

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP(M) No.1232 of 2026

Date of Decision : 05.08.2026

State of Himachal Pradesh and another

..... Appellants

Versus

Virender Kumar

..... Respondent

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the Appellants : Mr. Shrawan Dogra, Senior Advocate with
Mr. Tejassvi Dogra, Advocate, for the State.

G.S. Sandhawalia, Chief Justice (Oral)

The present appeal filed by the State against the judgment of learned Single Judge, passed in ***Civil Writ Petition No.6757 of 2022 titled Virender Kumar vs. The State of Himachal Pradesh and another***, decided on 21.11.2024, is hopelessly time barred by 01 year and 142 days.

2. Learned Senior Counsel appearing on behalf of the State has tried to convince us that the merits of the case should be examined since the observations of the learned Single Judge, as such, would go against the policy and would amount to giving a concession as such,

¹ **Whether reporters of Local Papers may be allowed to see the judgment?**

which is beyond the terms of the policy. On this account, he tried to persuade us while falling back on the judgment of the Hon'ble Apex Court, in ***State of Nagaland vs. Lipok AO and Others*, (2005) 3 SCC 752**, which had further been relied upon in ***O.P. Kathpalia vs. Lakhmir Singh (dead) and others*, (1984) 4 SCC 66**, a 3 Judges Bench, wherein it has been held that if the delay results in grave miscarriage of justice, it would be a ground to condone the delay.

3. He has further pointed out that there are observations in the said judgment that the State as such is always put at a disadvantage in filing appeals and needs prompt action, yet prompt action is usually never taken. However, lapses of officials should not put the State at a disadvantageous position on account of the impersonal machinery as it works through its officers or servants. He has also relied upon the decision of the Hon'ble Apex Court, in ***Inder Singh vs. State of Madhya Pradesh*, 2025 SCC OnLine SC 600**, on the same aspect that merely on account of delay, the appeal should not be dismissed and the merits should be examined. He has further relied upon the decisions of the Hon'ble Apex Court, in ***State of Haryana vs. Chandra Mani and others*, 1996(3) SCC 132**; and ***State of Manipur and others vs. Kotin Lamkang*, 2019(10) SCC 408**.

4. We are in agreement, as such, with the arguments raised by the Counsel, but however it is to be kept in mind that there has to be a semblance of an explanation offered for sufficient cause, and merely

on account of the said judgments and the delay over a period of year and half has to be strictly explained. In the absence of having done so, in the application bearing CMP(M) No.1232 of 2026, we are not in a position to accept the arguments of the learned Senior Counsel.

5. A perusal of the application (CMP(M)No. 1232 of 2026) for condonation of delay would go on to show that the order was passed on 21.11.2024 by the learned Single Judge. Certified copy of the same was then applied on 26.11.2024 expeditiously and was attested on 10.02.2025. It is to be noticed that the delivery of the copy was done on 03.03.2025 itself. The said certified copy was then received on 19.03.2025 in the office of the appellant. Before that, the Director, Land Records, vide a letter dated 15.02.2025, had taken up the matter with the Government for getting necessary directions for implementation of the judgment. Thereafter, the matter was sent by the said officer on 05.04.2025 to the Additional Chief Secretary (Revenue).

6. Thereafter, there was absolute paralysis at the hands of the Government thereafter, as apparently only on 06.11.2025, the opinion of the Law Department was taken regarding the judgment and accordingly conveyed to the concerned, and the matter was then taken up by the Advocate General for filing the appeal. Thereafter, another period of five months apparently expired as the matter was then assigned to the Senior Counsel, and the communication is also dated 01.04.2026. And thereafter, the present appeal has been filed on

28.07.2026 and again a delay of almost 4 months has occurred. The explanation given is thus of the impersonal handling of the files.

7. It is pertinent to notice that the judgment relied upon by the learned Senior Counsel pertains to a delay which had not been condoned and was a paltry period of 57 days in **Lipok's case** (supra). And the explanation as such therein was that the file along with the note sheet was found missing from the Office and could not be traced despite best efforts and was then eventually traced. In such circumstances, the refusal of the High Court to condone the delay had not been approved. The background of the case was also taken into account that it was a case involving a shootout incident regarding the Police Officer attached to the Minister, and a judgment of acquittal had been passed, which was a subject matter of serious consideration that weighed with the learned Apex Court and, therefore, the said judgment would have no application.

8. Similarly, in **Inder Singh's** (supra), the delay of 1537 days had been noticed, part of which had been spent in filing a review petition before the first Appellate Court, and thereafter, the period of COVID had come. In such circumstances, the delay having been condoned by the High Court, which was subject matter of consideration by a private litigant, had been upheld, and the litigant had been awarded an amount of ₹50,000/- as costs for the delay which had been condoned, primarily keeping in view the question whether there was a

dispute regarding the land, which was allotted for the public purpose to the Youth Welfare Department. Therefore, it was not a dispute between a private party, but between the State and the land allocated for public purpose, which primarily weighed with the Apex Court for upholding the delay which had been condoned.

9. In the present case, as noticed above, the issue pertains to compassionate appointment in place of an employee who had died way back in February 2013 while serving as a Peon in the Deputy Commissioner's Office to the family of the employee. There were various rejection orders. On 01.07.2015, reconsideration had been ordered in the interim period, and again the rejection order dated 18.08.2020 was subject matter of consideration before the learned Single Judge as the proposal apparently had not met the financial income criteria. Directions have been given to have a re-look and take a pragmatic decision, as the whole purpose is for the persons who are in need of succor on account of the untoward demise of the breadwinner. Keeping the litigation hanging and the sword of Damocles on the head of the poor Class-IV employees is an aspect which weighs with us, that the State in its own wisdom for a period of 1 year and 142 days can sit with its hands comfortably behind its back and expect that this Court shall be indolent in such circumstances. We are not in agreement with the said argument that such inordinate delay, which has not been explained, can be condoned.

10. In such circumstances, we are of the considered opinion that it is the settled principle that all legal proceedings have to be challenged within the prescribed/reasonable period and on not doing so, a vested right accrues to the other side.

11. Reference can be made to the recent judgment of the Apex Court in ***Shivamma (dead) by Lrs Vs. Karnataka Housing Board & others***, reported in ***(2025) 4 Recent Civil Reports 134***, whereby the whole case law as such was discussed regarding filing of belated appeal and the delay which had been condoned by the High Court while entertaining the Regular Second Appeal. Resultantly, plethora of judgments right from the year 1962 were considered as to whether such course of action was justified. Resultantly, it was held that the law of limitation was founded on public policy. The object of limitation was to put a quietus on stale and dead disputes and a person cannot be allowed to agitate his claim after a long delay and the parties cannot be allowed to resort to dilatory tactics. The object as such was not to destroy the rights of the parties, but life span as such has to be fixed for such remedy to unending uncertainty and consequential anarchy, while relying upon the judgment of the Apex Court, in ***N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123***.

12. Thus, the fundamental principle that the law assists those, who are vigilant and not those who sleep over their rights, was highlighted.

13. Reference has also been made to the judgment of the Apex Court in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy***, reported in **(2013) 12 SCC 649**, wherein the principle as such had been laid down that there should be a liberal, pragmatic and justice-oriented approach and substantial justice being paramount and concept of liberal approach cannot be allowed a totally unfettered free play. The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be kept in mind so that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation. The right of remedy having not been exercised or availed for a long time, thus necessarily comes to an end or ceases to exist and the length of delay functions as a contextual indicator, but not a determinative factor.

14. Reference can be made to the decision of the Hon'ble Apex Court in ***Government of Maharashtra, (Water Resources Department) represented by Executive Engineer vs. M/s Borse Brothers Engineers & Contractor Pvt. Ltd.***, reported in **(2021) 6 SCC 460**, wherein it was held that one has to be diligent in prosecuting the matter and condonation is only exception to rule and delay cannot be granted merely on the ground of identity of the applicant.

15. The law stands settled in catena of judgments as such that where there is total inaction on part of the State, there is no justification

for condonation of delay. In such circumstances, we are of the considered opinion that there is a lack of explanation for the inactive action of the State. Reliance placed by the State on the judgment in ***Chandra Mani's case*** (supra) is misplaced, since perusal of the said judgment would go on to show that there was only 109 days' delay in filing the Letters Patent Appeal (LPA), which had not been entertained on the ground of said delay, rather observations that came from the Apex Court are that the State Government at appropriate level should constitute legal cells, to examine whether any legal principles are involved and whether cases require filing of appeal. It has further been observed that decision to file appeal needed prompt action pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses. Apparently, the State has taken no such proactive steps to comply and put into place such a machinery, and continues to work at its snail's pace. Similarly, in ***Kotin Lamkang's case*** (supra), where delay was only of 44 days, and the issue involved was regarding the land which was of strategic importance for the State, as the State was to vacate and handover the land, which was occupied by the Manipur Rifles and it was held that if the consideration of the appeal is not permitted in strategically sensitive cases involving security, public interest is likely to suffer. Resultantly, the costs of Rs.50,000/- was imposed while allowing the application for condonation of delay and remanding the matter. The condonation had

also been sought on account of the fact that there was a *bona fide* mistake in preferring the appeal before the wrong forum namely the District Judge and, therefore, the facts and circumstances of such case are of no help to the learned Senior Counsel.

16. Hon'ble Apex Court in ***Postmaster General and others versus Living Media India Limited and another (2012) 3 SCC 563***, in paras 26 and 27 has held as under:-

"In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the

Government or a wing of the Government is a party before us.”

17. Thus, for the reasons laid down in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649***, we are of the considered opinion that sufficient cause having not being made out in the present case for condonation of delay in filing the appeal and the application is accordingly dismissed.

18. In view of the order passed in the application, the main appeal also stands disposed of, so also, the pending miscellaneous application(s), if any.

**(G.S. Sandhawalia)
Chief Justice**

**(Bipin Chander Negi)
Judge**

August 05, 2026 (KS)