

GAHC010111862023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/1457/2023

BIKRAMJIT ROY
S/O BIKASH CH. ROY, VILL. BISANDAI PT-II, P.O. BISANDI, P.S.
GOLAKGANJ, DIST. DHUBRI, ASSAM, PIN 783334

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, ELEMENTARY EDUCATION DEPTT., DISPUR, GUWAHATI 06

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM CUM CHAIRMAN OF STATE LEVEL SCRUTINY COMMITTEE
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 19

3:THE DEPUTY COMMISSIONER CUM CHAIRMAN OF DIST. SCRUTINY
COMMITTEE
(ELE. EDUCATION)
DHUBRI
P.O. AND P.S. DHUBRI
DIST. DHUBRI
ASSAM
PIN 783301

4:THE DIST. ELEMENTARY EDUCATION OFFICER

DHUBRI
P.O. DHUBRI
DIST. DHUBRI

ASSAM
PIN 783301

5:THE BLOCK ELEMENTARY EDUCATION OFFICER

GOLAKGANJ
P.O. GOLAKGANJ
DIST. DHUBRI
ASSAM
PIN 783334

6:ABU KHAYER SK
S/O LT. FULBAR ALI SK.
VILL. BISANDAI PT-I
P.O. BISANDAI
P.S. GOLAKGANJ
DIST. DHUBRI
ASSAM
PIN 78333

Advocate for the Petitioner : MR. R ISLAM

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 15-09-2023

(S.P. Khaund, J)

- 1.** This interlocutory application u/s 5 of the Limitation Act, 1963 is filed with prayer for condonation of delay of 335 days occasioned in filing the connected writ appeal. The State of Assam, the Director of Elementary Education, the Deputy Commissioner of Dhubri, the District Elementary Education Officer (DEEO) and the Block Elementary Education Officer (BEEO) are arrayed as the respondents/opposite-parties Nos. 1, 2, 3, 4 and 5 respectively and Sri Abu

Khayer Sk is the Private Respondent/opposite-party No. 6.

- 2.** The brief facts of this case are that the opposite-party No. 6 herein - private respondent No. 6 who was aggrieved and dissatisfied with the order of provincialisation dated 05.02.2021 filed a writ petition being WP(C) No. 5702/2021 against the order, as he was not recommended for provincialisation of his service as Head Master due to lack of enrollment in the School. Through the same order dated 05.02.2021, issued by the O.P. No. 2, the services of present applicant along with two other Teachers were provincialised under the provision of the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 (hereinafter referred to as the Act of 2017 for short). The learned Single Judge vide order dated 09.05.2022 was pleased to set aside the provincialisation order of the applicant and further directed the respondent authorities-opposite parties to consider the case of the writ petitioner/Respondent No. 6 for provincialisation as Language Teacher in the Dakhin Biso doi M.E. School within a period of 45 days.
- 3.** The applicant learnt about the order dated 09.05.2022 through his engaged counsel, but at that time his wife Sabita Roy was undergoing medical treatment at Nemcare Hospital, Guwahati from 28.04.2022 upto 27.05.2022. The applicant has annexed the relevant documents relating to his wife's treatment as Annexure-1 series. The applicant's wife was advised bed rest after surgery of GB + CBD exploration. It is submitted that the applicant could not take any decision immediately and had a series of discussions with his engaged counsel, who advised him to file a separate writ petition challenging the Teachers List dated 30.05.2017 submitted by the Head Master (OP No. 6) of the school to the District Scrutiny Committee whereby the opposite-party No. 6 illegally changed the subjects taught by the individual teachers of the school. Accordingly the writ

petition numbered as WP(C) No. 4573/2022 was filed and is pending for disposal. Meanwhile owing to passage of time, the applicant had to collect certain documents/reports in support of his case. Thereafter the applicant's wife took ill and he consulted a doctor at Dhubri on 05.07.2022. As the applicant was terminated from service as a teacher-tutor, he was suffering from anxiety and hypertension. However he finally applied for the copy of the order dated 09.05.2022 on 31.10.2022. After receipt of the copy of the judgment and order, the applicant discussed the matter with his engaged counsel and thereafter, he decided to prefer an appeal against the impugned judgment and order dated 09.05.2022. The applicant's wife was under medical supervision and she was again brought to Nemcare Hospital, Guwahati on 14.12.2022 and 15.12.2022 but she has not recovered completely from her ailment. Meanwhile the applicant who was suffering from anxiety and hypertension was advised bed rest for five days. Thereafter the applicant engaged the present Advocate to prefer an appeal against the judgment and order dated 09.05.2022 in connection with the writ petition No. 5702/2021. This resulted in the delay of 335 days in filing the accompanying writ appeal.

4. The private respondent/opposite party No. 6 filed an affidavit-in-opposition contending inter alia that he was appointed on 12.12.1985 as Assistant Teacher in Dakhin Bisondoi M.E. School whereas the applicant was appointed on 28.03.2010 as Assistant Teacher in the said M.E. School and they have been teaching language subjects. As Head Master, he (opposite-party No. 6) submitted the names of Teaching and Non-teaching staff of the School on 30.05.2017 before the District Scrutiny Committee, Dhubri in the prescribed format for provincialisation of their services as Tutors under the provisions of the Act of 2017, but the SDC, Dhubri had illegally recommended the applicant

as language subject teacher along with two other teachers to the State Level Scrutiny Committee for provincialisation which impelled him to file the writ petition as captioned.

- 5.** It is contended by the respondent's counsel that the Discharge Summary Slips and the certificate dated 15.05.2022 issued by the Nemcare Hospital, Guwahati, where applicant's wife underwent treatment reveals that the applicant's wife Smt. Sabita Roy was admitted in the hospital on 28.04.2022 and she was discharged on 08.05.2022 from the hospital. The order impugned by the applicant was passed on 09.05.2022 i.e., after the applicant's wife was discharged from the Nemcare Hospital, Guwahati. It is further contended by the opposite-party No. 6 that after the order in the WP(C) No. 5702/2021 was passed, the applicant filed another writ petition in the month of June, 2022 which was registered as WP(C) No. 4573/2022, challenging the Teachers List submitted by the respondent/opposite-party No. 6. It is urged that if the applicant could file writ petition in the month of June, there was no impediment which prevented him to file the appeal against the impugned order dated 09.05.2022.
- 6.** The Opposite Party No. 6 has further contended that through WP(C) No. 5702/2021, he claimed his provincialisation as Language Subject Teacher and after the order dated 09.05.2022 was passed, the applicant who was aggrieved by the order ought to have preferred an appeal instantly. The applicant however filed a separate WP(C) No. 4573/2022 claiming his provincialisation as a Social Studies Tutor. The appellant is now before this Court with varying prayers in connection with two different writ petitions which is not permissible in law and is liable to be dismissed.

SUBMISSIONS

- 7.** The learned counsel for the applicant laid stress in his argument that the delay of 335 days was not intentional. There was no willful negligence on the part of the applicant. It is admitted that in condoning delay "*every day's delay*" is required to be explained. Applicant has prayed to waive the approach in calculating every day's delay and to endow him with substantial justice. It is submitted that without dismissing the application at the threshold the, appeal may be permitted to be decided on merits as there is every possibility that the writ appeal will succeed on merits.
- 8.** Per contra the opposite-party No. 6 has contended that there was indeed willful negligence on the part of the applicant who was aware of the order dated 09.05.2022 in connection with the WP(C) No. 5702/2021. Instead of filing appeal against the order dated 09.05.2022 in the month of June, the applicant filed another writ petition being WP(C) No. 4573/2022 with a distinct claim. The respondent has submitted that sufficient cause has not been shown to justify the delay of 335 days in filing the present appeal. Moreover, the applicant was attending school regularly w.e.f. May, 2022 to December, 2022, till the cancellation of his provincialisation. It has to be borne in mind that the Nemcare Hospital's Discharge Slip clearly reveals that the applicant's wife was discharged from the hospital on 08.05.2022. The applicant has failed to explain the reasons relating to delay in filing the memo of appeal w.e.f. July, 2022 to November, 2022 and from 16 December, 2022 to February, 2023 and thereafter from April, 2023 to May, 2023. The applicant's claim of possibility of success of the appeal holds no water. The opposite-party has prayed to dismiss the petition, with costs, considering the applicant's inconsistent stance.

- 9.** Heard Mr. A.R. Bhuyan, learned counsel for the applicant and Mr. M.R. Khandakar, learned counsel for respondent No. 6. The respondent Nos. 1, 4 and 5 are represented by Ms. K. Das and the respondent No. 3 is represented by Mr. N. Das, learned Government Advocate.
- 10.** The learned counsel for the applicant and the learned counsel for the respondent No. 6 advanced their arguments assiduously.

CONSIDERATION OF SUBMISSIONS

- 11.** We have given our anxious consideration to the submissions at the Bar.
- 12.** Annexure-1 is the Discharge Summary of the Nemcare Hospital which clearly reveals that the applicant's wife was discharged on 08.05.2022. The applicant's wife was advised bed rest for one month w.e.f. 28.04.2022 upto 27.05.2022. The applicant has annexed the medical documents as Annexure-1 series along with the application. The applicant has also annexed the Advice Slip as Annexure-2 along with the application to buttress his claim that he consulted a doctor on 20.03.2023.
- 13.** It is clear from the documents annexed along with the application as well as the affidavit-in-opposition that the applicant has not shown sufficient cause for condonation of delay of 335 days. The applicant's wife was advised bed rest only upto the month of May. Thereafter the applicant had sufficient time to file the appeal. The applicant has not denied that he filed another writ petition being WP(C) No. 4573/2022 in the month of June, 2022. No explanation is offered by the applicant justifying his act of filing a fresh writ petition in the corresponding period while failing to take steps for filing timely appeal in this matter.
- 14.** The submission of the learned counsel for the respondent No. 2 that the

applicant instead of filing an appeal against the order dated 09.05.2022 passed in WP(C) No. 5702/2021, filed a separate writ petition with a separate prayer which was numbered as WP(C) No. 4573/2022, cannot be ignored. The applicant has also admitted that a writ petition with a separate prayer was filed by him on advice of his legal counsel. This belies the applicant's submissions that he was unable to file this appeal as his wife was unwell. Thus the cause shown by the applicant so as to justify the huge delay in filing the appeal does not appear to be bonafide. The applicant had also not denied the assertion of the respondents that he was attending school regularly from May, 2022 upto December, 2022. Thus it is apparent that the applicant has slumbered over his rights. The applicant's wife was discharged from Nemcare Hospital on 08.05.2022. Assuming that she was on bed rest for 1 month after 08.05.2022, even then the applicant failed to show sufficient cause as to why he could not file the appeal after 09.05.2022. The doctor's advice slip to the applicant dated 20.03.2023 is too farfetched. The applicant's submission that his wife again took ill and a doctor at Dhubri had to be consulted on 05.07.2022 is not found to be worthy of credence. The willful negligence of the applicant is apparent as he applied for certified copies of the judgment and order dated 09.05.2022 on 31.10.2022. The radiological report dated 14.12.2022 submitted by the applicant relating to his wife's ailment clearly reveals that the applicant's wife Sabita Roy's USG features were found within normal limit. Thus it is manifest that the conduct of the applicant reveals willful negligence. Gross inaction and lack of bonafides on the part of the applicant are writ large on the face of record. The submissions reveal that the applicant was commuting to and fro from Bissondoi to Guwahati, after the impugned

judgment and order was passed, but he willfully avoided to prefer an appeal and rather filed another writ petition instead. The copy of the Daily Attendance Register marked as Annexure-2 series clearly reveals that the applicant was attending school regularly till the month of December, 2022.

- 15.** The decision of Hon'ble the Supreme Court in *Basawaraj and Another vs. Special Land Acquisition Officer*, reported in (2013) 14 SCC 81 can be gainfully referred to when the discretion to condone delay has to be exercised judicially based on facts and circumstances of a case. It is observed and held by Hon'ble the Supreme Court in Basawaraj's case (supra) that the discretion to condone the delay has to be exercised judicially based on facts and circumstances of each case. It is further observed that the expression "*sufficient cause*" cannot be liberally interpreted if negligence, inaction or lack of bonafides is attributed to the parties. Even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute.
- 16.** In the instant case, there is lack of bonafides and the applicant had acted with negligence and laches. Willful negligence is also apparent from the records of Daily Attendance Register (marked as Annexure-2 series). No satisfactory explanation has been offered by the applicant for condonation of delay of 335 days. The grounds set out in the application are specious and unsatisfactory.
- 17.** The application is hereby dismissed.
- 18.** No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant