IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2020

PRESENT

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MR.JUSTICE NATARAJ RANGASWAMY

WRIT APPEAL NO.339 OF 2020 (S-RES)

BETWEEN:

1. THE PRINCIPAL SECRETARY TO GOVERNMENT,
   PRIMARY AND SECONDARY EDUCATION
   DEPARTMENT,
   M.S. BUILDING,
   BENGALURU-560001.

2. DIRECTOR/DEPUTY DIRECTOR,
   DEPARTMENT OF PRE-UNIVERSITY EDUCATION,
   18TH CROSS, MALLESHWARAM,
   BENGALURU-560012.

3. DEPUTY DIRECTOR,
   DEPARTMENT OF PRE-UNIVERSITY EDUCATION,
   MYSURU DISTRICT-570012.

… APPELLANTS

(BY SRI. R.SUBRAMANYA, ADDITIONAL ADVOCATE GENERAL ALONGWITH SMT. VANI.H., ADDITIONAL GOVERNMENT ADVOCATE)

AND:

1. SRI. PRABHUDEVA M.G.,
   S/O M.C. GURUMURTHY,
   AGED ABOUT 50 YEARS,
   LECTURER IN CHEMISTRY,
   SBRR MAHAJANA PRE-UNIVERSITY COLLEGE,

JAYALAKSHMIPURAM,
MYSURU-570012.

2. SBRR MAHAJANA PRE-UNIVERSITY COLLEGE
JAYALAKSHMIPURAM,
MYSURU-570012,
REPRESENTED BY ITS PRINCIPAL.

3. MAHAJANA EDUCATION SOCIETY (REGD.),
JAYALAKSHMIPURAM,
MYSURU-570012,
REPRESENTED BY ITS SECRETARY.

… RESPONDENTS

(BY JYOTHI B. KANGOKAR, ADVOCATE FOR CAVEATOR RESPONDENT NO.1)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 18.07.2019 PASSED BY THE LEARNED SINGLE JUDGE IN WP NO.46228/2018.

THIS APPEAL COMING ON FOR PRELIMINARY HEARING THIS DAY, NAGARATHNA, J., DELIVERED THE FOLLOWING:

JUDGMENT

There is a delay of 219 days in filing the appeal by the State.

2. Learned Additional Advocate General appearing for the appellants – State drew our attention to the application filed under Section 5 of the Limitation Act, 1963 which is supported by the

affidavit of the Deputy Director, Pre-University Education (R&G), Bengaluru seeking to explain the delay in filing the appeal. Learned Additional Advocate General submitted that the impugned order was passed by the learned Single Judge in W.P.No.46228/2018 on 18.07.2019. On receipt of communication from the learned Government Advocate, the Department decided to process the matter in January, 2020 and ultimately, decided to file an appeal. On 09.06.2020, the appeal was filed. That time was consumed in the processes prior to the filing of this appeal as opinion had to be obtained for filing the appeal. He submitted that the State has a good case on merits and the bonafide and unintentional delay of 219 days in filing the appeal may be condoned as the matter touches upon the State Exchequer.

3. *Per contra*, learned counsel for the respondent – caveator contended that the delay of 219 days in filing the appeal has not been properly

explained. The contents of the affidavit are bald. The explanation offered is not sufficient in law, so as to condone the delay. That the respondent No.1 is a lecturer who was appointed on 07.10.2011. But, the grant-in-aid scales have been extended to him only on 20.06.2014. The learned Single Judge has rightly observed that the difference in pay scales be extended to him from the date of appointment, till the actual date of grant-in-aid scale. This appeal has been filed subsequent to filing of the contempt petition by the State only to procrastinate the matter and to escape the contempt proceedings. There is no merit in the appeal and therefore, the appeal may be dismissed.

4. We have considered the submissions made at the Bar, in the light of the fact that there is a delay of 219 days in filing the appeal. The relevant portion of the affidavit of the officer reads as under:

> *"2. The above Appeal is filed challenging the Order dated 18.07.2019 passed by the learned single Judge in Writ Petition No.46228/2018 (S-RES).*

3. I submit that, the Government Advocate by his letter intimated the Department that the Writ Petition is disposed of with a direction to pay the difference of salary within a period of three months from the date of order and also inform that once the order is released the same would be sent to the Department. The Respondent No.1 by a Representation enclosed the xerox copy of the order and submitted the same and sought for the arrears of salary.

4. I submit that the Director, Department of Pre-University Education forwarded xerox copy of the order submitted by the Respondent No.1 in the Writ Petition on 07.01.2020. The same was received in the section on 13.01.2020. Thereafter, the case worker submitted the file with note to the Section Officer on 16.01.2020. The Section Officer submitted the file with note to the Under Secretary on 17.10.2020. The Under Secretary forwarded the file to the Joint Secretary on 18.01.2020. The Joint Secretary after going through the file with note submitted the same to the Principal Secretary on 20.01.2020.

5. I submit that the Principal Secretary approved the proposal of the Director, Department of Pre-University Education and mark to the file to the head of Legal Cell for further action on 20.01.2020. The head of Legal Cell after receiving the file and on going through the file and the order dated 18.07.2019 passed by the learned single Judge in W.P.No.46228/2018 opined to file the Writ Appeal against the order dated 18.07.2019 in W.P.No.46228/2018 and thereafter returned the file to the Board on 23.01.2020 along with the Government order dated 22.01.2020 to prefer the Writ Appeal. The Department thereafter approached the Advocate General Office and submitted the file to the Advocate General on 24.02.2020.

6. I further submit that the office of the Advocate General after going through the file called the Department for further discussion in the matter. After discussion with the Department with regard to the appointment of Respondent No.1 and is claim the Government Advocate was apprised to file the Appeal against the order of the learned single Judge dated 18.7.2019 in W.P.No.46228/2018. The Government Advocate prepare the Writ Appeal and the

same is submitted. In this process there is some delay in filing the above Writ Appeal."

5. On perusal of the same, we find that the gross delay of 219 days in filing the appeal has not been properly explained. The affidavit filed on behalf of the State is lacking in material particulars and the explanation offered is not sufficient in law, so as to condone the delay in filing the appeal.

6. In this regard, we place reliance on the judgment of the Hon'ble Supreme Court in the case of ***Postmaster General and others Vs. Living Media India Limited and Another, (2012) 3 SCC 563,*** the relevant portion of which reads as under:

"28. 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 fides, 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.

29. 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 bona fide 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. 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."

7. Hence, the application seeking condonation of delay of 219 days in filing the appeal is dismissed. Consequently, the appeal stands ***dismissed***.

In view of dismissal of the appeal, I.A.No.2/2020 stands dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

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