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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26.04.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE ABDUL QUDDHOSE

C.M.P.(MD) No.2506 of 2018
in Rev.Aplc (MD) No.SR10459 of 2018

1. The Director of Elementary Education,
   College Road, Chennai - 600 006

2. The District Elementary Educational Officer,
   Tiruchirappalli - 620 020

3. The Additional Assistant
   Elementary Educational
   Officer, Marungapuri - 621 305
   Tiruchirappalli District .. Petitioners

Vs.

The Correspondent,
St. Joseph's RC Primary School,
Palakurichy - 621 308
Tiruchirappalli District ..Respondent

Prayer: Civil Miscellaneous Petition filed under Section 5 of Limitation Act to condone the delay of 29 days in filing the above Review Petition filed as against the Order dated 29.11.2017 in W.A (MD) No.1292 of 2017.

Prayer in WA(MD). 1292/ 2017 :
Preferred this Memorandum of Grounds of Writ Appeal before this Honourable High Court as against the order dated 27/02/2017 made in WP(MD)No. 7456 of 2016 on the filed of this Honourable Court.

Prayer in WP(MD). 7456/ 2016 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd respondent District Elementary Education Officer in Na.Ka.No.5147/a5/2015 dated 14.12.2015, quash the same and further direct the 2nd District Elementary Educational Officer to approve forthwith the

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appointment of Sr.A.Rex Anita as Secondary Grade Teacher in the petitioner s School namely, St. Josephs R.C. Primary, Palakurichi, w.e.f 18.11.2013 and disburse the grant-in-aid towards her salary and allowances w.e.f. the said date with all attendant benefits.

For Petitioners : Mr.K.Karthikeyan
Government Advocate

For Respondent : Mr.K.M.Arun for
M/s Issac Chambers

O R D E R

[Order of the Court was made by **M.VENUGOPAL, J.**]

Heard both sides.

2. According to the Petitioners, the post of Secondary Grade Teacher fell vacant on 01.01.2013 and one Sr.Rex Anita was appointed in the said vacancy from 18.11.2013 and that proposals for approval were rejected as per proceedings dated 14.12.2015 by 2nd Petitioner / The District Elementary Educational Officer, Tiruchirappalli on the ground that there were surplus teachers working in the same management. As a matter of fact, the said proceedings dated 14.12.2015 was assailed by the Writ Petitioner in W.P.(MD) No.1456 of 2016 and on 27.02.2017, the said Writ Petition was allowed. Thereafter, the Petitioners, as Appellants filed W.A.(MD) No.1292 of 2017 before the Madurai Bench of this Court and the same was dismissed on 29.11.2017.

3. The stand of the Petitioners is that the Judgment was delivered by this Court and on 29.11.2017 in W.A.(MD) Nos.1292 of 2017 and 461 of 2014 and the Copy of the Judgment was received on 09.01.2018. Subsequently, the relevant papers were transmitted to the Higher Officials for obtaining administrative sanction. However, the papers got mixed with other files and only after efforts being taken in this regard, the papers were traced in the 2nd week of February, 2018.

4. In this connection, the plea taken on behalf of the Petitioners is that as per the directions of the Higher Officials, the Petitioners had approached the Learned Government Pleader for an opinion, who gave his opinion to the effect that 'It may be a fit case for 'Review'. Subsequently, the 'Review Petition' was made ready and the same was filed with a delay of 29 days. The reason ascribed for the delay of 29 days in question by the Petitioners is that because of the bonafide administrative reasons in securing opinion of the

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Learned Government Pleader after tracing out the relevant papers, which got originally mixed with other files, the delay of 29 days had occurred, which is neither wilful nor wanton, but due to the aforesaid reasons.

5. At this stage, the Learned Government Advocate for the Petitioners strenuously points out that if administrative delay of 29 days in preferring the present Review Petition in (MD) Sr.10459 of 2018 is not condoned, then, irreparable hardship and great prejudice would be caused to the Petitioners. Furthermore, the Petitioners do have a fair chance of success in the Review Petition.

6. It may not be out of place for this Court to make a pertinent mention in W.A.(MD) Nos.1292 of 2017 and 461 of 2014, this Court on 29.11.2017 at Paragraph Nos.51 to 54 had observed the following and ultimately, dismissed the Writ Appeals without costs.

> *"51. In the case on hand, it is not the case of the Appellants that the appointment procedure was not fair but was discriminatory and irrational. This same Division Bench, by its recent judgment rendered in W.A. (MD) No.1350 of 2017 on 14.11.2017, while considering the issue whether a Government Aided Minority Educational Institution is required to obtain prior approval from the concerned Educational authorities for conversion of a Secondary Grade Post to a B.T.Assistant Post, considered all the Judgments rendered by the Hon'ble Supreme Court till date and held that there is no necessity for the School to obtain prior permission for conversion of post from the authorities concerned when there is a vacancy.*
>
> *52. Article 30(1) of the Constitution of India gives linguistic and religious minorities a fundamental right to establish and administer Educational Institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution of India, which declares that any law in breach of the fundamental rights would be void to the extent of such violation. It is well settled that Article 30(1) cannot be read in a narrow and pedantic sense and being a fundamental right, it should be given its widest amplitude. The width of Article 30(1) cannot be cut down by introducing in it considerations which are destructive to the substance of the right enshrined therein.*

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*53. Following T.M.A. Pai Foundation case reported in **[2002] 8 SCC 481, the Hon'ble Supreme Court in a judgment reported in [2007] 1 SCC 386 (Secretary, Malankara Syrian Catholic College V.T.Jose and others**], in Paragraph 19 of the said Judgment summarized the general principles relating to establishment and administration of Educational Institution by Minorities, which reads as follows:*

"19. The general principles relating to establishment and administration of educational institution by minorities may be summarised thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:

(a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the insitution;

(b) to appoint teaching staff [teachers/lecturers and Headmasters/Principals] as also non-teaching staff, and to take action if there is dereliction of duty on the part of any of its employees;

(c) to admit eligible students of their choice and to set up a reasonable fee structure;

(d) to use its properties and assets for the benefit of the institution.

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-a-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation, etc., applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees [both teaching and non-teaching],

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regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(iv) Subject to the eligibility conditions / qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers / lecturers by adopting any rational procedure of selection.

(v) Extension of aid by the State does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilisation of the aid, without however, diluting or abridging the right under Article 30(1)"

54. Applying these principles formulated by the Hon'ble Supreme Court, this Court is of the considered view that both the impugned proceedings dated 14.12.2015 in Na.Ka.No.5147/A5/2015 and dated 03.08.2012 in O.Mu.No.614/A1/2012, were rightly quashed by the Learned Single Judge as the regulations imposed by the Second Appellant does not come within the parameters laid down by the Judgment in T.K.A.Pai Foundation V. State of Karnataka, reported in 2002 8 SCC 481.

7.Be it noted that ordinarily, a Court of Law in respect of the 'Condone Delay Petition' is to adopt a lenient, liberal and a practical view, overriding technicalities or hyper technicalities. It is true that if a 'Delay Petition' is condoned by a concerned Court, then, the maximum thing that would happen is a liberty will be provided to the concerned party / Petitioners to take part in the main arena of proceedings. However, if the 'Condonation of Delay' Petition is dismissed at the threshold / nascent stage, there may be an even possibility that a meritorious case can also be thrown out.

8. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Court. The term 'Sufficient Cause' under Section 5 of the Limitation Act, 1963 is an elastic one to enable the Court to apply the Law in a meaningful manner. The term good cause/ sufficient case is a condition precedent for exercise of discretion by a Court concerned in regard to the aspect of 'Condonation of Delay'. If the delay in question is not either satisfactorily or

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properly or convincingly explained, the Court of Law cannot condone the delay on sympathetic ground alone, as per decision **Hon'ble Supreme Court Brijeshkumar V. State of Haryana reported in AIR 2014 SCC at Page 1612.**

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9. It is worthwhile for this Court to recall and recollect the decision of **Hon'ble Supreme Court between H.Dohil Constructions Company Private Limited V. Nahar Exports Limited and Another** reported in **(2015) 1 Supreme Court Cases at Page 680 wherein at Special Page 690**, Paragraph No.20 and at Special Page 692, Paragraph No.24, it is observed as under:

> *20. In the case on hand, the delay in refiling was of 1727 days. As rightly pointed out by the learned Senior Counsel for the appellant(s), the respondents paid the scrutiny charges on 11.04.2008 as disclosed in Receipt No.73 issued by the High Court of that date. When the appeal papers were filed on 06.09.2007 and the scrutiny charges were paid on 11-04-2008, it was quite apparent that the processing of papers of the appeals for its registration did commence in the month of April 2008. Thereafter, if rectification of whatever defects were not carried out by the respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the respondents to have satisfactorily explained such a long delay in refiling. When we refer to the applications filed on behalf of the appellant(s), we find that there was no convincing explanation as to how the respondents were disabled from rectifying the defects pointed out by the Registry and refiling the appeal papers within time. The respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior Counsel for the appellant(s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial court. As a matter of fact the appeal papers were filed without payment of any court fee. This only affirms the stand of the appellant(s) that there was no bonafide in the respondents' claim and that they were seriously interested in challenging the Judgment of the trial court as against the non-grant of relief of specific performance. We also fail to see as to who Respondent 1, which is a limited company involved in the business of exports, which would certainly have its own legal department, can*

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plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up to ensure that its appeals were duly registered in the High Court. In this context the maxim vigilantibus non dormientibus jura subveniunt (law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand. The respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refiling the same should be condoned as a matter of course as there was only 9 days' delay involved in filing the appeals.

24.When we apply those principles of Bhattacharjee Case to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona-fides in its approach. It also required to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, courts are required to weigh the scale of balance of justice in respect of both the parties and the same principal cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance based on

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the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

10. At this stage, this Court points out the decision of this Court between **P.R.Ravichandran and others V. K.Ashwani kumar reported in 2015 SCC Online** at Page 935 whereby and whereunder at Paragraph No.24 at inner para 10, it is observed as under:

24. "10. Similarly, the judgment of this Court reported in 2002(3) CTC 13 in between Sankaralingam and Anr.V. V.Rahuraman would also enlighten this Court regarding the points to be pondered in a case of condonation of delay. The relevant portion would run as under:

This Court is inclined to point out the following facts and circumstances which would speak volume against the petitioners (i.e.)

(a) Negligence and inaction, that too wilful, has to be inferred from the facts and circumstances,

(b) Vagueness of the affidavit and contradiction between the affidavit and deposition before Court,

(c) Failure to place any materials before Court to substantiate the case, and

(d) Absence of arguable points and law in the defence.

11. As far as the present case is concerned, this Court while passing the Common Judgment in W.A.Nos.1292 of 2017 and 461 of 2014, after applying the principles enunciated by the Hon'ble Supreme Court came to the resultant conclusion that the Learned Single Judge had rightly quashed the impugned proceedings dated 14.12.2015 in Na.Ka.No.5147/A5/2015 and dated 03.08.2012 in O.Mu.No.614/A1/2012 because of the reason that the regulations imposed by the 2nd Petitioner / 2nd Appellant do not come within the parameters laid down by the **Hon'ble Supreme Court in the Judgment reported in [2007] 1 SCC 386 [Secretary Malankara Syrian Catholic College V. T.Jose and Others] and the Judgment in T.M.A. Pai Foundation V. State of Karnataka, reported in 2002 8 SCC 481.**

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12. On a careful consideration of the averments made by the Officer of the 2nd Petitioner and also this Court after going through the reasons assigned by the Petitioners at Paragraph No.4 of the Crl.M.P.No.2506 of 2018 to the effect that the papers were sent to the Higher Officials for obtaining administrative sanction after receiving Judgment Copy on 09.01.2018, later, the papers were got mixed with other files and after tracing out in the 2nd Week of February 2018, the Higher Officials approached the Learned Government Pleader for obtaining opinion and later, after obtaining his opinion, the present C.M.P.No.2506 of 2018 in Review [MD] Sr.No.10459 of 2018 is filed with a delay of 29 days before this Court and even though on behalf of the Petitioners, administrative reasons were assigned for the delay of 29 days, this Court is not inclined to accept the same because of the reason that explanations / reasons offered by the Petitioners, as referred supra at Paragraph No.4 of the affidavit in CMP(MD) No.2506 of 2018 are not 'Sufficient Cause / Good Cause' and further, they do not inspire the subjective confidence / subjective satisfaction of this Court. Furthermore, this Court is not inclined to accept the reasons ascribed on behalf of the Petitioners at Paragraph No.4 of the affidavit in CMP(MD) No.2506 of 2018, since they suffer from lack of bonafides. Viewed in that perspective and looking at from any angle, the C.M.P.(MD) No.2506 of 2018 sans merits.

In fine, C.M.P.(MD) No.2506 of 2018 is dismissed. Consequently, Rev.Aplc (MD) No.SR10479 of 2018 stands rejected.

sd/-
Assistant Registrar (W)

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Sub Assistant Registrar

ssd
To,
The Correspondent,
St. Joseph's RC Primary School,
Palakurichy - 621 308
Tiruchirappalli District

GJM/MMS/SAR-I0-28.5.18-9P-2C

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