam Mamang Leikai, PO & PS Nambol, Bishenpur District, Manipur – 795134.

.... Respondent/s

3. The Chairman, Manipur Rural Bank, Keishampat Head Office, Imphal West District, PO & PS Keishampat, Manipur – 795001.
4. The Branch Manager, Manipur Rural Bank, Nambol Branch, Nambol, Bishnupur District, Manipur – 795134.
5. The Branch Manager, State Bank of India, Bishenpur Branch, Bishenpur District, Manipur – 795134.
6. The Branch Manager, State Bank of India, (RUSA) Bishenpur Branch, Bishenpur District, Manipur – 795134.
7. The Branch Manager, State Bank of India, Nambol Branch, Nambol, Bishnupur District, Manipur – 795134.
8. The Principal i/c, Mayai Lambi College, Yumnam Huidrom, Mayai Lambi, Yumnam Huidrom, Imphal, Manipur – 795009.
9. The Principal i/c, Thambal Marik College, Oinam, Tiddim Road, Bishenpur District, Manipur – 795135.

.... Proforma Respondent/s

BEFORE
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Applicants : Mr. H. Debendra, Dy. AG

For the Respondents : Mr. D. Julius Riamei, Advocate for Respondent Nos.1 & 2
Mr. S. Samarjeet, Advocate for Respondent Nos.3 & 4
Mr. Sushilkumar, Advocate for Respondent No.7
Mr. P. Tamphamani, Advocate for Respondent No.8

Date of Hearing : 18.08.2023

Date of Judgment & Order : **27.09.2023**

JUDGMENT & ORDER
(CAV)

(A. Guneshwar Sharma, J)

[1] The present application has been filed by the applicants under Section 5 of the Limitation Act, 1963 read with Rule 3(2) of Chapter IV-A as well as Rule 2 of the Chapter-VIII of the High Court of Manipur Rules, 2019 for condoning an unintentional delay of 334 days in filing the accompanying Writ Appeal.

[2] The brief fact of the present case is that the applicants filed the accompanying Writ Appeal challenging the legality and propriety of the impugned Judgment and Order dated 25.02.2022 passed by learned Single Judge in W.P.(C) No.1057 of 2018. The present Respondents, who were the writ petitioners, filed W.P.(C) No.1057 of 2018 praying for directing the State Respondents to allow the petitioners (respondents herein) to function until the handing and taking over of Mayai Lambi College and Thambal Marik College and to quash the order dated 20.10.2018 passed by the respondent No.1 (applicant No.1 herein). The writ petition was disposed on 25.02.2022 with a direction to the State Respondents to absorb the 11(eleven) employees (Teaching Staff-5 and Non-Teaching – 6) of the Thambal Marik College, Oinam.

[2.1] Being aggrieved by the order dated 25.02.2022 passed in W.P.(C) No.1057 of 2018, the accompanying Writ Appeal is preferred mainly inter-alia on the grounds that the Ld. Single Judge failed to appreciate that the order dated 20.10.2018 was issued as a natural consequence of the decision of the State Cabinet taken on 28.02.2018. The Ld. Single Judge, also failed to give an opportunity to the State respondents to counter/reply to the Addl. Affidavit filed by the petitioners on 24.02.2022. It is stated that on 12.12.2022, the Administrative approval for preferring Appeal was

obtained. Thereafter, on 13.12.2022, the concerned File was referred to Law Dept. and on 19.12.2022, the Deputy Secretary (Law) issued an Order bearing No.5/29/2022-Case/L-(HC)Pt.dated 19-12-2022 for engagement of Govt. Advocate to represent State Govt. The order dated 19th December, 2022 issued by Deputy Secretary (Law), Government of Manipur is reproduced below.

"GOVERNMENT OF MANIPUR
SECRETARIAT:LAW & LEGISLATIVE AFFAIRS DEPARTMENT

...

ORDERS

Imphal, the 19th December, 2022

No.5/29/2022-Case/L-(HC) Pt: The Governor of Manipur is pleased to direct the Government Advocate (High Court), Manipur to file Writ Appeal before the Division Bench of the High Court of Manipur against the Judgment & Order dated 25.02.2022 passed by the Hon'ble High Court of Manipur in W.P.(C) No.1057 of 2018 (The Governing Body, Mayai Lambi College, Yumnam Huidrom & Anr. –versus- The State of Manipur & Ors.) along with petition for stay of impugned order and condonation of delay, if necessary.

By orders etc.,

(Patience Panmei)
Deputy Secretary (Law)
Government of Manipur."

[2.3] In pursuance of the Law Dept.'s order dated 19.12.2022, engagement of Govt. Advocate (High Court) was issued for filing Appeal.

[3] Mr. H. Debendra, learned Dy. AG for the applicants has submitted that while filing the accompanying Writ Appeal, there is an unintentional and bona fide delay of 334 days which has been caused due to the circumstances as explained hereunder:-

Sl. No.	Date	Reasons
1.	25-02-2022	Ld. Single Judge passed the impugned Order.
2.	28-04-2022	Communicated the order to Administrative Department vide letter No.102/209/2018-GA(C)/140 dated 28-04-2022.
3.	28-04-2022	Received Legal Notice from the side of the Petitioners.
4.	05-05-2022	Called detailed report from the Directorate with regards the Judgment & Order dated 25.2.2022 as the relevant records are in the custody of the Directorate.
5.	23-05-2022	Called report from the Directorate for the second time.
6.	04-07-2022	Called report from the Directorate for the third time.
7.	09-08-2022	Called report from the Directorate for the fourth time.

8.	10-10-2022	Called the report from the Directorate for the fifth time.
9.	5-12-2022	As no report was received from the Directorate, Administrative Dept. initiated the File for preferring Appeal.
10.	12-12-2022	Administrative Dept. approved for filing Appeal.
11.	13-12-2022	File referred to Law Department.
12.	19-12-2022	Order issued by the Law Dept. to Govt. Advocate to file Appeal.
13.	20-12-2022	Engagement order of Dy. Govt. Advocate for filing Appeal.
14.	22-12-2022	Dy. Govt. Advocate sent letter to administrative Dept for finishing document regarding Grounds of Appeal.
15.	05-01-2023	Administrative Dept furnished Grounds of Appeal and documents.
16.	17-01-2023	Additional Grounds for Appeal furnished by Administrative Department.
17.	10-02-2023	Dy. Govt. Advocate sought instructions from Administrative Dept.
18.	23-02-2023	After discussion and examination, Administrative Department return back the duly signed Appeal Petition.

[3.1] Mr. H. Debendra, learned Dy. AG has submitted that there are some delays in file processing from table to table and from Department to Department during the decision making process. After calculation, there was delay of 334 days in filing the above referred Writ Appeal. He has further submitted that some considerable time was consumed by the Government Advocate for preparation of Memo of Appeal and Misc. Application due to unavoidable workload owing to shortage of supporting Staff. Mr. H. Debendra, learned Dy. AG has submitted that there are good grounds for succeeding the Appeal and has prayed that the Misc. Application, for condoning the delay of 334 days in filing the accompanying Writ Appeal, be allowed. If the same is not allowed, the impugned order of granting a relief not prayed in the writ petition will be perpetuated.

[4] Mr. D. Julius Riamei, learned counsel for Respondent Nos.1 & 2 has submitted that the Applicants/Appellants have failed to show any good and sufficient cause for the delay in filing the present appeal, as provided under Section 5 of the Limitation Act, 1963 and Rule 3 (2) of Chapter IV A of the Manipur High Court Rules, 2019. He has further submitted that the Applicants/Appellants have filed the present appeal before this Court only after the filing of the Contempt Case No.29 of 2023 for compliance of the order dated 25.02.2022 passed in WP (C) No.1057 of 2018. It is stated that

the same clearly manifests the filing of the present appeal as an afterthought. It is submitted that there was clearly lack of diligence and bonafide on the part of the Applicant/Appellants while preferring the present appeal. There are unexplained days/months in the delay while preferring the present appeal as shown in the present application under reply. The explanation sought to be given for the cause of delay in preferring the appeal is not satisfactory and lacks bonafide. It is submitted that there is no sufficient cause in explaining the 334 days delay while preferring the appeal before this Court. The learned Single Judge passed the order on 25.02.2022. The table shown in para 7 under reply shows huge gaps of unexplained days and there is no justification for calling the report for the Directorate for the fifth time. Such an unexplained long days of delay does not warrant a beneficial treatment from this Court. He prays for dismissal of the Misc. Application for condonation of delay.

[5] Mr. H. Debendra, learned Dy. AG has submitted that with reference to the period in between 28.4.2022 to 12.12.2022, it is explained that the same was caused due to the illness of the concerned Legal Officer dealing with the matter and at that relevant time, the Directorate was heavily engaged for conversion of 6(six) Aided Colleges including Mayai Lambi College and Thambal Marik College, the relevant File could not be

processed for filing Appeal. Taking over of these Aided Colleges into full-fledged Government Colleges involved assessment of land, building, other property, verification of teaching and non-teaching staff, etc. Although the Court's Order was passed on 25.2.2022, the Administrative Department received the same only on 25.4.2022 vide legal notice dated 22.4.2022 of the Petitioner's counsel and letter dated 28.4.2022 from the concerned Government Advocate dealing the case. As such, State Government came to know the Court's Order dated 25.2.2022 passed in WP(C) No.1057 of 2018 only on 25.4.2022. He further submitted that on 20.5.2022, File was put up by the Legal Office to call a detailed report from the Director (UHE), Manipur as the matter was related to appointment of teaching and non-teaching staff of Thambal Marik College, Oinam. On 10.10.2022, Legal Officer (Hr. & Tech. Edn), Government of Manipur also communicated the Addl. Director, University & Higher Education, Manipur vide letter No.Writ/11/87/2018-HE/Case dated 10.10.2022 by enclosing the letters dated 4.7.2022 and 9.8.2022 thereby requesting to furnish a detail comment along with relevant documents. On 5.12.2022, although no comment was received from the Director despite repeated reminders, Legal Officer put up the File for further reference to the Law Department. On 12.6.2023, the Director (Univ. & Hr. Edn.), Government of Manipur explained that the delay in submission of

comment/relevant documents to the Government was caused as Shri L. Itobombi Singh, Legal Officer of Directorate of University and Higher Education was not able to work on it for a long time due to health issues and also some time was consumed in gathering required information/documents on the matter for furnishing to the Government.

[6] Heard Mr. H. Debendra, learned Dy. AG for the State, Mr. D. Julius Riamei, learned counsel for Respondent Nos.1 & 2, Mr. S. Samarjeet, learned Sr.PCCG for respondent Nos.3 & 4, Mr. Sushilkumar, learned counsel for respondent No.7, Mr. P. Tamphamani, learned counsel for respondent No.8 and perused the materials available on record.

[7] Mr. D. Julius Riamei, learned counsel for Respondent Nos.1 & 2 refers to a case of ***Shri Gainaichung Malangmei vs. The State of Manipur & Ors., Judgment & Order dated 04.04.2022 passed by a Division Bench of this Court in MC(WA) No.70 of 2022*** and ***Judgment & Order dated 13.03.2023 passed by another Division Bench of this Court in MC(WA) No.48 of 2020 & MC(WA) No.75 of 2021***. He further draws the attention of this Court to the fact that the legal officer was processing the file for filing the present appeal, while the

applicants stated that as the legal officer was unwell the file could not be processed in time.

[8] Mr. H. Debendra, learned Dy. AG refers to a case of ***State of Nagaland vs. Lipok AO & Others reported as (2005) 3 SCC 752*** where Para 13 is reproduced hereinbelow:-

13. *Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In ***Prabha v. Ram Parkash Kalra***¹¹ this Court had held that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the*

matter was remitted for expeditious disposal in accordance with law.

[8.1] Mr. H. Debendra, learned Dy. GA also refers to the case of ***State of Manipur & Others vs. Koting Lamkang reported as (2019) 10 SCC 408*** where Para 6, 7 & 8 are reproduced hereinbelow:-

6. Insofar as the refusal by the High Court to condone the delay of 312 days in the RFA preferred by the State of Manipur and others, it is apparent that the appellants did prefer the appeal at first instance on 15-06-2017 before the District Judge. But since this was before the wrong forum and it was filed after a delay of about eleven months and there is no explanation for the time taken by the State between 18-7-2016 and 15-6-2017, the delay in the RFA before the High Court was not condoned. In fact the Court found that the State has not shown as to what prevented them from preferring the appeal before the District Judge (wrong forum), until 15-6-2017. The Court also said that the latitude in applying the standards of "sufficient cause" test is not attracted, in the instant case.

7. But while concluding as above, it was necessary for the Court to also be conscious of the bureaucratic delay and the slow pace in reaching a government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law of limitation would harshly affect the party, the Court felt

that the delay in the appeal filed by the State, should not be condoned.

8. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal by the State are lost for individual default, those who are at fault, will not usually be individually affected.

[8.2] Mr. H. Debendra, learned Dy. AG further relies on the judgment of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Others reported as (2013) 12 SCC 649***. Para 21 is reproduced hereinbelow:-

21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and

are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

21.4 (iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

21.5 (v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6 (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

21.7 (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8 (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9 (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10 (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11 (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12 (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13 (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

[8.3] Mr. H. Debendra, learned Dy. AG clarifies that there are two legal officers- one in Directorate and another in the Secretariat. It is the legal officer posted in the Directorate who was unwell at the relevant time

and due to his illness, the file could not be processed for a long period of about 6 months. The legal officer mentioned by Mr. Julius is the one posted in the Secretariat. It is stated that there is no wrong statement has been made by the applicants while explaining the details of time taken in preferring the appeal. He submits that the present application requires sympathetic consideration from this Court in order to prevent implementation of the direction of the learned Single Judge which is prima facie cannot be executed in the present form. It is pointed out that the relief granted is not prayed for the writ petitioners.

[9] Learned counsel for the other respondents submit that this Court may pass appropriate order in the facts and circumstances of the present case.

[10] We have considered the submissions of the parties, the materials on record and relevant case law in this regard. In the table furnished by the applicants, it is seen that the major delay of about 6 months' time was taken while waiting for report from the Directorate. This has been explained by learned Dy AG as the concerned legal officer of the Directorate was unwell at the relevant time. For the remaining period, the time taken for movement of the file from one desk to another and from one office to another does not

seem to be fatal. The case laws referred to above lay down the principle that while considering an application for condonation of delay, a liberal, pragmatic, justice oriented and non-pedantic approach has to be adopted and mere technicalities should not amount to in perpetuating injustice. Substantial justice should prevail over hyper technicalities. Whether a relief not prayed for has been granted or not is an important question which requires consideration on merit. We are of the view that the delay of 334 days in filing the accompanying appeal be condoned subject to the payment of a cost of Rs. 5000/- (Rupees five thousand) only in favour of the High Court Bar Association, Manipur. On submission of proof of payment of such cost, the Registry is directed to number the accompanying appeal. With these observations and directions, the application is allowed and disposed of.

JUDGE

JUDGE

FR/NFR

- Larson