

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22 /2/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal SR.No.32053 of 2018
and
C.M.P.No.7609 of 2018

1. The Secretary to Government
Adi Dravidar and Tribal Welfare Department
Secretariat
Chennai 600 009.

2. The Director
Adi Dravidar Welfare
Chepauk
Chennai 600 005.

Appellants

VS

C. Sankarasubramaniam

Respondent

Prayer Petition filed under Clause 15 of the Letters Patent

against the order dated 4/8/2014 made in W.P.No.8410 of 2008.

For appellants

... Mr.S.Udayakumar
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by Subramonium Prasad,J)

State of Tamil Nadu, has filed the instant writ appeal, against the judgment dated 4/8/2014, made in W.P.No.8410 of 2008.

2. The writ petition No.8410 of 2008 has been filed with the following prayer:-

“To quash the proceedings dated 12/2/2008, made in Letter No.16803/ADW.1/2006-4, of the Secretary to Government, Adi Dravidar and Tribal Welfare Department, Secretariat, (rejecting the review petition) confirming the proceedings of the second respondent dated 8/4/2006 made in Na.Ka.N.E1/42306-9/02 rejecting the request of the petitioner to regularise his services in the cadre of Junior Assistant retrospectively with effect from 7/11/1978 and consequently, direct the respondents therein to regularise his services in the cadre of Junior Assistant in the office of the second respondent retrospectively with effect from 7/11/1978 with due further seniority together with other attended benefits.”

3. Respondent/writ petitioner, joined the office of the Directorate of Adi Dravidar Welfare Department, on 17/11/1972, as Section Writer. He was ousted from service, by an order, dated 29/3/1976 and once again, ousted on, 15/3/2005, consequent on disbandment of post. Respondent has preferred an appeal to the Government and was appointed, on 23/1/1986, as Junior Assistant, and his services were regularised, with effect from 3/2/1986. Vide, order, dated 8/4/2006, quoting Rule 35 (6) of State and Subordinate Services Rules, request of the respondent was not considered.

4. Affidavit of the appellant would show that the respondent was appointed, as Junior Assistant, as a special case, with effect from 3/2/1986 and his services were regularised, in the cadre of Junior Assistant, with effect from 3/2/1986, in G.O.Ms.No.196, Adi Dravidar and Tribal Welfare Department, dated 21/11/1995.

WEB COPY

5. Respondent had filed writ petition No.8410 of 2008 for regularisation of his services from 7/11/1978, citing G.O.Ms.No.1352 (C & E) Department dated 7/11/1978 and G.O.Ms.No.52 Finance (FR 11), dated 14/1/1977, wherein the Government has issued instructions

to the effect that all the contingent services for more than 5 years should be considered for bringing into regular establishment.

6. Since the appeal of the respondent was rejected, by an order, dated 8/4/2006, moved the Hon'ble Minister for Adi Dravidar Tribunal Welfare Department, which was later on, to the Secretary of Adi Dravidar Tribal Welfare Department, for regularisation of services, with effect from 1978. The representation of the respondent was rejected, by an order, dated 12/2/2008. The said order reads as under:-

“I am directed to invite attention of your letter cited and to state that the proposal was already examined in detail orders and issued in G.O.Ms.No.196, Adi Dravidar and Tribal Welfare Department, dated 21/11/1995, regularising the service of Thiru.C.Sankara Subramanian, in the post of Junior Assistant as a special case, with effect from 3/2/1986. Considering the present review petition to the Government, there is no ground for his claim for retrospective regularisation with effect from 7/11/1978. The request of the individual is rejected.

2. I am to request you to confirm whether the other 17 section writers appointed in the office of the Adi Dravidar and Tribal Welfare Department as Junior Assistant have passed the Tamil Nadu Public Service Commission examination.”

7. It is the contention of the respondent that order of the appellants in rejecting his prayer, for regularisation, from 1978, is erroneous.

8. Learned Single Judge, relied on the provisions of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Wornen) Act, 1981 and also on the decision of the Government which had recommended the case of the respondent, as a special case to be appointed as a Junior Assistant, allowed the writ petition.

9. Being aggrieved, the appellants have filed the instant appeal, with an application, for condonation of delay, for 1318 days. Reasons given for the delay, reads as under:-

“3. It is submitted that the order was passed

by this Hon'ble Court in the above writ petition on 4/8/2014. On receipt of the above order, the Government has consulted the matter with the advisory departments and Tamil Nadu Public Service Commission. In his letter, dated 17/3/2016, the Government Pleader has opined that this is not a fit case for filing writ appeal. After careful examination in the records, the Government has not satisfied with the above opinion of the Government Pleader which is in verbatim in the Court order. Accordingly, the Government decided to get second opinion from the Government Pleader. In his letter, dated 31/7/2017, the Government Pleader has opined that this is a fit case for filing writ appeal, since the individual had represented the Government for retrospective regularisation only on 28/1/2002, i.e., after 6 years of the regularisation (from 7/11/1978) of services as Junior Assistant. Therefore, the Government rejected his request citing the General Rule 35 (f) of the Tamil Nadu State and Subordinate Service Rule, now in Section 40 (6) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act 14 of 2016). As the individual was out of employment between periods of /6/1980 to 7/10/1980 and 16/3/1985 to 2/2/1986, i.e., nearly 15 months, the services of the individual could not regularise w.e.f.7/11/1978. Based on the above

opinion of the Government Pleader, the Government now decided to file this writ appeal.”

10. There is hardly any reason given by the State, to dismiss the appeal, to condone the delay, in filing the appeal. The respondent would be now aged 58 years and probably has retired from service.

11. Delay cannot be condoned, as a matter of right. In fact, the affidavit discloses that on 17/3/2016, the Government Pleader opined that it is not a fit case for filing writ appeal. In fact, the Government had once again decided to get a second opinion and the second opinion which was given, on 31/8/2017 that it is a fit case. Application does not state as to why was the first opinion wrong and why the second opinion correct. Mere change in opinion cannot be a ground for condonation of delay.

12. No doubt, it is settled that while dealing with cases filed by the Government, the Courts must be liberal, taking into account the details in movement of files, but that does not mean that any delay how so ever large can be condoned. As noticed earlier, the only reason given for condonation of delay is the change in the opinion of

the Government Pleader. Nothing further has been mentioned as to why there has been a delay of three years, in getting the opinion, from the Government Pleader and more importantly what was the reason for the change of opinion. Limitation Act does not make any justification between the State and Citizen. Sufficient cause has not been given by the State Government to condone the large delay of 1318 days.

13. The Hon'ble Supreme Court in *Esha Bhattacharjee v. Raghunathpur Nafar Academy*, {2013 (12) SCC - 649} has observed as under:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on

the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded

on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

14. The abovesaid judgment has been followed, in *H. Dohil*

Constructions Co. (P) Ltd. v. Nahar Exports Ltd., {2015 (1) SCC -

680}, wherein the Hon'ble Supreme Court has observed as under:-

“**23.** We may also usefully refer to the recent decision of this Court in *Esha Bhattacharjee [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12*

SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595] where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay. Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under: (SCC pp. 658-59)

“21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

.....

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.”

15. To condone the delay, at this length of time i.e., about 3 ½

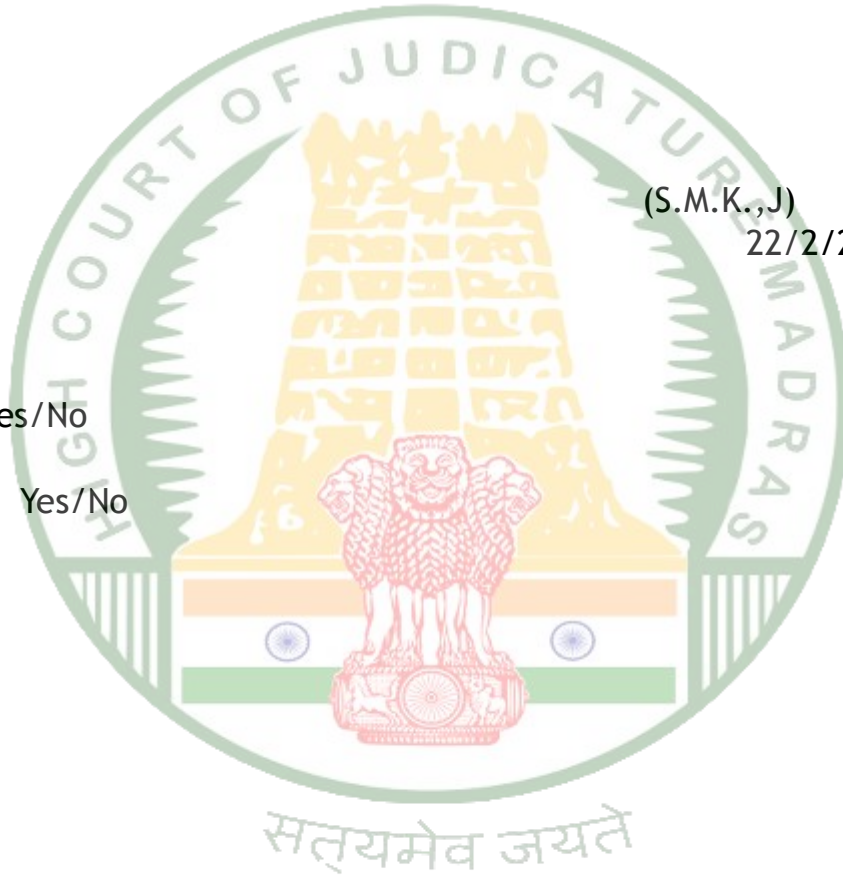
years, without their being any reason at all, cannot be accepted. Accordingly, C.M.P.No.7609 of 2018, filed to condone the delay of 1318 days, in filing the writ appeal against the order, dated 4/8/2014, made in W.P.No.8410 of 2008, is dismissed and Writ Petition is rejected at the SR stage.

(S.M.K.,J) (S.P.,J)
22/2/2019

mvs.

Index: yes/No

Internet: Yes/No



WEB COPY

S.MANIKUMAR,J

A N D

SUBRAMONIUM PRASAD,J

mvs.



W.A.SR.No.32053 of 2018
and
C.M.P.No.7609 of 2018

WEB COPY

22/2/2019