



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WEB COPY

W.P.(MD) No.2142 of 2014andM.P(MD)No.1 of 2014

K.Sivakumar

: Petitioner

Vs.

The Secretary to Government,
Law (Administration) Department,
Fort St. George, Secretariat,
Chennai - 9

: Respondent

Prayer : This Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the respondent in G.O(Ms)No.229, Law (Administration) Department, dated 22.03.2013 and quash the same and consequently direct the respondent to issue certificate of Practice of Notary to the petitioner for two periods namely, 2007 and 2012.

For Petitioner

: Mr.R.Devaraj

For Respondent

:Mr.M.Alagathevan

Special Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the impugned proceedings of the respondent in G.O(Ms) No.229, Law (Administration) Department, dated 22.03.2013 and seeking a consequential direction to the respondent to issue certificate of Practice of Notary to the petitioner for two periods namely, 2007 and 2012.

2.According to the petitioner, he is an Advocate enrolled himself in the year 1991 in En.No.958/1991 before the Bar Council of Tamil Nadu. From the year 1991, the petitioner is practicing in various courts right from the District Munsif to District Court. The petitioner submitted an application for appointment of Notary which was recommended by the Principal District Judge, Tanjore. Thereafter, the Government passed an order by G.O.Ms.No.256, Law Department, dated 29.04.2002 appointing the petitioner as Notary with effect from 29.04.2002. The same was valid till 28.04.2007. During the said period, there was no adverse entry against the petitioner and no complaint was pending against the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/> While the matter stood thus, on expiry of the five years period, the petitioner as per the Notaries Rules, is entitled to



apply for renewal. According to Rule 8B of the Notaries Rules, 1956, which is extracted hereunder, a practicing lawyer is required to apply for renewal of certificate of practice on payment of prescribed fee and the same shall be submitted to the Government before 6 months from the date of expiry of the period of license validity.

"8-B. Renewal of certificate of practice .- The certificate of practice issued under sub-rule(4) of rule 8 may be renewed for a further period of five years on payment of prescribed fee. An application for renewal of Certificate of Practice shall be submitted to the appropriate Government before six months from the date of expiry of its period of validity:

Provided that the appropriate Government may, after considering the reasons stated in the application, relax the condition of submission of application for renewal of certificate of practice before the above specified period."

4. According to the petitioner, he suffered from various ailments like heart dis-functioning, chronic diabetes and hypertension, for which, he was taking continuous medical treatment. The petitioner could not apply for renewal of certificate of practice within the time stipulated in the above said rules because of his deteriorating health conditions. However, after recovering from the illness, he had applied for renewal of certificate of practice for two periods, namely, 2007 and 2012 with a delay on 06.02.2013 with requisite fee prescribed for renewal to the respondent. According to the petitioner, though he had not renewed the certificate of practice in time, his registration was not cancelled by the respondent and as such the petitioner was entitled to apply for renewal with delay, provided the delay was properly explained to the satisfaction of the respondent.

5. In response to the belated application, the respondent passed the impugned order dated 22.03.2013 rejecting the claim of the petitioner for renewal of certificate of practice on the ground that the petitioner has applied after a lapse of six years from the date of expiry of certificate of practice by Government Order in G.O.Ms.No.229, Law (Administration) Department, dated 22.03.2013. According to the rejection order, the petitioner had not enclosed certificates and other documents in support of his medical treatment taken by him for his continued ill health. Against the rejection order, the present writ petition has been filed.

6. According to the petitioner, there was no proper service rendered by the respondent in spite of his valid explanation for not applying for renewal of certificate of practice within the time stipulated. However, according to him,



the proviso to Rule 8B provides for consideration of renewal application even with the delay. In the said case, the petitioner could not apply in time because of his continuous medical treatment he was taking and there was no wilful intention in approaching the respondent belatedly. Moreover, the petitioner had not suffered by any disqualification or any complaints pending against him during the period when he was issued the certificate of practice between the year 2002 and 2007. That being the case, the respondent ought to have considered the renewal application liberal approach instead of rejecting the claim of the petitioner in a pedantic manner and by rigid application of the rules.

7. Per contra, the learned counsel appearing for the respondent would submit that the respondent had taken a decision on the basis of the records and therefore, the same did not call for any interference.

8. The learned counsel for the petitioner also cited three decisions in support of his claim. One of the judgments, which was enclosed in the typed set of papers, reported in **2003(1) LW 202** (Suriya @ Beatrice Michael vs. the State of Tamil Nadu). According to the said decision, in the absence of any period of limitation prescribed, the application for renewal made even after the expiry of the period cannot be rejected and it ought to have been considered. In the said decision, it is also held that Legal practitioner appointed as Notary is automatically entitled to seek for registration as the renewal is automatic under Section 5(2) subject to an application and the prescribed fee in this regard. In this case, according to the petitioner, the prescribed fee has already been remitted and his earlier period of certificate of practice has not been cancelled.

9. The learned counsel appearing for the petitioner has cited another judgment reported in **2009(3) CTC 490** (M.A.Mohammed Ibrahim vs. The Secretary to Government, Law Department (Admn)). According to the said decision, the authority is empowered to relax condition and authorities are expected to adopt liberal and not pedantic approach when there is no adverse entry regarding conduct of the petitioner and reason adduced was ill health. In another unreported decision made in W.P(MD)No.4848 of 2009 dated 17.06.2009, which was also cited by the learned counsel for the petitioner, similar view was taken in identical circumstances. In paragraph 6 of the said order, this court has granted the relief to the petitioner therein. The relevant paragraphs Nos.6 and 7 of the said order read as follows:-

"6. Though as per rule 8-B of Notary Rules, 1956, the petitioner ought to have made the application on or before 26.06.2007, having regard to the illness of the petitioner, the respondent ought to have considered the



case of the petitioner liberally and granted the licence. As a matter of fact, the medical certificate now produced before this Court was not produced before the respondent and had it been produced before the respondent, the respondent would have considered it in favour of the petitioner. Therefore, having regard to the circumstances of the case and the fact that there is no adverse entry or remarks against the petitioner while practising as a Notary, in my opinion the delay in applying for the renewal ought to have been condoned by the first respondent.

7. Hence, for the reasons stated above, this Court condone the delay in making the application for renewal of the licence to practice as notary by the petitioner. Therefore, the respondent is directed to consider the application for renewal in accordance with law within four weeks from the date of receipt of a copy of the order."

10. In view of the above narrative, the petitioner herein although applied for renewal belatedly, yet the rules provided for consideration of the renewal even after renewal is made after expiry of the period stipulated and in such event, it is up to the authority to consider the totality of the circumstances for submitting the application belatedly. In the instant case, the petitioner expressed his inability to apply because of his continued ill health, the same may be considered little more liberally. Particularly when the petitioner was not having any adverse remarks or there was no complaint against him during the period the writ petitioner was permitted to practice under the Certificate of Practice between 2002 and 2007.

11. In such view of the matter and the views expressed by this Court in the earlier citation cited supra, the impugned order dated 22.03.2013 is set aside and the matter is remanded back to the respondent for fresh consideration. The respondent is directed to consider the application of the petitioner for renewal with liberal approach and if otherwise qualified, grant a certificate of practice as per the application. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above directions, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True copy/



To

The Secretary to Government,
Law (Administration) Department,
Fort St. George, Secretariat,
Chennai - 9.

+1cc to Mr.R.Devaraj, Advocate, SR.16785

W.P. (MD) No.2142 of 2014
and
M.P (MD) No.1 of 2014
21.03.2017

SKN

KK/SKN RSK/SAR2/06.07.2017/5P-3C/