

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

LPA No. 23/2022
CM No. 2224/2022
CM No. 2225/2022
CM No. 1534/2024

1. Union Territory of J&K Through
Commissioner/Secretary to Govt.,
Health Department Civil Secretariat Jammu
2. J&K Services Selection Board,
Through its Secretary, Sehkari Bhawan,
Near Bahu Plaza, Jammu

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

Through :- Mr. Raman Sharma, AAG for A-1
Mr. Amit Gupta, AAG for A-2

V/s

1. Sahila Kousar Dev D/o Shabir Ahmed Dev
R/o Village Sigdi, Tehsil Chatroo,
District Kishtwar
2. Ashwani Shan S/o Jodh Ram
R/o Village Kunja (Trigam)
Tehsil and District Kishtwar

....Respondent(s)

Through :- Mr. F.S. Butt, Advocate

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

ORDER
27.03.2024

Tashi Rabstan, J:

CM No. 2224/2022 (Delay condonation application)

1. Instant application has been filed by the applicants-UT seeking condonation of delay of 1138 days in filing the accompanying appeal against the judgment dated 29.08.2018 passed by the learned Single Judge in the writ petition being SWP No. 89/2015 titled "*Sahila Kousar Dev & Ors. v. State of J&K & Ors*".

2. It is averred in the application that after passing of the judgment dated 29.08.2018, the matter was placed before the J&K Services Selection Board in its 157th meeting held on 30th September, 2019, wherein it was decided that since

the writ petition has been allowed to the extent of the petitioner Nos. 1 and 3 and with regard to the claim of the petitioner No. 1 to the post of Jr. Nurse District Kishtwar, all eligible candidates be called in the ratio 1:5 in accordance with Rule 14 of the Jammu and Kashmir Civil Services Decentralization Recruitment Rules, 2010, but in so far as the claim of the petitioner No. 3 is concerned, since the selection for the post of Jr. Laboratory Technician under RBA category has already been finalized by the Board, the issue was taken up with the Law Department through General Administration Department vide communication dated 14.01.2021 and the General Administration Department vide communication dated 17.02.2021 conveyed the sanction of Law Department to file appeal and the appellants, contacted the learned counsel and steps were taken for drafting of the appeal.

3. It is further contended that the consideration of the matter and decision to file appeal was delayed due to complete lockdown ordered by the Govt. due to COVID-19 and the Supreme Court extended the limitation period w.e.f. 15th March, 2020; that law is well established that law of limitation should be liberally construed to do the substantial justice and when the technicalities and substantial justice are pitted against each other, the cause of substantial justice must prevail.

4. In the objections filed by the non-applicants/respondents, it is contended that the appeal against the judgment impugned, insofar as the respondent No. 1 is concerned, is not maintainable for the reason that the appellant in 157th Board Meeting held on 30.09.2019 decided to implement the judgment insofar as respondent No. 1 is concerned and decided to take sanction for filing LPA so far as other appellant is concerned. In the Minutes of 157th Board Meeting of SSB (Annexure-III with the application) it has been decided

that as regards the claim of petitioner No. 1/respondent No. 1 herein regarding the post of Jr. Nurse District Kishtwar, item No. 379, pursuant to advertisement notification No. 03 of 2012 dated 28.12.2012, all the eligible candidates be called in the ratio 1:5 in accordance with Rule 14 of Jammu and Kashmir Civil Services Decentralization Recruitment Rules, 2010. It is further decided that so far as the claim of the petitioner No. 3/respondent No. 2 herein is concerned, the selection has already been culminated and he has been appointed. Learned counsel for the respondents submits that selection *qua* the petitioner No. 1/respondent No. 1 herein could not be finalized, therefore, she has questioned before the Writ Court.

5. In support of the case, learned counsel for the applicants has submitted that the delay caused in this case is not deliberate or intentional but incidental as the delay is caused on account of the departmental procedures involved in for filing the appeal as well as due to lockdown ordered by the Government due to the COVID-19 pandemic. 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.

6. 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.

7. Heard learned counsel for the parties.

8. The averments made in the application clearly reveals that the applicants/appellants were not serious in filing the appeal as the sanction for

filing the appeal has been granted by the Law Department on 17.02.2021, but the applicants took about 9 months for filing the appeal, i.e. on 16.12.2021. Also, the judgment has been passed after hearing learned counsel for both the parties and not in absence of learned counsel for the respondents/appellants herein, but the appellants have not bothered to file the appeal in due time. The appellants-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.

9. 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.

10. 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].....”.

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

12. 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.

13. As a result thereof, the accompanying appeal i.e. LPA No.23/2022 is also rejected.

Jammu:
27.03.2024
Pawan Angotra

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is speaking? : Yes/No
Whether the order is reportable? : Yes/No

