

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

LPA No.194/2023
CM No.6431/2023
CM No.6432/2023

Social Welfare

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

Through :- Mr. Ravinder Gupta, AAG.

V/s

Surinder Kumar & Ors.

....Respondent(s)

Through :- Mr. Abhirash Sharma, Advocate.

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

**ORDER
(26.11.2024)**

01. This intra-Court appeal under Clause 12 of Letters Patent is directed against an order and judgment dated 06.09.2002 passed by learned Single Judge of this Court ("the writ Court") in SWP No.595/2001 titled '*Surinder Kumar & Ors. V. State of J&K & Ors.*', whereby the writ Court has directed the respondent authorities to regularize the services of the respondents herein and has also held them entitled to salary for the period they have actually worked and also for the period they were kept out of service. The appeal is delayed by 20 years 11 months and 07 days and, therefore, an application for condonation of delay.

02. The delay is sought to be explained by the appellant on the ground that they were not party to the writ petition nor was any direction issued to it in terms of the judgment sought to be challenged in the LPA. It is pleaded that they came to know about the passing of the judgment only when they were impleaded as party respondents in the contempt filed by the respondents alleging violation of the judgment dated 06.09.2002. The appellant was impleaded as party

respondent on 18.03.2023 and notice was issued to the appellant to appear on 27.03.2023. Thereafter, the appellant appeared before the Court and came to know for the first time that there is a judgment which as per the Court hearing the contempt was also required to be implemented by the appellant herein. It is submitted that, thereafter, the steps were taken, the record was collected and ultimately, the appeal was preferred on 12.09.2023. This is how they have sought to explain the delay.

03. We have heard learned counsels for the parties and perused the material on record. We have also gone through the explanation tendered by the appellant in seeking condonation of huge delay in filing the appeal. We also went through the impugned judgment passed by the writ Court. From reading of the judgment, it clearly transpires that the judgment is directly against the arrayed respondents which includes the then State of J&K, now the Union Territory of J&K through Chief Secretary. It is true that Commissioner/Secretary to Government, Department of Social Welfare, i.e. appellant herein was not a party in the petition before the writ Court. We could have considered the matter of delay liberally provided the appellant had a locus to file this appeal. We are told that judgment impugned in the appeal was unsuccessfully assailed by the contesting party, i.e. the Managing Director, JKSC, ST and Backward Classes Development Corporation, Jammu. The said appeal was dismissed for non-prosecution and the application filed for restoration of appeal, too, was dismissed by this Court. The judgment passed by the writ Court has thus, attained finality, though a review petition against the order of the writ Court declining to restore the appeal is still subjudice in this Court.

04. Be that as it may, the fact remains that the judgment passed by the writ Court does not oblige the Commissioner/Secretary to Government, Social Welfare Department in particular to comply with the order. The regularization, if

any, as directed by the writ Court is required to be done by the Corporation. The financial implications, if any, required to be met by the Government, if any, can be well taken care of by the Union Territory of J&K which was party before the writ Court through Chief Secretary.

05. Viewed from any angle, we do not see any sufficient cause coming forth from appellant for justifying the delay of more than 20 years. Needless to say that once the Government of J&K through its Chief Secretary is a party respondent in a case, all officers/officials subordinate with him shall be deemed to be in the knowledge of such case and judgment, if any, passed therein. The plea of the appellant that they were not aware of the passing of the judgment is also not worthy of acceptance. For all these reasons, the appeal is found without any merit and the same is, accordingly, dismissed.

(MOHD. YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
26.11.2024.
Eva