

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(Review.Pet.) No. 9 of 2024

Ref:- Review Pet. No.

Ref:- W.P.(C) No. 41 of 2020

The State of Manipur and 2 Others

Applicants

Vs.

Ahanthem Abani Singh and 28 Others

Respondents

BEFORE

HON'BLE THE CHIEF JUSTICE MR. D. KRISHNAKUMAR

ORDER

30.01.2025

Mr. M. Devananda, learned Additional Advocate General assisted by Ms. Naorem Jyotsana Devi, learned counsel appears on behalf of the review petitioners and Mr. A. Romenkumar, learned senior counsel assisted by Mr. RK Banna, learned counsel, appears for the respondents.

The present miscellaneous review application has been filed by the review petitioner for reviewing the order dated 11.4.2022 passed in Writ Petition in WP(C) No. 41 of 2022 by this Court whereby the said writ petition of the respondents was disposed of directing to count the service of the petitioners commencing from the initial officiating appointment w.e.f. 03.02.1986 till the regularization for the purpose of pensionary benefits in terms of Rule 13 of the Rules 1977 read with the Office Memorandum dated 05.07.2003.

Aggrieved by the aforesaid direction passed by this Court in the aforesaid writ petition in WP(C) No. 41 of 2022, the review applicant has preferred an appeal before the Hon'ble Supreme Court in SLP (C) No. 1394 of 2023 (State of

Manipur Vs. Khumukcham Robindro Singh and Others and SLP (C) No. 2901 of 2023 (State of Manipur Vs. Ahanthem Abani Singh and Others) and the said SLPs came to be dismissed and thereafter, the petitioner department had chosen to file the review application before the Hon'ble Supreme Court against the order dated 06.02.2023. The said review application came to be listed in the Hon'ble Supreme Court on 31.10.2023 and the same also dismissed by the Hon'ble Supreme Court. Thereafter, the petitioner has filed the instant review application along with condone application for condoning the delay of 797 (seven hundred ninety-seven) days in filing the review application. In the aforesaid condone application, the petitioner has stated the reason that the aforesaid review application came to be dismissed on 31.10.2023 and thereafter, the file has been forwarded to the Minister Fishery on 03.11.2023 and Deputy Secretary (FY), in this regard, FD(PIC) was requested to obtain the views or comments and by letter No. 22/3/2023-FD(PIC) dated 07.11.2023 it is stated that all fresh proposals for similar linking up of past service to be kept on hold in view of the Cabinet decision and thereafter, the Administrative Department (AD) was requested to put such case of linking up of past service on hold for the time being and thereafter, on 08.12.2023, the Assistant Secretary (FY) put up to seek advice/comments from the learned Advocate General in this regard to take further course of action.

On 11.12.2023, the Secretary (FY) put up before the Commissioner (Law). On 13.12.2023, the Commissioner (Law) put up for examination to Deputy Secretary (Law) and the Deputy Secretary (Law) as desired by Administrative Department (AD) file was referred to learned Advocate General for advice and the same was submitted before the Commissioner (Law).

On 13.12.2024, the Commissioner (Law) submitted for seeking advice from Advocate General. On 21.12.2023, the Advocate General, Manipur, in view of the legal proposition involved herein, particularly, the fact that the writ petitioners were regularized not against the regular substantive posts but after creating supernumerary post in 2019 only for the purposed of regularization w.e.f 2019 and to stop opening up of flood gate of litigation a curative petition may be filed before the Hon'ble Supreme Court of India by taking legal advice and guidance from the learned Attorney General of India. Thereafter, the file was put up before the Chief Secretary, Manipur for necessary consideration. Again, to the Commissioner Law, Manipur, as advised by the learned Advocate General and again the said paper was placed before the Secretary, Fishery on 29.12.2023 and thereafter, there is no detail explanation submitted by review applicant in the affidavit till filing of the review application on 17.07.2024. That means from 29.12.2023 till 17.07.2024, after more than 7 (seven) months, there is no explanation in affidavit in filing the review application before this Court and then, the application is filed with a delay of 797 days in filing the review petition for examining the issues involved in the present case.

This Court is of the view that after considering all the aforesaid dates and events which has been furnished by the petitioner department in the condone application this Court is not satisfied with the explanation given for condoning the inordinate delay in filing the review application by the applicant before this Court and the decision of the Hon'ble Supreme Court in ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others***, reported in **(2013) 12 SCC 649**, clearly states that the said delay in filing the

review application by the other parties, when the department has not chosen to file the condone application within the reasonable time and to submit the explanation to satisfy the Court for condoning the delay. If the Court is not satisfied with the reason for such delay the Court cannot consider to condone the delay in filing such application and therefore, this Court, in the light of the decision of the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee*** and subsequent decision of the Hon'ble Supreme Court wherein it has been clarified that unexplained delay in filing the review application is not to be considered by the Court and the Court cannot grant such concession to the parties for condoning the delay in filing the review application. In such circumstances, there is no sufficient reason for condoning the delay of 797 days in filing the review petition. In this circumstances, this Court rejects the said application filed by the review petitioner.

The learned Additional Advocate General also relied upon the judgment of the Hon'ble Supreme Court reported in ***Sheo Raj Singh (Deceased) Through Legal Representatives and Others Versus Union of India and Another, (2023) 10 SCC 531*** in paragraphs 31, 32, 33, 39, 40 and 41 which read as follows :

“31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an ‘explanation’ and an ‘excuse’. An ‘explanation’ is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an ‘explanation’ from an ‘excuse’. Although people tend to see ‘explanation’ and ‘excuse’ as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

33. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question. Law is fairly well-settled that "a court of appeal should not ordinarily interfere with the discretion exercised by the courts below". If any authority is required, we can profitably refer to the decision in *Manjunath Anandappa v. Tammanasa*, which in turn relied on the (2003) 10 SCC 390 on the decision in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha*¹³ where it has been held that

"an appellate power interferes not when the order appealed is not right but only when it is clearly wrong". (emphasis in original)

34. The order under challenge in this appeal is dated 21-12-2011. It was rendered at a point of time when the decisions in *Mst. Katiji* (supra), *Ramegowda* (supra), *ChandraMani* (supra), *K.V.Ayisumma* (supra) and *Lipok AO* (supra) were holding the field. It is not that the said decisions do not hold the field now, having been overruled by any subsequent decision. Although there have been some decisions in the recent past [*State of M.P. v. Bherulal* is one such decision apart from *University of Delhi* (supra)] which have not accepted governmental lethargy, tardiness and indolence in presenting appeals within time as sufficient cause for condonation of delay, yet, the exercise of discretion by the High Court has to be tested on the anvil of the liberal and justice oriented approach expounded in the aforesaid decisions which have been referred to above.

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39. According to Mr. Sharma, *University of Delhi* (supra) is a decision by a larger Bench and, therefore, binding on us. This Court, while deciding *University of Delhi* (supra), was seized of a situation where even if the delay were to be condoned, it would cause grave prejudice to the respondent *Delhi Metro Rail Corporation* at the instance of the casual approach of the appellant *University*. This Court, on the

argument of non-availability of the Vice Chancellor for granting approval to file the appeal, and other reasons put forth in the matter, could not conclude that there was fulfilment of sufficient cause for condonation of delay; hence, the refusal to condone the delay. The decision really turns on the facts before this Court because of the prejudice factor involved.

40. We can also profitably refer to Koting Lamkang (supra), cited by Mr. Sen, where the same Bench of three Hon'ble Judges of this Court which decided University of Delhi (supra) was of the view that the impersonal nature of the State's functioning should be given due regard, while ensuring that individual defaults are not nit-picked at the cost of collective interest. The relevant paragraphs read as follows:

"7. But while concluding as above, it was necessary for the Court to also be conscious of the bureaucratic delay and the slow pace in reaching a government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law of limitation would harshly affect the party, the Court felt that the delay in the appeal filed by the State, should not be condoned.

8. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by the State are lost for individual default, those who are at fault, will not usually be individually affected." (underlining ours, for emphasis)

41. Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision to condone the delay on account of the first respondent's inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests."

This Court has gone through the aforesaid judgment of the Hon'ble Supreme Court and the Hon'ble Supreme Court has held in para 32 therein that there is no formula that caters to all situations and, therefore, each case for

condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

Considering the facts of the case, the aforesaid decision of the Hon'ble Supreme Court will not apply to the facts of the case.

It is clear from the averments made in the affidavit filed by the review applicant that there is no explanation for inordinate delay for more than 7 (seven) months i.e. from 29.12.2023 till 17.07.2024 in filing the review petition for examining the issues involved in the present case though the review applicant was aware of the fact that order had been passed by the Hon'ble High Court as well as the Supreme Court.

So, considering the fact that the review applicant had already filed an appeal before the Hon'ble Supreme Court and the same came to be dismissed and also filed review application, that dismissed by the Hon'ble Supreme Court.

In these circumstances, the present application has been filed to condone the delay of 797 days without satisfactory explanation for condoning the delay in filing the review application. On such circumstances, this Court is not satisfied with the reasons/explanations for entertaining the said application and there is no merits in the contention of the learned Additional Advocate General for allowing the said application.

In fine, the application, MC (Review.Pet.) No. 9 of 2024 is rejected and consequently, is dismissed.

At this juncture, the learned Additional Advocate General made a request before this Court that the final order passed in the writ petition will not be a precedent in the future cases. Therefore, question of law involved in the present writ petition will be left open to decide afresh in appropriate matters.

CHIEF JUSTICE

Sushil