

GAHC010138152023



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

Case No. : I.A.(Civil)/1838/2023
in Writ Appeal (filing serial) No.6204/2023

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GHY-6

2: THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19
DIST- KAMRUP (M)
ASSAM

3: THE DISTRICT ELEMENTARY EDUCATION OFFICER
NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSAM
PIN-

4: THE DY. INSPECTOR OF SCHOOLS
NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSAM

5: THE BLOCK ELEMENTARY EDUCATION OFFICER
LAKHIMPUR
DIST- LAKHIMPUR
ASSAM
PIN

VERSUS

DIPTI DAS AND ANR.
W/O- SRI DILIP DAS, R/O- VILL- GHARMARA, P.O. GHARMARA, P.S. NORTH
LAKHIMPUR, DIST- LAKHIMPUR, ASSAM

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR GHY-

Advocate for the Petitioner : MR. N J KHATANAR

Advocate for the Respondent : SC, FINANCE

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT

Date : 19-07-2023

(Arun Dev Choudhury, J)

1. Heard Mr. N.J. Khataniar, learned counsel for the applicants and Mr. R Borpujari, learned standing counsel, Finance Department.

2. The present application is filed by the State of Assam in Education (Elementary) Department under section 5 of the Limitation Act, 1963 praying for condonation of delay of 404 days in preferring the connected Writ Appeal/SI. No.6204/2023 against the impugned order dated 17.03.2022 passed in WP(C) No.1046/2019.

3. The applicants have pleaded the following grounds in an endeavor to justify that there are sufficient causes which prevented them in filing the appeal within the prescribed period of limitation:

I. After receipt of the copy of the order dated 17.03.2022 passed in WP(C) 1046/2019, the same was put up in file and finally after the file was processed at different levels, it was placed before the Judicial Department on 01.10.2022 for its view.

II. Judicial Department returned the file on 19.10.2022 asking the department to consult the standing counsel of the

department.

III. On 05.11.2022 the file was endorsed to learned Advocate General for his view for filing review/appeal.

IV. The learned Advocate general gave his opinion on 05.12.2022.

V. On 19.01.2023 the Senior Standing counsel of the department was requested to prefer the appeal.

VI. The appeal was filed on 26.05.2023 as the file was misplaced in the office of the standing counsel of the department.

4. In the case of ***Collector, Land Acquisition, Anant Nag and Another Vs. Musstt. Katiji and Others*** reported in ***(1987) 2 SCC 107***, the Hon'ble Apex court has provided certain exceptions to the state litigants so far the same relates to condonation of delay. However, the Hon'ble Apex court in ***Office of the Chief Postmaster General and Others Vs. Living Media India Ltd.*** reported in ***(2012) 3 SCC 563*** after dealing with the ***Collector, Land Acquisition, Anant Nag and Another (supra)*** held that 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 bona fide effort on their part, there is no need to accept the usual explanation that the file was kept pending for considerable time for procedural red tape in the process. It was further observed in the case of ***Chief Postmaster General*** (supra) that the Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. The Hon'ble Apex Court further went ahead and held that condonation of delay is an exception and should not be used as an anticipated benefit for the Government departments.

5. In the backdrop of aforesaid proposition of law, now let this court

consider whether the state applicants were prevented by sufficient cause in preferring the connected appeal within the prescribed period of limitation.

6. From the pleadings as discussed herein above, it is seen that though a statement is made that Director of Elementary Education Assam, initiated the process for further necessary action and endorsed the file to the Judicial Department on 01.10.2022, there is no whisper on which date the Director had received the order dated 17.03.2022 and what are the "different levels" the file was processed. According to the State respondent the file was returned by the Judicial Department on 19.10.2022 advising to consult the standing counsel, however, admittedly file was endorsed to the learned Advocate General on 05.11.2022 and there is no explanation whatsoever why after return of the file by the Judicial Department on 19.10.2022, almost a month's time was taken to endorse the same to the learned Advocate General.

7. It is also an admitted position that the learned Advocate General gave his opinion on 05.12.2022, however, no explanation has been given regarding the intervening one month. Yet another fact, which shows the lethargic attitude of the state applicant, is that even after receipt of the opinion of the learned Advocate General dated 05.12.2022, the department requested the senior standing counsel to prefer an appeal on 19.01.2023. No explanation /justification is given, why the file was endorsed after expiry of one and a half month to the senior standing counsel from the date of receipt of advice of the learned Advocate General on 05.12.2022.

8. The appeal was finally filed on 26.05.2023, though the same was received by the office of the learned standing counsel on 17.03.2022, though an explanation is sought to be given that the file was misplaced in the office of the learned standing counsel.

9. The Elementary Education Department is having their own

standing counsel and therefore, they are surely well aware and conversant to the issues involved in the connected appeal including the prescribed period of limitation.

10. The explanation given clearly reflects the lethargic and negligent attitude of the state applicant as discussed herein above. The state applicant cannot also deny that they are unaware of the dictum of Hon'ble Apex Court in ***Chief Postmaster General*** (supra).

11. Considering the explanation given and the casual approach of the applicant, this court is of the opinion that the applicant has failed to show that they were prevented by sufficient cause in preferring the connected appeal within the prescribed period of limitation.

12. Mr. Khataniar, learned standing counsel, Elementary Education Department also argued on merit of the connected writ appeal to impress upon this Court that a meritorious matter should not be thrown out on the ground of delay alone.

13. The judgment impugned dated 17.03.2022 is off shoot of a judgment and order dated 05.09.2017 passed by the learned Single Judge in WP(C) No.1015/2009 preferred by the respondent No.1.

14. As to the issue of non-payment of salary to certain classes of teachers, a learned Single Judge in ***Sudhendu Mohan Talukdar Vs. State of Assam*** in ***WP(C) No.2147/1999 & 71 others*** while dealing with the same by its judgment dated 06.04.2006, directed the state authorities to constitute a screening committee to examine the claim of the petitioners therein for salary and arrears of salary as the Government took a stand that the petitioners were appointed without following due process of law.

15. The present petitioner also preferred a writ petition claiming arrears of salary which was registered as WP(C) No.1816/2006. The said

writ petition was disposed of by a learned Single Judge under its order dated 26.04.2006 holding that the case of the petitioner is covered by the judgment passed in ***Sudhendu Mohan Talukdar*** (supra).

16. Thereafter, the claim of the petitioner was negated by a speaking order dated 07.01.2009 (Annexure – 16 to the Writ Appeal) on the ground that the appointment of the petitioner is illegal and therefore, question of payment of salary does not arise.

17. Such decision was again challenged by the petitioner in WP(C) 1015/2009 and the learned Single Judge under its order dated 05.09.2017, set aside the order dated 07.01.2009 and directed the respondent State to reconsider afresh, the case of the petitioner. The learned Judge relying on the honourable Supreme Court judgment in the case of ***State of Karnataka Vs. Lalitha*** reported in ***(2006) 2 SCC 747*** observed that large numbers of litigants similarly situated were regularized on 03.12.2016 by creating supernumerary posts w.e.f 01.09.2004 and therefore, the petitioner is also entitled to claim relief on parity. Accordingly, matter was again remitted to the department to pass a speaking order.

18. Subsequently, yet another speaking order dated 31.10.2018 was passed rejecting the claim of the respondent No.1, writ petitioner. Such order was once again challenged by the respondent No.1 in WP(C) 1046/2019 and the learned Single Judge, under the impugned order dated 17.03.2022 allowed the writ petition by setting aside the order dated 31.10.2018 and remanded the matter back to the Principal Secretary to pass a fresh order strictly taking note of the conclusion already arrived at in the judgment dated 05.09.2017 passed in WP(C) 1015/2009.

19. The learned Single Judge in WP(C) 1015/2009, in its order dated 05.09.2017 concluded that the petitioner is entitled for parity with the other similarly situated candidates. Such conclusion remained unchallenged till

date. Therefore, this court cannot find fault in the decision of the learned Single Judge impugned in the connected appeal.

20. It is an admitted situation that state on its own volition, regularized the services of the teachers akin to the petitioner by creating supernumerary posts and preferred appeal in the case of the respondent No.1 only.

21. The Hon'ble Apex court in the case of ***A.P.S.R.T.C. Vs. G. Srinivas Reddy*** reported in ***(2006) 3 SCC 674*** held that when high court directs the authority to consider a matter, the authority will have to consider and decide the matter in the light of the finding or observation of the court. It was further held that where the High court, without recording any findings, or without expressing any view, merely directs the authority to consider the matter, the authority will have to consider the matter in accordance with law, with reference to facts and circumstances of the case, its power not being circumscribed by any observation or finding of the court

22. In the case in hand, in WP(C)No.1015/2009, the learned Single Judge drew a categorical conclusion that the writ petitioner was entitled to be treated at par with the other persons who were absorbed/regularized by creating supernumerary posts. Such conclusion having attained finality, the learned Single Judge vide the order impugned dated 17.03.2022 has rightly directed the authority to pass the speaking order in terms of the conclusion drawn in WP(C) 1015/2009. Therefore, we do not find any infirmity in the impugned decision. Further, in view of the ratio laid down in ***A.P.S.R.T.C. Vs. G Srinivas Reddy (supra)***, the State authority is required to pass a speaking order in the light of finding of the learned Single Judge in WP(C) No.1015/2009. Hence, even on merits, the State has no valid ground to challenge the impugned judgment.

23. In view of the aforesaid discussion and reasons, this Court is not

inclined to condone the delay and accordingly the I.A seeking condonation of delay as well as the connected writ appeal are dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant