

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

LPA No. 159/2019
CM No. 5036/2019
CM No. 5037/2019

Harish Chander

....Petitioner(s)/Appellant(s)

Through :- Mr. Navyug Sethi, Advocate

V/s

State of J&K & Ors.

....Respondent(s)

Through :- Mr. Ravinder Gupta, AAG for R-1, 2 & 4
Mr. Raman Sharma, AAG for R-3

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

ORDER
07.08.2023

Tashi Rabstan, J:

CM No. 5037/2019

1. Instant application has been filed by the applicant seeking condonation of delay in filing the accompanying appeal against the order dated 03.04.2017 passed by the learned Single Judge in SWP No. 635/2013 titled "*Harish Chander v. State of J&K & Ors.*".
2. It is contended in the application that on disposal of the writ petition vide order dated 03.04.2017, the appellant on 10.04.2017 filed an application under J&K Right to Information Act, 2009 seeking information regarding the candidate selected against the 36th post of Junior Engineer Civil Grade-II notified vide Advertisement Notice dated 24.12.2010 and on getting no response, the appellant preferred First Appeal on 23.10.2017 before the First Appellate Authority. When the First Appellate Authority did not pass any order in the First

Appeal, the appellant preferred 2nd Appeal before the J&K State Information Commission on 17.01.2018. The Public Information Officer as well as the First Appellate Authority were called upon to appear before the J&K State Information Commission in the 2nd Appeal, where the respondents furnished the information sought for by the appellant vide communication dated 16.04.2018, where under the respondents stated that no selection in favour of the physically handicapped under ST category has been made. Thereafter, the appellant filed Review petition which has been dismissed vide order dated 28.05.2019. It is contended that delay in filing the LPA is neither intentional nor deliberate, but, because of the reason that the appellant was pursuing the remedy under RTI Act and in case the delay is not condoned grave and serious prejudice will be caused to the appellant.

3. In the objections filed by the respondents to this application, it is contended that the applicant has failed to explain the period of delay and had been negligent in filing the appeal. It is further contended that the applicant has applied for issuance of certified copy of the impugned order dated 25.07.2018 after 15 months and filed the review petition on 26.07.2018, which was dismissed on 28.05.2019, thereafter the present LPA has been filed on 19.06.2019. It is further contended that mere pendency of an application under RTI does not bar the applicant to apply for certified copy of the judgment and the applicant cannot compare the application filed under the RTI as an alternative remedy for the order of the writ Court.
4. Heard learned counsel for the parties.

5. On perusal of the application seeking condonation of delay, it would transpire that the applicant has admitted that immediately after disposal of the writ petition, the petitioner instead of filing the review petition as well as the appeal, has availed the remedy under J&K Right to Information Act, 2009 for getting some information, as such, no cogent and plausible ground has been taken in the application, which would entail delay in filing the appeal. Also, the application has been drafted in a vague and casual manner and even number of days of delay has not been mentioned in the application. Thus, in the light of what has been stated hereinabove, we hold that the applicant/appellant has miserably failed to give any justifiable reason/ground for the delay caused in filing the aforesaid appeal.

6. Law is well settled with regard to condonation of delay in filing the appeal and same has been reiterated in judgment passed by the Apex Court in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and ors.** reported as (2014) 2 SCC (LS) 595. The relevant paragraph is reproduced as under:

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

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 legalize injustice but are obliged to remove injustice.

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.

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

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.

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

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.

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

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.

ix) The conduct, behavior 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.

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.

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.

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

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

7. A similar view has been expressed by the Apex Court in **Brijesh Kumar and ors. v. State of Haryana and ors.** reported as **AIR 2014 SC 1612**, the relevant extract whereof is reproduced below:

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.”

8. Having regard to above referred judgments, it suggests that the applicant has perceived delay as a non serious matter and its lackadaisical tendency is exhibited by its nonchalant manner.
9. In view of the facts and circumstances of the case, observations made hereinabove and the settled law position, we are not satisfied with the explanation given by the applicant for condoning the delay. The application seeking condonation of delay is dismissed.
10. As a result thereof, the accompanying appeal i.e. LPA No.159/2019 shall also stand dismissed.

Jammu:
07.08.2023
Pawan Angotra



(Rahul Bharti)
Judge

(Tashi Rabstan)
Judge

Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No