

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CMP.Nos.21666 & 22113/2018 & WA.SR.Nos.112678 & 135471/2018

CMP.No.21666/2018 & WA.SR.No.112678/2018

1.The Government of Tamil Nadu
rep. By its Secretary to Government
Animal Husbandry & Fisheries Department
Fort St George, Chennai 600 009.

2.The Commissioner & Director of
Veterinary Services,
Animal Husbandry & Fisheries Department
DMS Compound, Chennai 600 006.

3.The Regional Joint Director
Animal Husbandry & Fisheries Department
Dharmapuri, Dharmapuri District.

4.The Deputy Director,
Animal Husbandry Department
Hosur Cattle Farm
Mathagiri Post, Hosur 635110.

Petitioners /
Appellants

Versus

1.S.Sudanathan
2.C.Kallamegam
3.S.Krishnamurthy
4.R.Venkatraman
5.V.Sampaiah

6.M.Sakuthala
 7.V.Neela
 8.A.Venkatesan
 9.M.Yellappa
 10.K.Puttammal
 11.P.Sunjappa
 12.A.Ramudu
 13.S.Sampangi
 14.M.Puttanna
 15.N.Nanjappa
 16.V.Sampangi
 17.S.Rajanna
 18.P.Lakshiah
 19.M.Govindasamy

.. Respondents /
 Writ Petitioners

Prayer in CMP.No.21666/2018:- Miscellaneous Petition filed u/s.5 of the Limitation Act, to condone the delay of 2050 days in filing the writ appeal against the order dated 14.02.2013 made in WP.No.5522/2005.

Prayer in WA.SR.No.112678/2018:- Writ Appeal filed under Clause 15 of Letters Patent against the order dated 14.02.2013 made in WP.No.5522/2005.

CMP.No.22113/2018 & WA.SR.No.135471/2018

1.The State of Tamil Nadu rep.by its
 Secretary, Animal Husbandry Department
 Fort St George, Chennai-9.

2.The Commissioner cum Director of
 Veterinary Services, DMS Compound
 Chennai 600 006.

.. Petitioners /
 Appellants

Versus

Tamil Nadu Animal Husbandry Assistant
 Association [Regn.No.163/1981]
 rep.by the District Secretary
 S.Krishnamoorthy
 No.287, Pudupillayar Koil Street
 Suthakulam, Cuddalore O.T
 Pin 607003.

.. Respondent /
 Writ Petitioner

Prayer in CMP.No.22113/2018:- Miscellaneous Petition filed u/s.5 of the Limitation Act, to condone the delay of 2022 days in filing the writ appeal against the order dated 05.03.2013 made in WP.No.7191/2005.

Prayer in WA.SR.No.135471/2018:- Writ Appeal filed under Clause 15 of Letters Patent against the order dated 05.03.2013 made in WP.No.7191/2005.

For Petitioners in
 both the petitions : Mr.E.Manoharan, AGP

COMMON ORDER

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

The present miscellaneous petitions are filed to condone the delay of 2050 days and 2022 days respectively in filing the writ appeals against the orders dated 14.02.2013 and 05.03.2013 made in WP.Nos.5522 and 7191/2005.

CMP.No.21666/2018 in WASR.No.112678/2018:-

2 A perusal of the affidavit, especially, paragraph No.9, would disclose that after the pronouncement of the orders on 14.02.2013, the 4th petitioner/4th appellant sought for legal opinion from the Government Pleader vide letter dated 22.04.2013 and obtained the same on 13.05.2013, opining that it is not a fit case for filing the writ appeal and in the interregnum, similar orders came to be passed in WP.No.7191/2005 on 05.03.2013 and once again, legal opinion has been obtained as to the challenge made to the said order and in that case, the Government Pleader has given his opinion on 01.04.2014, that it is a fit case to prefer an appeal and thereafter, request was made to revise the legal opinion and once again, the Government Pleader vide his opinion dated 09.01.2015, opined that it is not a fit case for an appeal and despite the fact that the Government Pleader gave an opinion that the case is not fit to prefer an appeal, a decision has been taken to file the writ appeal and there occasioned the delay.

CMP.No.22113/2018 in WASR.No.135471/2018:-

3 A perusal of the affidavit, especially, paragraph No.7, would disclose that after the pronouncement of the orders on 05.03.2013, the appellants/official respondents had received the same

during October 2013 and the 2nd petitioner/2nd appellant sought for legal opinion from the Government Pleader vide letter dated 08.11.2013 and obtained the same on 01.04.2014, opining that it is a fit case for filing the writ appeal and in the interregnum, similar orders came to be passed in WP.No.5522/2005 on 14.02.2013 and once again, legal opinion has been obtained as to the challenge made to the said order and in that case, the Government Pleader has given his opinion on 13.05.2013, that it is not a fit case to prefer an appeal and thereafter, request was made to revise the legal opinion and once again, the Government Pleader vide his opinion dated 09.01.2015, opined that it is not a fit case for an appeal and despite the fact that the Government Pleader vide opinion dated 09.01.2015, opined that it is not a fit case to prefer an appeal and despite the fact that the Government Pleader gave an opinion that the case is not fit to prefer appeal, a decision has been taken to file the writ appeal and there occasioned the delay.

4 Mr.E.Manoharan, learned Additional Government Pleader appearing for the petitioners/appellants in both the cases would submit that even prior to the regularisation, due to inadvertent mistake, increments have been awarded and when those increments sought to be recovered, writ petitions came to be filed and one such writ petition

in WP.No.3203/2009 came to be allowed and challenging the same, the petitioners/appellants herein along with the Regional Director, Animal Husbandry Department, Pudukottai District, had filed WA.No.397/2018 and the writ appeal came to be dismissed vide judgment dated 05.03.2018 and challenge made to the said judgment, by filing Special Leave Petition in SLP [C] Diary No.32281/2018 also came to be dismissed by the Hon'ble Supreme Court of India, vide order dated 22.10.2018 and thereafter, a decision has been taken, not to collect the said amounts inadvertently paid.

5 This Court has carefully considered the submission made by the learned Additional Government Pleader for the petitioners/appellants in both the petitions and also perused the materials placed before it.

6 A perusal and consideration of paragraphs No.9 and 7 of the respective affidavits would disclose that despite repeated opinions given by the Government Pleader that the cases are not fit for preferring appeals, ultimately a decision has been taken to file the present writ appeals and in the considered opinion of the Court appears to be on account of administrative reasons.

7 The Hon'ble Supreme Court of India in the decision reported in **2010 [5] SCC 459 [Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation and another]**, has considered the scope of the discretion of the Court in condoning the delay if sufficient cause is shown and it is relevant to extract paragraphs No.14 and 15 of the said judgment:-

"14 We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15 The expression "sufficient cause" employed in Section 5 of the Limitation Act, 1963, and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice.

Although, no hard-and-fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector [L.A] Vs. Katiji [1987 [2] SCC 107] ; N.Balakrishnan Vs. M.Krishnamurthy [1998 [7] SCC 123 and Vedabai Vs. Shantaram Baburao Patil [2001 [9] SCC 106."

8 In the decision reported in **2012 [5] SCC 157 [Maniben Devraj Shah Vs. Municipal Corporation of Brihan, Mumbai]**, the Hon'ble Apex Court has held in paragraph No.24 as follows:-

"24 What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. It, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

9 In **Office of the Chief Post Master General and**

Others Vs. Living Media India Limited and another reported in ***2012 [2] SCALE 782***, the Hon'ble Apex Court, in paragraphs No.12 and 13, has observed as follows:-

"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 bona fide, 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."*

10 In the considered opinion of the Court, such an enormous

delay of 2050 days and 2022 days respectively in preferring the writ appeals have not all been properly explained and in the absence of any plausible, acceptable or tenable reasons, such a huge delay cannot be condoned and that apart, in the connected matters, similar orders came to be upheld in WA.No.397/2018 and the challenge made to the said appeal, also ended in dismissal before the Hon'ble Apex Court of India.

11 In the light of the reasons assigned above, the present miscellaneous petitions deserves dismissal and accordingly, **dismissed** and consequently, WA.SR.Nos.112678/2018 and 135471/2018 are **rejected**.

[MSNJ]

[PRMJ]

29.01.2019

Internet : Yes

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M.SATHYANARAYANAN, J.,
AND
P.RAJAMANICKAM, J.,
AP

To

- 1.The Secretary to Government
Government of Tamil Nadu
Animal Husbandry & Fisheries Department
Fort St George, Chennai 600 009.
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