

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.12.2016

CORAM

THE HON'BLE Mr.JUSTICE NOOTY.RAMAMOohana RAO

AND

THE HON'BLE Mr.JUSTICE S.M.SUBRAMANIAM

C.M.P.No.5585 of 2016
and W.A.No.SR104748 of 2016

1.State of Tamil Nadu,
Rep. by the Secretary to Government,
Higher Education [I1] Department,
Fort St. George, Chennai-9.

2.The Commissioner of Technical Education,
Chennai-25.

... Petitioners/Appellants

Vs.

1.K.N.Shanmugasundaram,
Principal [Retd.] Alagappa Chettiar,
College of Engineering & Technology,
Karaikudi, 178/82C, Mahaveer Nagar,
Vadavalli, Coimbatore 641 041.

2.The Principal Accountant General [A&E],
361, Anna Salai, Teynampet,
Chennai-18.

... Respondents/Respondents

C.M.P.No.5585 of 2016 : Miscellaneous Petition filed under Section 5 of the Limitation Act to condone the delay of 709 days in filing the Writ Appeal against the order dated 19.11.2013 made in W.P.No.8680 of 2007.

W.A.No.SR104748 of 2016 : Writ Appeal preferred under Clause 15 of Letter Patent against the order dated 19.11.2013 made in W.P.No.8680 of 2007.

For Petitioners : Mr.P.S.Shiva Shanmugasundaram,
Special Government Pleader
For Respondents : Mr.S.Ilamvaludhi for R1

ORDER

[Delivered by NOOTY.RAMAMOHANA RAO, J.]

This petition has been moved, seeking condonation of delay of 709 days in preferring the accompanying Writ Appeal.

2. The Writ Petitioner after serving for a considerable length of time, retired as Principal of a college of Engineering and Technology. He instituted the Writ Petition aggrieved by the decision of the State Government, who withheld his Death-cum-Retirement Gratuity [in short "DCRG"] and also implead the punishment of reduction of his pension by a sum of Rs.300/- per month for a period of two years.

3. The learned Single Judge, by his Judgment dated 19.11.2013, has found that there is no provision, which would enable the State, to withhold the DCRG.

4. But, at the same time, the learned Single Judge has left it open to the appellants, who are the respondents in the Writ Petition to effect recovery from the person responsible for the shortage of the stores. Insofar as the punishment of withholding of Rs.300/- per month for a period of two years, from the pension payable to the Writ Petitioner, the learned Single Judge has declined to interfere with the same.

5. It is plainly clear that the order of punishment imposed by the State Government against the Writ Petitioner has not been interdicted completely, but that portion of the order, which proposed to unjustly withhold the DCRG alone has been interdicted. Even then, the loss said to have been suffered by the State is allowed to be recouped by initiating appropriate proceedings against the person[s] found responsible and accountable for such shortage of stores. Therefore, the interests of the State are no way jeopardised in that process.

6. When we have taken up this petition for consideration, we have gone through the reasons seeking condonation of delay, which are spelt out in paragraph No.7, in the following words.

"7. It is submitted that the copy of the order dated

19.11.2013 of this Hon'ble Court made in W.P.No.8680 of 2007 was received by the petitioners/appellants herein on 27.02.2014. Further, the representation of the first respondent/respondent was received in this office on 17.03.2014. Based on the representation of the first respondent/respondent the original documents were traced out which took considerable time. In turn, the representation as received was sent to the Government vide CTE's Letter No.15892/A1/1999, dated 03.07.2014 with necessary remarks for consideration. After examination of the remarks of DOTE, the Government in Letter No.23914/11/2013-2, dated 02.09.2014 had requested the Commissioner of Technical Education to send legal opinion regarding the feasibility of filing Writ Appeal. Accordingly, a letter was sent to the Special Government Pleader, High Court of Madras, Chennai in which it was requested to offer his opinion regarding feasibility of filing Writ Appeal Vide CTE's Letter No.15892/A1/99, dated 10.11.2014. In continuation, the Government Advocate in his Letter No.1565/2014, dated 04.12.2014 has requested to send particulars regarding recovery of DCRG and cut in pension of the first respondent/respondent.

In CTE's Letter No.15892/A1/1999, dated 19.02.2015, the detail was sent to the Government Advocate. After examining the same, opinion was offered by the Special Government Pleader, High Court of Madras on 30.04.2015 in which he has opined that it is a fit case for filing Writ Appeal. The said opinion of G.P was sent to Govt on 02.06.2015 for orders. On 23.06.2015 the Government have requested the second

petitioner/appellant herein to send draft Memorandum of Grounds of Writ Appeal and Miscellaneous Petitions after vetted by Special Government Pleader for its approval. In the meantime records pertaining to the incident which occurred ten years back were traced out. Since the Assistant post dealing with the said case was vacant for the past one year, there was administrative delay in filing the Writ Appeal.

The draft Writ Appeal and Affidavit for Stay along with petition for condonation of delay were prepared accordingly by the second petitioner/appellant and were sent to the Special Government Pleader for his approval on 16.09.2015. On 01.10.2015, the Special Government Pleader, High Court, Madras has approved the same. After vetted by the Special Government Pleader, the draft W.A. and affidavit were sent to Government on 07.10.2015 for its approval. On 19.11.2015, the Government have approved the draft W.A. and requested the second petitioner/appellant herein to file the same before this Hon'ble High Court. The petitioners/appellants are in charge of various administrative and quasi judicial functions, such as initiating policy decision of the Government, disposal of appeals under various statutory provisions and day to day administration of the departments. Due to the above reasons, the Writ Appeal could not be filed in time and it was filed with a delay of 709 days. The delay in filing the Writ Appeal has occurred due to the above said administrative reasons. The delay is neither wilful nor wanton."

7. The Writ Appeal was in fact preferred only on 21.12.2015. The

above explanation keeps referring to the seemingly interminable correspondence ever since February 2014. The usual Administrative lethargy and lack of any aptitude to take prompt action in writ large. Such reasons do not offer a valid basis for condonation of delay of more than 700 days in presenting the allowance. Generally, a very liberal approach is adopted by us, while considering applications for condonation of delay particularly at the hands of the Government. But however, when we consider the fact that equities are loaded more in favour of a retired employee, we feel that it would not promote the cause of justice to condone the unreasonable delay that occasioned in filing the Writ Appeal. All the more so when the interests of the State are not seriously impacted by the judgment of the learned Single Judge.

8. Hence, the petition for seeking condonation of delay is dismissed. Accordingly, the accompanying Writ Appeal in W.A.No.SR104748 of 2015 stands rejected.

[N.R.R., J.] [S.M.S., J.]
14.12.2016

gya
Index : Yes/No
Internet : Yes/No

NOOTY.RAMAMOHANA RAO, J.

and
S.M.SUBRAMANIAM, J.
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