

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

LPA No. 105/2023
CM No. 3890/2023
CM No. 3891/2023

UT of J&K through Secretary, Health and Medical Education Department, J&K Government, Civil Secretariat, Jammu

..... Appellant/Petitioner(s)

Through: Mr. Raman Sharma, AAG

Vs

Deepak Kumar S/o Sh. Chuni Lal R/o Floor Harmkund, Tehsil and District Jammu

..... Respondent(s)

Through: Mr. Rahul Pant, Sr. Advocate with Mr. Aniruddh Sharma, Advocate

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

ORDER

12.07.2024

Tashi Rabstan, J:

CM No. 3890/2023 (Delay condonation application)

1. Instant application has been filed by the applicant-UT seeking condonation of delay of 1437 days in filing the accompanying appeal against the judgment dated 02.05.2019 passed by the learned Single Judge in the writ petition being SWP No. 522/2005 titled "*Deepak Kumar v. State of J&K & Ors*".

2. It is averred in the application that the judgment dated 02.05.2019 was examined in the Department and accordingly, attention of the Finance Department was invited towards the said judgment and requested them to furnish comments, which vide UO dated 01.01.2020 returned the file with the advice; that after examining the advice of the Finance Department, the Department vide UO dated 06.01.2020 took up the matter with the Department of Law, Justice & Parliamentary Affairs for advice, which vide UO dated 20.02.2020 returned the file with the advice. It is averred that after examining

the advice of the said department the matter was again taken up with the Finance Department vide UO dated 25.02.2020 and attention was invited towards the advice dated 20.02.2020 and requested to furnish views and comments in the matter; that the Finance Department while returning the file vide UO dated 13.05.2020 advised to justify the upgradation, otherwise take up the matter with the Department of Law, Justice and Parliamentary Affairs for filing of LPA; that thereafter the case of the non-applicant was again examined in the Department and it was observed that the department vide Government Order dated 28.07.1999 accorded sanction for upgradation of the post as per the concurrence of the Finance Department; that the retrospective issue of sanction was not considered by the Finance Department; that the Finance Department in clear terms has stated that there was no specific cause for upgradation of all posts from the same date.

3. It is contended that after perusing the records and examining the orders, the Department of Law, Justice and Parliamentary Affairs vide communication dated 08.12.2022 requested Mr. Amit Gupta, Additional Advocate General to file the LPA and accordingly, on receipt of the necessary assistance the LPA was prepared and filed before the Registry of this Court; that in the meantime, the parakar assigned with the learned Additional Advocate General got retired and also the Law Officer of the Administrative Department was transferred, due to which there was a communication gap; that as soon as the new Law Officer took charge the defects of the instant LPA were noticed, which got removed in the right earnest; that the time required got consumed, which in no way can be termed intentional, willful or deliberate. Lastly, it is contended that the Government is impersonal machinery and decisions are taken at slow pace and certain amount of latitude is not impermissible, otherwise also

the private parties cannot be put on the same footing in the matter of condonation of delay.

4. In the objections filed by the non-applicant/respondent, it is contended that the appellant has failed to explain the reason for delay in filing the appeal. It is averred that the contention of the appellant that the relief granted by virtue of the judgment impugned is beyond the relief claimed as the petitioner had prayed for writ in the nature of Mandamus commanding upon the respondents to upgrade the post of Hostel Manager, AMT School, Jammu with effect from 29.12.1997, i.e., the date when three posts of Srinagar Division have been upgraded, i.e., giving the upgradation to the petitioner retrospective effect from 29.12.1997 to avoid effect on his further promotion prospects and future benefits, as such, the grounds for seeking condonation of delay is nothing but an attempt to mislead this Court.

5. It is further averred that the respondent/appellant herein cannot be allowed at this stage to raise the argument that the relief was granted without returning any finding as to the maintainability of the writ petition as the said writ petition was admitted and the respondents were directed to file counter affidavit and to produce the record before the Court, however, the appellants herein have neither filed counter affidavit nor produced the record before the Court, as such, the respondents cannot be permitted to benefit from their own mistakes; that the time consumed in the department itself is an indicator to the fact that the present application seeking condonation of delay has been filed in casual manner and the reason for filing the present appeal along with the application for condonation of delay is only to escape the necessary consequences of non-implementation of the judgment as the non-applicant/respondent was compelled to file a contempt petition before this Court and after the notice was received,

the appellants instead of implementing the judgment, preferred the present appeal; that the present LPA is nothing but an attempt on the part of the respondents to evade the contempt proceedings as the respondents vide order dated 01.06.2022 were granted last opportunity to file compliance report and further vide order 22.09.2023, they have been directed to file compliance report failing which the respondent No. 2 has been ordered to appear in person and it was only out of fear of rule being framed in the contempt petition that the appellant herein has chosen to file the LPA. It is further contended in the objections that the sanction for filing the present appeal was granted on 08.12.2022, however, the same was not filed until June, 2023 and moreover, the appeal presented before the Registry was defective and the same establishes causal approach adopted by the appellants.

6. In support of the case, learned counsel for the applicant has submitted that the delay caused in this case is neither deliberate nor intentional but incidental as the delay is caused on account of the departmental procedures involved in for filing the appeal. It is also submitted that matters relating to the Government are required to be considered at various levels and then only a decision is taken to file the appeal. The process of referring the particular file from one department to another is time consuming and decisions have to be taken collectively and hence, the delay deserves to be condoned.

7. On the other hand, learned counsel for the respondents has shown strong reservations in case the delay is condoned and submitted that delay caused in approaching the court is huge, unexplained and the reasons given for delay are nothing but charade. It is submitted by learned counsel for the respondent that the present application seeking condonation of delay along with the appeal has been filed after filing of the contempt petition and also no cogent

reason has been given by the petitioner seeking condonation of delay in filing the appeal. Learned counsel for the respondents also contended that even after condoning some of the period extended by the Supreme Court due to COVID-19, still there is huge delay in filing the appeal.

8. Heard learned counsel for the parties.

9. The averments made in the application clearly reveals that the applicant/appellant was not serious in filing the appeal as the sanction for filing the appeal has been granted by the Law Department on 08.12.2022, but the applicant took 6 months for filing the appeal, i.e. on 08.06.2023. After the writ petition was admitted, the respondents were directed to file counter affidavit and to produce the record before the Court, however, the appellants herein have neither filed counter affidavit nor produced the record before the Court and also the appellants have not bothered to file the appeal in due time. The appellant-UT, for instance, have given reasons which only show that they have proceeded in the matter in a perfunctory manner and excessively adhered to the formalities. No cogent and plausible grounds have been taken in the application which would entail delay in filing the appeal and the application has been drafted in a very casual and vague manner.

10. It is trite that delay in filing appeal after the statutory period of limitation prescribed cannot be condoned as a matter of course. The party seeking condonation of delay was required to satisfy the Court that there was sufficient cause justifying condonation of delay. Merely saying that the delay was on account of procedural aspect, is not a sufficient cause to condone the delay.

11. 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].....”.

12. Having regard to above referred judgment, it suggests that the applicant-UT has perceived delay as a non serious matter and its lackadaisical tendency is exhibited by its nonchalant manner in which the appellant has pursued the matter and allowed the file to move from table to table for months together.

13. 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 applicants/UT for condoning the delay. The application seeking condonation of delay is dismissed.

14. As a result thereof, the accompanying appeal i.e. LPA No.105/2023 is also rejected.

Jammu:
12.07.2024
Pawan Angotra

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is speaking? : Yes/No

Whether the order is reportable? : Yes/No