

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

LPA No. 25/2023
CM No. 1316/2023
CM No. 1317/2023

1. State of J&K (now UT) through
Principal Secretary to Govt.
Home Department, J&K, Jammu
2. Director General of Police,
J&K, Jammu
3. Director,
Police Telecommunication,
PHQ, Jammu.
4. Commandant JKAP, 4th BN,
(Security), Channi Himmat, Jammu

....Appellant(s)

Through :- Mrs. Monika Kohli, Sr. AAG with
Mr. Virender Dev Singh, Advocate.

V/s

Bal Krishan Thusoo,
S/O Sh. Kanth Thusoo,
R/O At Present House No.426,
Lane No.16, Houzari Bagh, Bhorl,
Tehsil & District Jammu

....Respondent(s)

Through :- Mr. P. N. Bhat, Advocate.

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

ORDER

21.02.2024

TASHI RABSTAN,J:

1. CM No.1316/2023 is an application filed by the State seeking condonation of delay of 1954 days in filing the appeal.
2. In support of his submissions, Mrs. Monika Kohli, Sr. AAG appearing for the applicants submits that the judgment against which the appeal is sought to be filed is passed on 25.08.2017. On 14.11.2017, the Department received the court order and the file was processed on 21.12.2017 and a proposal for obtaining sanction was sent to the Finance Department. On 23.05.2018, the Finance Department advised the Law Department to implement the orders of the

court. Rather, on 20.02.2020, the Law Department accorded sanction to file the appeal and finally, the appeal was filed on 02.03.2023. Hence, the delay of 1954 days in filing the appeal.

3. Mrs. Monika Kohli, learned Sr. AAG for the applicants submits that the delay caused on the part of the State in filing the appeal is neither intentional nor willful and she has given the details in chronological order explaining delay in filing the appeal in time.

4. Learned Sr. AAG for the applicants further submits that the grounds in the appeal are strong on merits and the applicants-State is sure to succeed in the appeal and in case the delay is not condoned, the appeal be not heard on merits.

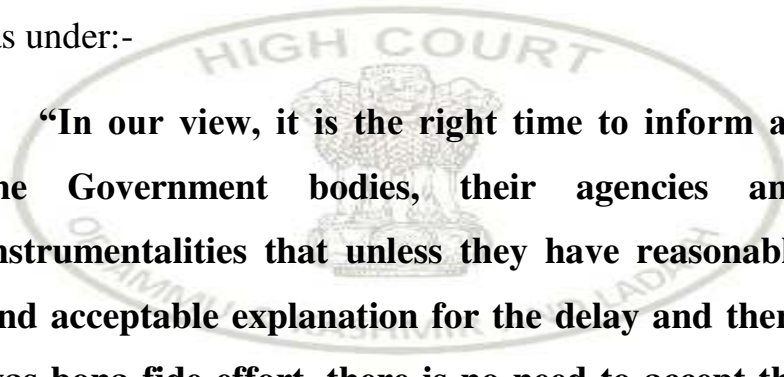
5. On the other hand, Mr. P. N. Bhat, learned counsel appearing for the respondent submitted that there is no sufficient cause shown in the application for the enormous delay. The various dates shown in the application are nothing but charade. Besides, the delay is unexplained from the years 2020 through 2023. He prayed for outright dismissal of the application along with appeal with heavy costs.

6. Heard learned counsel for the parties and perused the application as well as the file.

7. On perusal of the application seeking condonation, it would transpire that though the State has given details for the delay, but the perusal of the same would show that it has not appreciated the matter in its correct perspective. The Law Department accorded sanction to file the appeal on 20.02.2020. After more than three years, the appeal has been filed on 02.03.2023. The State has put the matter on hold for around five years for reasons that the delay occurred due to inter and intra-departmental communications. It is not a case where the judgment impugned has been passed *ex parte* and the State was oblivious of the

passing of the judgment. The judgment had been passed on 25.08.2017 and the State was very well represented by its Sr. AAG. No explanation has been tendered in the application which could justify the time which the applicants took in filing the appeal so belatedly except the reiteration of inter departmental communications and COVID-19 pandemic period.

8. Hon'ble the Supreme Court, while dismissing the appeal bearing Civil Appeal No. 2474-2475 of 2012 (Arising out of SLP (C) Nos.7595-96 of 2011 dated 24.02.2012) titled *Office of the Chief Post Master General & Ors. V. Living Media India Ltd. and Another* on account of no proper explanation for delay observed as under:-



“In our view, 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, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. 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. Hon'ble the Supreme Court while dismissing *SLP (Civil) Diary No(s).19846/2020* titled as *Union of India Vs. Central Tibetan Schools Admin & Ors.*, on 04.02.2021 on account of delay observed as under:-

“We have repeatedly being counselling through our orders various Government departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the legal department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake!

The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No. 22605/2020

decided on 11.01.2021].....”

10. We are of the view that the above judgments of the Supreme Court apply to the present case *in all fours*.

11. Pellucidly clear are the dilly dallying tactics of the State in the matter. Despite the nod by the Law Department as well as the Finance Department in prior point of time, the concerned department has contrived ways for eschewing implementation of the judgment, on one pretext or the other, as if the judgment was in the teeth of law. Had that been the case, the State should have acted promptly instead of deep-slumbering. Also, the huge part of the delay is blithely explained in the application which cannot be brushed aside by us.

12. It is clear case where we can draw an inference that the State has proceeded in the matter nonchalantly.

13. In view of the preceding analysis as well as the settled law position, we hold that applicants have failed to plausibly show before us sufficient cause which prevented them to file the appeal in time. The gargantuan delay of 1954 days in filing the appeal is not satisfactorily explained which could dissuade us from not allowing the application. The delay condonation application (CM No.1316/2023) is dismissed.

14. Resultantly, LPA No.25/2023 is also dismissed along with connected application(s).

Jammu:
21.02.2024
Raj Kumar

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is speaking? :Yes/No.

Whether the order is reportable? :Yes/No.