

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WMP.No.835 of 2017
in Rev.Aplw.No.SR87534 of 2013 in WP.No.4968 of 2012

1.S.Malathi Raj
2.Seetha
3.Subbashini
4.Miss.Sheeba ... Petitioners

Vs

1. Union of India
Represented by the General Manager
Southern Railway, Chennai - 600 003.
2. The Chief Personal Officer
Madras Southern Railway
Chennai.
3. The Chief Workshop Manager
Signal and Telecommunication Workshop
Perambur, Chennai - 600 023.
4. The Central Administrative Tribunal
Madras Bench
Chennai - 600 104. .. Respondents

Prayer:- Writ Miscellaneous Petition filed under Order IV Rule 9 (4) of A.S. Rules praying to condone the delay of 1213 days in re-representation of the review petition.

Rev.Aplw.No.SR87534/2013:

Review Application filed under order 47 Rule I r/w Section 114 of CPC to allow the review Petition and revise the final order of this Court dated 26.06.2013 in W.P.4968/2012.

W.P.4968/2012:

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the final order dt 30.6.2010 in O.A. No.874 of 2009 passed by the 4th respondent and quash the same as null and void as against the basic principle of natural justice and

consequently direct the respondents herein to settle all service and monetary benefits in the shape of DCRTG, PF, CGIS, Leave Salary, Bonuses for the year 1992-1993 and subsequent years pension arrears and other accumulated amounts which are available as entitlement for the husband of the 1st petitioner as on date of retirement dt 4.10.1993.

For Petitioners : Mr.G.Thangavel

ORDER

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

The present petition is filed to condone the delay of 1213 days in re-presenting the review petition.

2. The petitioners, who are the legal heirs of the deceased Maragatharaj have filed original application in O.A.No.874 of 2009, before the Central Administrative Tribunal, Madras Bench, Chennai, praying to release the terminal benefits of the deceased and to settle all service and monetary benefits in the shape of DCRTG, PF, CGIS, Leave Salary, Bonus, for the year 1992-93 and for subsequent years and pension arrears etc., and this application came to be dismissed, vide order of the Tribunal dated 30.0.2010, aggrieved by which, the petitioners have filed WP.No.4968 of 2012, directing the officials concerned to settle the said benefits and to call for the records of the order of the Tribunal in O.A.No.874 of 2009, and the Division Bench of this Court, vide Order dated 26.06.2013, dismissed the said writ petition. To review the said order, the petitioners are before this Court and the review application filed, is pending in SR.No.87534 of 2013.

3. The Registry, while entertaining the petition at SR stage, has pointed out certain defects and therefore it was returned and while re-presenting the review papers, there appears to be a delay of 1213 days and to condone the said delay, the present miscellaneous petition is filed.

4. The learned counsel appearing for the petitioners has invited the attention of this Court to paragraph No.2 of the affidavit and would submit though the review application was filed within the stipulated time, however and the papers were returned by the Registry on 17.09.2013 for want of certain details, and since the bundle was in the office of the counsel, there occurred some delay in presenting those details and as such, prays for condonation of the said delay in re-presenting the review petition.

5. This Court has considered the submissions of the learned counsel appearing for the petitioners and also perused the materials placed before it.

6. The delay is enormous and the affidavit filed in support of the petition is bereft of any particulars.

7. In the decision of the Hon'ble Supreme Court in [2014 (9) Scale 503] [H.Dohil Constructions Co.(P) Ltd., Vs. Nahar Exports Ltd.,], the facts of the case would disclose that there was a delay of 9 days in filing the first appeals and a further delay of 1727 days in refiling of those first appeal papers, and hence, an application to condone the those delay was filed, and the High Court of New Delhi had condoned the said delay of 9 days in filing the appeals and 1727 days in refiling, aggrieved by which, a challenge was made to the said order. The Hon'ble Supreme Court, after taking into consideration its earlier decision, in paragraph No.23 of its judgment, has observed as follows :

" 23. When we apply those principles 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 bonafides 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 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 bonafides in its approach. It also requires 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 parties and the same principle, 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 and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance based on 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."

8. In the considered opinion of the Court, the said decision, is fully applicable to the facts of the present case, that in the instant case, the delay is three years and odd, and also no tenable reasons are adduced in the affidavit filed in support of this petition. In the absence of any plausible or tenable explanation provided by the petitioner for the delay in re-presenting the review petition, this Court is not in a position to condone such a huge delay occurred in re-presentation of the review petition.

9. In the result, the miscellaneous petition filed to condone the delay of 1213 days is dismissed and the consequently Rev.Aplw.No.SR87534 of 2013, is rejected.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

ds

To:

1.The General Manager
Union of India
Southern Railway,
Chennai - 600 003.

WEB COPY

2.The Chief Personal Officer
Madras Southern Railway
Chennai.

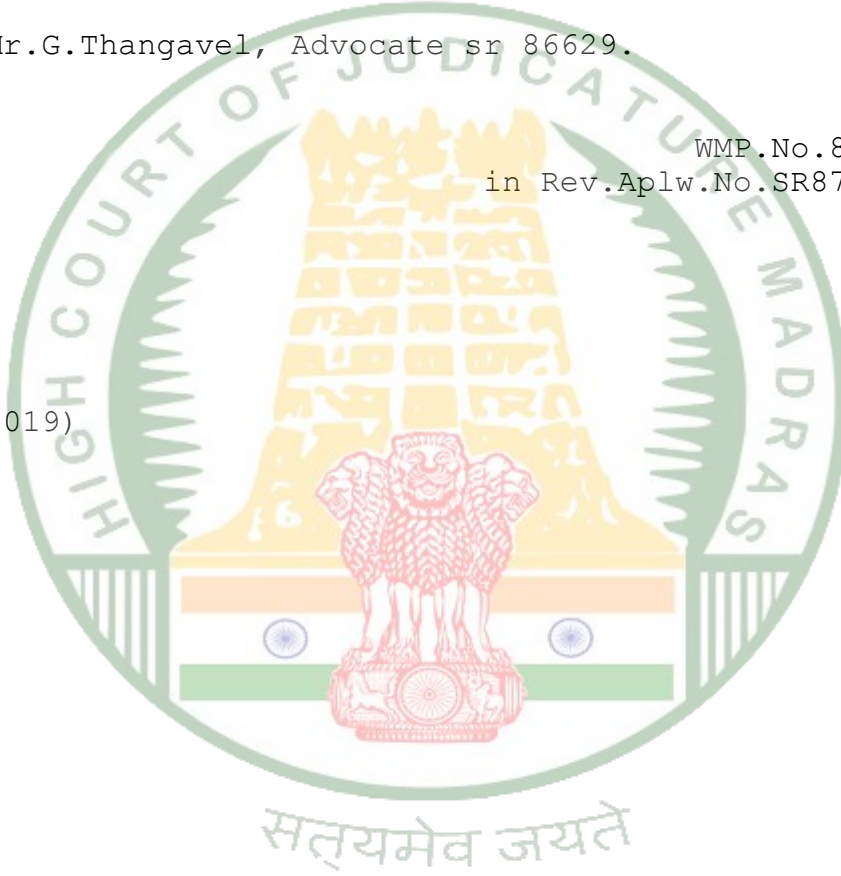
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+1 CC to Mr.G.Thangavel, Advocate sr 86629.

WMP.No.835 of 2017
in Rev.Aplw.No.SR87534 of 2013

VD(CO)
SP(29/11/2019)



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