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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 24th September, 2018*

+ LPA 506/2018 & CM Nos.35782-35783/2018

KIRANJOT SINGH

..... Appellant

Through: Mr.Naveen R. Nath, Advocate.

versus

DIRECTORATE OF EDUCATION & ANR Respondents

Through: Mr.Ankur Chhiber with Mr.Bhanu Gupta,
Advocates for R-1/Director of
Education.Mr.Rupendra Pratap Singh with
Ms.Vasudha Bajaj, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM No.35783/2018 (exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM No.35782/2018 (delay) and LPA 506/2018

1. This is an application seeking condonation of delay of 63 days in filing the present appeal.
2. Mr.Nath, counsel for the appellant submits that the delay was on account of bonafide reason and not on account of carelessness or inaction on part of the appellant.

3. This application is opposed by counsel for the School who submits that no grounds much less cogent grounds have been given for seeking condonation of delay.

4. We have heard the learned counsel for the parties. The application seeking condonation of delay reads as under:-

**“AN APPLICATION FOR CONDONATION OF DELAY IN
FILING LETTERS PATENT APPEAL UNDER SECTION 151
CPC**

To,

*The Hon’ble Chief Justice of India And His Companion
Justices of the High Court.*

MOST RESPECTFULLY SHOWETH:

1. *The Appellant above-named respectfully submits this appeal seeking Appeal against the final Judgment and order dated 29.05.2018 passed by the High Court of Delhi, at New Delhi in W.P. (C) 8172/2017. The facts of the case are not being repeated for the sake of brevity.*

2. *There is a delay of about 63 days in the filing of the above Appeal. Certified copy of the impugned order was prepared on 07.07.2018.*

3. *It is submitted that the delay in filing the appeal has occurred due to typing of various annexures. It is submitted that most of the annexures to the appeal are of dim impression. The Counsel for the appellant has got some of them typed but few still remains to be typed. Since limitation for filing the appeal has expired, the appeal is being filed along with an application for exemption from filing typed copy of dim impressions. It is submitted that typing the annexures took a lot of time. Hence there is a delay. Interests of justice, therefore, require that the delay in filing the accompanying appeal is condoned.*

4. *It is respectfully submitted that the delay is neither intentional nor deliberate but due to reasons explained hereinabove.*

PRAYER

*In the circumstances, it is respectfully prayed that this
Hon’ble Court may be pleased to;*

(a) *It is therefore prayed that this Hon'ble Court may please to condone the delay of 63 days in filing the accompanying letters Patent Appeal which is directed against the judgment and order dated 29.05.2018 passed by the High Court of Delhi in W.P.(C) 8172/2017.*

(b) *Paas any such other order(s) as may be deemed just and expedient"*

5. The only ground raised seeking condonation of delay is that the time was spent in typing of various annexures as they were dim. This in our view does not fall within the definition of sufficient cause.

6. In the present case the appellant has simply blamed the counsel for not filing the appeal. The application does not disclose the steps taken by the applicant to safeguard his interest. The Supreme Court in the case of ***Salil Dutta v. T.M. and M.C. Private Ltd.*** reported as **JT 1993 (4) SC 528**, wherein, while distinguishing the decision in ***Rafiq and Anr. V. Munshilal and Anr.*** reported as **AIR 1981 SC 1400**, it was observed as below:

"The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal, i.e., the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant, but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition."

7. In the case of ***Brijesh Kumar & Ors. V. State of Haryana & Ors.***, reported at AIR 2014 SC 1612, the Apex Court has held as under:-

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.”

8. We find no ground to condone the delay.

9. We have also examined the matter on merits. In this case, the appellant had served the respondent/School for almost more than three decades and was due to superannuate on 30.06.2017. The appellant was not granted benefit of the circular dated 28.02.2007. The operative part which has been relied upon reads as under:-

“.....the re-employment will be subject to fitness and vigilance clearance of the retiring teachers, i.e. the pensioner. For physical fitness of retiring teacher, a certificate from authorized medical practitioner is required to be submitted to the Head of School, where the retiring teacher has last served. The professional fitness is required to be assessed by DDE of the concerned District after considering work and conduct report, vigilance clearance and medical certificate submitted by the pensioner. The DDE concerned will ensure that the

teachers, who are free from vigilance angle, are only re-employed and individual teacher should not be made to run around to get the vigilance clearance.....”

10. Mr.Nath, counsel for the appellant submits that the appellant has an unblemished service record, she is physically fit and as far as professional fitness is concerned, she has all along been marked good as per her ACR. Copy of ACR has been placed on record. He further submits that two show cause notices dated 31.01.2017 and 15.02.2017 did not result in any inquiry against her and there is no finding, thus, not to grant extension and to cast a stigma would be highly unjustifiable. Mr.Nath also informed us that on account of stay order being granted, the appellant has served for almost one year in the extended period when the writ petition was dismissed on 29.05.2018.

11. Counsel appearing for the School submits that the objective of the communication dated 17.05.2017 was not to caste any stigma on the working or the conduct of the appellant but it only disclosed reasons as to why the extension was not granted. We find no infirmity in the order passed by the learned Single Judge. At this stage, leaned counsel for the appellant submits that the communication dated 17.05.2017 should not cast a stigma on the working and conduct of the appellant.

12. We make it clear that the communication dated 17.05.2017 would be read only for the purpose of not granting extension of two years to the appellant and would not be treated as stigmatic for any future employment which the appellant may seek.

13. In view of the stand taken, as prayed by counsel for the appellant the present appeal is disposed of.

14. In view of the observations made in para 12 above, the order of learned Single Judge would stand modified accordingly.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 24, 2018

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