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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 7th August, 2018*

+ LPA 111/2018
GOVT OF NATIONAL CAPITAL TERRITORY OF DELHI
..... Appellant

Through: Mr Anuj Aggarwal, ASC
with Mr Kanishk Rana, Adv

versus

SAROJ DEVI & ANR Respondents
Through: None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM Nos. 110046/2018 and 10313/2018 (exemptions)

Exemptions are allowed subject to just exceptions.

The applications stand disposed of.

CM No. 10045/2018 (delay in filing) and CM No. 110047/2018 (delay in re-filing)

1. These are the applications filed by the appellant seeking condonation of 308 days delay in filing and 16 days delay in re-filing the appeal. The counsel for the applicant submits that the delay was caused for reasons beyond the control of the applicant, for bona-fide reasons and not on account of any carelessness or inaction. He relies on the chart prepared which forms part of the application showing the movement of the file from 27.02.2017 to 22.01.2018. A careful analysis of this chart would show that the file kept moving from one branch to another but there is no explanation for the movement of the file.

2. In the case of *Office of the Chief Postmaster General & Ors. Vs. Living Media India Limited and Anr.*, reported at *AIR 2012 SC 1506*, the Supreme Court of India has analysed the entire law on the subject. It would be relevant to reproduce paras 11 to 13, which is reproduced below:

“11) We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. 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.

12) 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. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence

and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

3. In the case of *Office of the Chief Postmaster General & Ors. (Supra)*, the Supreme Court was considering an application seeking condonation of delay filed by a Government Department. The present case also pertains to a Government Department/GNCTD. The first question which arises for our consideration is whether the application discloses sufficient grounds for condonation of delay.

4. While considering the application seeking condonation of delay, the period of delay is not the criteria. A short delay may not be condoned in the absence of an acceptable explanation while a large delay may be condoned if the explanation is satisfactory. Courts cannot lose track of the fact that normally after the expiry of the period, the right to sue extinguishes and the other side acquires a right which should not be usually disturbed as it would cause injustice to the opposite party.

5. In the case of *P.K. Ramachandran vs, State of Kerala & Anr.* (1997) 7 SCC 556, the Supreme Court has held that an essential pre-requisite of exercising discretion to condone the delay is that the Court must record its

satisfaction that the explanation for delay was either reasonable or satisfactory.

6. Accordingly, we find no merit in the application. The same, is therefore, dismissed.

7. We have also examined the matter on merits.

8. Challenge in this appeal is to the order dated 17.02.2017 passed by a learned Single Judge while deciding two separate writ petitions. The necessary facts to be noticed for disposal of this appeal are that the respondent was appointed as part time water women at Rs. 65/- per month with effect from 01.09.1976 vide an approval letter No. Zone IV Boys/7310 dated 17.12.1976. On 22.07.2009, an order No. F DE 1 (16) (3) – 2006/E.I/12770-12785 was issued by the appellant to regularize the services of part time workers against the regular vacant posts of Watermen/women in the Directorate of Education. Since the appellant did not comply with its order dated 22.07.2009, the respondent was forced to knock the doors of this Court for justice.

9. The learned Single Judge while relying on the circular dated 22.07.2009 has allowed the writ petition. Para 4 of the order of the learned Single Judge reads as under:-

“A reading of the counter affidavit filed by the respondent no.1/DOE in the present case shows that there is no dispute that there was in fact a circular issued by the respondent no.1/DOE dated 22.7.2009. Respondent no.1/DOE only contends that the petitioner was only appointed on temporary basis and hence she is not entitled to get regular appointment. However, the stand of the respondent no.1/DOE of not granting of regularization on account of petitioner being a part time employee hits at the very language of the circular of

the respondent no.1/DOE dated 22.7.2009 (which has been reproduced above) as per which the part time workers only were to be regularized as long as they were working for the Group-D posts of water man/women. Petitioner admittedly was working as a water woman on part time basis and it is not the case of the respondent no.1/DOE that petitioner was not working in a sanctioned post of a water woman because petitioner's appointment was approved by the respondent no.1/DOE itself as per its letter dated 17.12.1976. The only defence of the respondent no.1/DOE is that the petitioner was working as a part time employee and such part-time employees cannot be regularized."

10. Learned counsel for the appellant has urged before this Court that the aforesaid circular would not apply to a Government aided School, however, the learned counsel for the appellant is unable to show as to how the said circular would not be applicable, resultantly, we find no grounds to entertain this appeal.

11. We find no infirmity in the order passed by the learned Single Judge. The appeal is, accordingly, dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 07, 2018
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