

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.31875/2019

V.Lalitha

Petitioner

Versus

- 1.The Union of India represented by the Secretary to Government Education Department, Government of Union Territory of Puducherry, Chief Secretariat, Puducherry 605001.
- 2.The Director of School Education Perunthalaivar Kamarajar Centenary Educational Complex, 100 Feet Road Anna Nagar, Puducherry-605008.
- 3.The Chief Educational Officer cum District Programme Coordinator, SSA Government of Puducherry, Mahe 673310.
- 4.The Central Administrative Tribunal Madras Bench, represented by its Deputy Registrar, Chennai 600 104.

Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to the impugned order of the 4th respondent in MA/310/00234/2012 [in] [OA/310/01608/2013 dated 13.06.2019 and quash the same and direct the respondents 1 to 3 to consider the petitioner's case for appointment as Pre Primary School Teacher as done in the case of the applicants in OA.No.1236/2009 and grant her all consequential benefits.

For Petitioner : Mr.P.Rajendran

ORDER

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

(1)The writ petitioner was the Original Applicant and she filed the Original Application in OA.No.1608/2013 before the 4th respondent / Tribunal, to call for the records of the respondents 1 to 3 relating to the selection of respondents 4 to 14 therein, vide order dated 18.11.2009 passed by the 3rd respondent and setting aside the selection and appointment of respondents 4 to 14 as Pre Primary School Teachers with a consequential direction, directing the respondents 1 to 3 to conduct selection in accordance with law and consider the case of the Original Applicant/writ petitioner herein, in accordance with law.

(2)There was a delay of 499 days in filing the Original Application and to condone the same, the Original Applicant/writ petitioner herein filed a Miscellaneous Application for condonation of the said delay and it is relevant to extract the relevant portion of the affidavit:-

'3.I sincerely state that I am challenging the order dated 18.11.2009, and as such, the one year period of limitation expires on 17/11/2010 and this original application is filed on 02.04.2012, there is a delay of 1 year and 5 months, that is 499 days, in filing this original application.

4.I sincerely state that I have also applied for the selection to the post of pre-primary school teacher and I am more meritorious than the selected respondents and I am directly aggrieved by the selection. However, during November 2010, my husband who is an auto driver, suffered from 'pleural effusion', that is swelling in the lungs and continuously required full attention and protracted treatment.

5.I submit that we belong to poor strata of society and were dependent upon the daily income of my husband to look after our family. Since our husband became unwell, we were into extreme financial crisis and out of sheer

poverty, I could not come over to Chennai from Mahe and file the case immediately. Only now, the health situation of my husband got better and through common friends I am able to come over to Chennai and file this Original Application.'

- (3) The official respondents had filed the Reply Statement dealing with the merits of the matter also and took a stand that out of 58 candidates, 9 candidates were selected for the post of Pre Primary School Teacher and 4 candidates were wait listed by the Recruitment Committee for selection to the post of Pre Primary School Teacher in Mahe region in the Meeting held on 18.12.2007 and 12 candidates [including 3 wait listed candidates] were engaged as Pre Primary School Teachers vide proceedings dated 18.11.2009. The official respondents also took a stand that the Original Applicant/writ petitioner was not selected by the Recruitment Committee for the post of Pre Primary School Teacher and her name was not even included in the wait listed candidates and nearly after a lapse of two and half years, she has no right to challenge the selection made during the year 2009 on the ground that she is more meritorious than the selected candidates.
- (4) The 4th respondent / Tribunal, after taking into consideration the contents of the affidavit as well as the reply statement and upon hearing the rival submissions of the respective learned counsels, found that it could not find any arbitrariness or illegality in the procedure followed for the recruitment to the post of Pre Primary School Teacher and as regards delay, it was observed by the Tribunal that the burden is on the Original Applicant to show that she was prevented from approaching the Tribunal in time because of a particular person and she has failed in that aspect also and having found that the Original Application is barred by limitation under section 21 of the Administrative Tribunals Act, has dismissed the Original Application as well as the Miscellaneous Application and challenging the legality of the same, the present writ petition is filed by the writ petitioner.
- (5) The learned counsel for the petitioner has drawn the attention of this Court to paragraph No.7 of the affidavit filed in support of this writ petition and would submit that the writ petitioner/Original Applicant has engaged the services of an Advocate in Chennai in the year 2009 itself and made arrangement to file a case challenging the said selection and also for a consequential direction to appoint her. However, the case was filed as a writ petition before this Court and in the light of the fact that the Central Administrative Tribunal alone is having the jurisdiction in this matter, the Registry has returned the papers for want of jurisdiction and she became

aware of the said development later. It is further stated in paragraph No.8 that she is a resident of Mahe during November 2010, and her husband is an auto driver and was suffering due to pleural effusion and since they belong to poor strata of Society and were depending upon the daily income of her husband, it took some time for her to approach the Tribunal.

- (6) It is to be pointed out at this juncture, that the said reasons assigned in paragraph No.7 of the affidavit filed in support of this writ petition, have not been cited as the reason in the application filed before the Central Administrative Tribunal for condonation of delay of 499 days. It is also the stand of the official respondents in the reply statement that the selection was done in a fair and transparent manner and the appointment of the private respondents came into being as early as on 18.11.2009 and the Original Applicant/writ petitioner was nowhere in the Merit List and she chose to make a challenge after a lapse of two and half years.
- (7) The Courts would normally come to the aid of the persons who are vigilant in prosecuting the proceedings and the Hon'ble Supreme Court of India in the decision reported in 2013 [5] CTC 547 [Esha Bhattacharjee V. Managing Committee of Raghunathpur, Nafr Academy and Others], has dealt with the application for condoning the delay filed under Section 5 of the Limitation Act, and after surveying various judgments, had culled out the principles in paragraph No.15 and it is relevant to extract the same:-

- i. There should be 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 in justice.
- 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.
- iii. Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- 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.
- v. Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

- 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.
- vii. The concept of Liberal Approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- 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.
- 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.
- 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.
- 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.
- xii. The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
- xiii. The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(8) The Hon'ble Apex Court also added some more guidelines taking note of the present scenario in paragraph No.16 and it is relevant to extract the same:-

- (a) An application for condonation of delay should be drafted with careful concern and not in a half hazard 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.

(d)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.

(f)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.

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

(9)In the considered opinion of the Court, the petitioner has failed to come out with any plausible or reasonable explanation as to the delay in approaching the Tribunal and in the process, also seeks to set aside the appointment of the private respondents who were engaged as the Pre Primary School Teachers vide proceedings dated 18.11.2009 and on account of the said delay, they cannot be mulcted with a fresh legal proceedings in the form of Original Application filed by the writ petitioner herein/Original Applicant before the Tribunal.

(10)This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent or infirmity or illegality in the reasons assigned by the Tribunal in dismissing the Original Application and finds no merits in the writ petition.

(11)In the result, the writ petition stands dismissed at the admission stage itself, confirming the order passed by the 4th respondent / Tribunal dated in MA.No.310/00234/2012 [in] [and] OA/310/01608/2013 dated 13.06.2019. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Secretary to Government, Union of India,
Education Department, Government
of Union Territory of Puducherry,
Chief Secretariat, Puducherry 605001.

2.The Director of School Education
Perunthalaivar Kamarajar Centenary
Educational Complex, 100 Feet Road
Anna Nagar, Puducherry-605008.

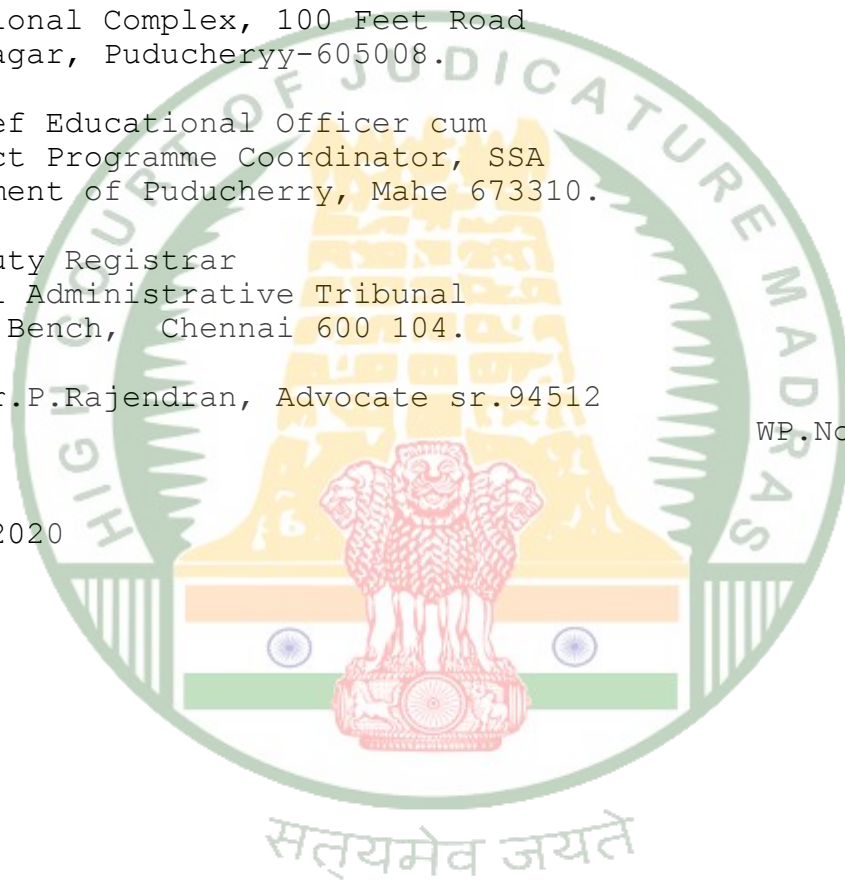
3.The Chief Educational Officer cum
District Programme Coordinator, SSA
Government of Puducherry, Mahe 673310.

4.The Deputy Registrar
Central Administrative Tribunal
Madras Bench, Chennai 600 104.

+1cc to Mr.P.Rajendran, Advocate sr.94512

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