

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

MC(W.A) No. 118 of 2022

Ref: W.A. No of 2022.

1. The State of Manipur, represented by the Principal Secretary (Education/S), Government of Manipur, Imphal.
2. The Director of Education (S), Government of Manipur, Imphal.

..... Applicant/s

- Versus -

1. Shri Oinam Manisana Singh, aged about 54 years, S/O (L) O. Dukanjao Singh of Chingmei Awang Leikai, P.O. & P.S. Moirang, Bishnupur District, Manipur.
2. Shri P.K. Mawi Guite, aged about 46 years, S/O Vumtuan Guite of Zehang Lamka, P.O. & P.S. Churachandpur, Churachandpur District, Manipur.
3. Shri N. Ibobi Singh, aged about 60 years, S/O (L) N. Angaton Singh of Khuga Tampak, Zehang Lamka, P.O. & P.S. Churachandpur, Churachandpur District, Manipur.
4. Shri Laishram Haridas Singh, aged about 58 years, S/O (L) L. Bokuljao Singh of Ningthoukhong Ward No. 11, P.O. & P.S. Ningthoukhong, Bishnupur District, Manipur.
5. Shri Thokchom Ingo Singh, aged about 59 years, S/O (L) Th. Ibobi Singh of Ningthoukhong, P.O. & P.S. Ningthoukhong, Bishnupur District, Manipur.
6. Khawllienkim, aged about 54 years, D/O J. Batlien of Khawmawi Village, P.O. & P.S. Churachandpur, Churachandpur District, Manipur.

7. Wungkathing Makang, aged about 53 years, S/O Okngai Makang of Tongou Village, P.O. & P.S. Somdal, Ukhrul District, Manipur.
8. Mathotmi Z. Ngalung, aged about 54 years, S/O (L) Tungshon Z. Ngalung of Tongou Village, P.O. & P.S. Somdal, Ukhrul District, Manipur.
9. S.R. Ningthar, aged about 58 years, S/O (L) S.R. Lungshim of Nongdam Tangkhul Village, P.O. Lamlong, P.S. Litan, Ukhrul District, Manipur.
10. Shri Ningombam Heramani Singh, aged about 59 years, S/O (L) N. Ibobi Singh of Wangkhei Ayangpali, P.O. & P.S. Porompat, Imphal East District, Manipur.
11. Nongmaithem Sucheta Devi, aged about 29 years, D/O (L) N. Surendra Singh of Wangkhei Yonglan Leirak, P.O. & P.S. Porompat, Imphal East District, Manipur.
12. Shri Lourembm Rachandra Singh, aged about 56 years, S/O (L) L. Rajamani Singh of Koirengai Bazar, P.O. Mantripukhri, P.S. Heingang, Imphal East District, Manipur.
13. Shri Nirmal Dornal, aged about 41 years, S/O Dhanbir Dornal of Kalapahar, P.O. Kalapahar, P.S. Kangpokpi, Kangpokpi District, Manipur.
14. Shri Dev Kumar Katwal, aged about 43 years, S/O (L) Bal Bahadur Katwal of Kalapahar, P.O. Kalapahar, P.S. Kangpokpi, Kangpokpi District, Manipur.
15. Shri T.S. Raisong, aged about 57 years, S/O (L) Sangba of Tumuyon Khullen, P.O. & P.S. Kangpokpi, Kangpokpi District, Manipur.

16. Shri Phairenbam Ibungcha Singh, aged about 57 years, S/O (L) Ph. Maipak Singh of Chingei, P.O. & P.S. Moirang, Bishnupur District, Manipur.
17. Shri Shelley P.H., aged about 40 years, S/O Hrani P.H. of Tungjoy Village, P.O. & P.S. Tadubi, Senapati District, Manipur.
18. Shri P.S. Hepuni, aged about 57 years, S/O (L) P. Shehrii of Tungjoy Village, P.O. & P.S. Tadubi, Senapati District, Manipur.
19. Shri Kamo Joseph, aged about 41 years, S/O (L) Y. Kamo of Ngari Lishang Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
20. Shri S. Hrui, aged about 53 years, S/O (L) S. Shirang of Ngari Lishang Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
21. Shri Wangkheimayum Opendro Singh, aged about 56 years, S/O (L) W. Tombi Singh of Wangkhei Khunou, P.O. & P.S. Porompat, Imphal East District, Manipur.
22. Shri Yarnao Keinam, aged about 58 years, S/O (L) K. Ophai of Thiwa Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
23. Shri Ngangbam Manidhaja Singh, aged about 53 years, S/O Ng. Chandramani Singh of Samaram, P.O. Wangjing, P.S. Khongjom, Thoubal District, Manipur.
24. Shri K.T. Ngalangzar, aged about 60 years, S/O (L) K. Kapong of Thiwa Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.

25. Shri Chiri Keinam, aged about 60 years, S/O (L) K. Tungtor of Thiwa Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
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27. Shri A. Hillaryo, aged about 60 years, S/O Ahrai of Phaibung Village, P.O. Maram, P.S. Tadubi, Senapati District, Manipur.
28. Shri Thokchom Bijendra Singh, aged about 52 years, S/O (L) Th. Ingo Singh of Heirok Part-II, Mayai Leikai, P.O. Wangjing, P.S. Heirok, Thoubal District, Manipur.
29. Ngangkham Gomati Devi, aged about 59 years, D/O (L) Ng. Angouba Singh of Khurai Konsam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur.
30. Shri Dennis T. Dongzahau, aged about 44 years, S/O T. Goukam of Bethel Veng, P.O. & P.S. Singhat, Churachandpur District, Manipur.
31. T. Paudam, aged about 41 years, S/O (L) T. Vungkhum of Bethel Veng, P.O. & P.S. Singhat, Churachandpur District, Manipur.
32. L. Gouchinkhup, aged about 45 years, S/O (L) L. Nengkhogin of Bethel Veng, P.O. & P.S. Singhat, Churachandpur District, Manipur.

.....Respondent/s

with
Writ Appeal No of 2022

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.....Respondent/s

B E F O R E
HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner	::	Mr. Th. Vashum, G.A. for the applicant/appellant
For the respondents	::	Mr. T. Rajendra, Sr. Advocate assisted by Mr. Donald, Advocate.
Date of hearing	::	14.03.2023
Date of Judgment and Order	::	03.04.2023

Judgment and Order (CAV)

A. Guneshwar Sharma, (J)

[1] The State applicants/appellants have filed the present application under Section 5 of the Limitation Act read with Section IX of the Manipur High Court Rules praying for condonation of 35 days delay in preferring the accompanying writ appeal passed by the learned Single Judge in the impugned judgment and order dated 07.02.2022 in Writ Petition No. 137 of 2018. It is stated in para 2 of the application that there has been an unintentional and bonafide delay of 35 days in preferring the accompanying writ appeal and the same has been caused due to circumstances beyond their control and the same has been explained herein below:

1.	08.02.2022	The Deputy Govt. Advocate furnished letter No. 102/105/2018-GA(C)/260 dated 08.02.2022 thereby informing that the WP(C) No. 137 of 2018 was disposed of, by pronouncing judgment and order dated 07.02.2022 and the said letter was receipt on 09.02.2022 by the Office of the Commissioner (Edn./2).
2.	11.02.2022	The Link Commissioner (Edn./S) sent down the said letter/dak to the Joint Secretary (Edn./S)

3.	18.02.2022	The Joint Secretary (Edn./S) sent down the said letter to the Deputy Secretary (Edn./S) on 18.02.2022 and the Deputy Secretary mark the same to the Legal Officer (Edn./S) and the same was received by the Legal Cell of Secretariat Education (S) on 19.02.2022.
4.	21.02.2022	The Legal Officer (Edn./S) put up the matter on the Deputy Secretary (Edn./S) on 21.02.2022 for considering to prefer writ appeal before the Division Bench of the Hon'ble High Court.
5.	22.02.2022	The Deputy Secretary (Edn./S) put the matter for consideration to the Additional Secretary (Edn./S). Then, the Addl. Secretary (Edn./S) put up the matter to the Commissioner (Edn./S), Govt. of Manipur.
6.	22.02.2022	The Commissioner (Edn./S) refer the matter to the Commissioner (Law) for obtaining view/comments of the Ld. Advocate General, Manipur relating to the filing of writ appeal
7.	22.02.2022	The Commissioner (Law), Govt. of Manipur circulate the file to the Office of the Ld. Advocate General, Manipur thereby tendering advice of the Ld. AG, Manipur.
8.	24.02.2022	The Ld. AG, Manipur return the file to the Commissioner (Law), Govt. of Manipur stating inter-alia therein that the said Government order dated 22.02.2016 was issued as per policy decision of the State Cabinet taken in its meeting held on 27.11.2015 and that the petitioner file the case without challenging terms and conditions of

		the Government Order dated 22.02.2016 and in the circumstances there are good and sufficient ground for appeal and as such, AD may take a decision for preferring writ appeal against the judgment & order dated 07.02.2022 passed in WP(C) No. 137 of 2018 and filed the appeal as soon as possible.
9.	24.02.2022	The Commissioner (Law) return the file to the Commissioner (Edn./S) stating that AD may take Administrative decision to file an appeal before the Division Bench of Hon'ble High Court of Manipur and may refer back file for issuing necessary order.
10	24.02.2022	The Commissioner (Edn./S), Govt. of Manipur submitted the file to the Hon'ble Minister of (Education) for Administrative Approval be accorded for filing appeal as advised by the Ld. A.G., Manipur on 24.02.2022
11.	15.03.2022	The relevant file was returned unattended by the Hon'ble Minister (Education) considering the present scenario and again circulated to the Law Department for allowing to file Writ Appeal by issuing a necessary order
12.	15.03.2022	The Commissioner (Law) sent down the file to the Deputy Secretary (Law) and the Deputy Secretary (Law) sent down to the Legal Officer (Law).
13.	17.03.2022	The Legal Officer (Law) put up the file to the Deputy Secretary (Law) placing the Law's Department order No. 5/12/2019-Case/L-(HC) dated 17.03.2022 for filing Writ Appeal before the

		Division Bench of Hon'ble High Court. The Deputy Secretary (Law) circulate the file to the Deputy Secretary (Edn./S)/
14.	21.03.2022	Being dated 18, 19 & 20 of March were holiday due to the Holi Festival, the relevant file was receipt by the Deputy Secretary (Edn./S) on 21.09.2022.
15.	23.03.2022	The Deputy Secretary (Edn./S), Govt. of Manipur has requested the Govt. Advocate to file a Writ Appeal before the Division Bench against the Judgment & order dated 07.02.2022 passed in WP(C) No. 137 of 2018.

3. That, since the Deputy Government Advocate (HC), Manipur is busy with other cases from Monday to Friday before the Hon'ble Court and as such, Memo of Appeal could not be prepared immediately. Accordingly, the accompanying Writ Appeal has been prepared and filed. In the process of filing the accompanying writ appeal, there has been 35 days delay which is not intentional but due to the circumstances stated in the foregoing paras of this Misc. Application. After deducting the statutory period of 30 days and 12 days for obtaining certified copy of the order dated 07.02.2022, there is a delay of 35 days in filing the accompanying Writ Appeal. The calculation of the numbers of days is given below:

1.	07.02.2022	-	Impugned Judgment and Order was passed.
2.	08.02.2022	-	21 days
3.	01.03.2022	-	31 days

4.	25.04.2022	-	25 days
5.	Total	-	77 days
6.	(Statutory period)	(-)	30 days
7.	Time taken in obtaining certified copy	(-)	12 days _____ 77-42 (days)
8.	Total	-	35 days

It is further stated that delay of 35 days has been caused due to the reasons explained above and the same is unintentional and bonafide and in the interest of justice, it is prayed that the same may be condoned.

[2] The respondents, except respondent No. 29, have filed their counter affidavit to the application. It is stated that there is gross negligence and inactions on the part of the applicants in preparing the accompanying writ appeal. Further it is also stated that there is no administrative approval to file the appeal from the Administrative Department, which is the Education Department but the administrative approval is given by the Deputy Secretary (Law), Government of Manipur vide order dated 17.03.2022. It is prayed that the application for condonation of 35 days delay be rejected. The accompanying appeal has been filed without administrative approval and the same is defective. Further, the Law Department's order dated 17.03.2022 is not annexed in the application under objection and as such, the respondents are not able to given proper

objection to the application. There is no explanation for the period from 24.02.2022 to 15.03.2022. It is prayed that the application may be rejected as being devoid of merit.

[3] The State applicants have filed additional affidavit. It is stated that under Article 166 of the Constitution, the State Government has framed Rules of Business which comes into force w.e.f. 21.01.1972. Under Rule 39 of the Rules of Business of Government of Manipur, 1972 is so clear that All Administrative Departments shall consult the Law Department on the institution or withdrawal of any prosecution at the instance of the Administrative Department and the defence or institution of any suit or proceedings filed against or by the Government. As per the Business of Government of Manipur (Allocation) Rules, 2009 it is stated that the Law Department is the competent authority. The respondents have also filed reply to the additional affidavit of the state applicants. It is stated that as per Rule 20 of the Business of Government of Manipur (Allocation) Rules, 2009, the role of the Law Department with the matter of giving advice on all legal matters and all matters relating to supervision of Government litigations but administrative approval ought to be given by the concerned department, i.e., Education Department.

[4] Heard Mr. Th. Vashum, learned G.A. for the applicant and Mr. T. Rajendra, learned senior counsel assisted by Mr. Donald, learned counsel for the respondents.

[5] Mr. Th. Vashum, learned G.A. for the applicant, submits that in paras 2 & 3 of the application, the day to day delay has been explained and there is no inordinate delay on the part of the state applicant in preferring the accompanying writ appeal against the impugned order. He also submits that while considering the explanation of delay, the Court ought to have given liberal view while considering the application filed by the State agency as the matter has to pass through many stages/officials while taking approval. He points out that the objection of filing the appeal without administrative approval can be considered at the time of the admission of the appeal and it is not a matter relevant in consideration for application for condonation of delay. A short delay of 35 days may be condoned.

[6] Mr. T. Rajendra, learned senior counsel for the respondents, submits that the explanations given in para 2 do not give proper reason and there is inordinate delay with respect to serial 15 regarding date, i.e., 23.03.2022 and there is no proper explanation for the delay between 15.03.2022 to 23.03.2022. Moreover, the appeal has been filed without the administrative approval from the concerned department. The administrative approval given by the Law Department cannot be considered as an administrative approval. He prays that the application may be dismissed without devoid of merit.

[7] In the case of **Balwant Singh v. Jagdish Singh, (2010) 8 SCC 685**, Hon'ble Supreme Court discussed the concept of 'sufficient cause' for condoning delay and held as below:

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

27. The application filed by the applicants lacks in details. Even the averments made are not correct and ex facie lack

bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflects normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party.”

[8] In the case of **Postal General v. Living Media Limited : (2012) 3 SCC 563**, while dismissing the appeal by government with a delay of 427 days of delay on the point of non-explanation of the delay so caused, Hon’ble Supreme Court held as below:

“28. 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 bona fides, 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.

.....
30. *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.”*

[9] In the present case, the State applicants have given a comprehensive chart giving day to day movement of the file and is able to explain. Accordingly, the delay of 35 days have been caused in moving file from one table to another and from one office to another. There is no inordinate and un-explained delay as in the cases cited above. The objection of the respondents to the maintainability of the appeal is to be considered at the time of the admission of the main appeal and not in the present application. In an application for condonation of delay, the Court has to examine the explanation for ‘sufficient cause’ for not filing the appeal within the stipulated time.

[10] We are of the view that the State applicants have been able to explain the delay. Accordingly, the delay of 35 days in filing the accompanying writ appeal is condoned and the present application is allowed. However, it is clarified that the respondents are at liberty to raise the question of maintainability of the writ appeal on the plea of filing without

proper administrative approval and this Court do not express any opinion on this issue at this stage. Accordingly, the application for condonation of delay is disposed of. No cost.

[11] Registry is directed to register the writ appeal, if the same is in order.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

joshua

KH. JOSHUA MARING
MARING

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JOSHUA MARING
Date: 2023.04.06
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