



WEB COPY

C.M.P.(MD)No.890 of 2020
in
W.A.(MD).SR.No.3501 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.M.P. (MD)No.890 of 2020

in

W.A. (MD) .SR.No.3501 of 2020

1. The District Elementary Educational Officer,
District Elementary Educational Officer,
Theni District.
2. The Additional Assistant Elementary Educational
Officer,
Periakulam, Theni District. ...Petitioners / Appellants/
Respondents

Vs.

Rahim Brothers Middle School,
Vadakarai, Periakulam,
Theni District,
Rep. by Correspondent,
A.Musthafa

... Respondent/Writ Petitioner

Prayer: Civil Miscellaneous Petition filed under Section 5 of Limitation Act, praying to condone the delay of 1026 days in filing the above Writ Appeal as against the order, dated 01.03.2017 passed in W.P.(MD).No.5841 of 2011 on the file of this Court.

Prayer in WA(MD).SR.No.3501/2011 : Writ Appeal filed under Clause 15 of Letter Patent to set aside the order dated 01.03.2017 passed in WP(MD)No.5841/2011.

Prayer in WP(MD). 5841/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records relating to the impugned order passed by the 1st Respondent in his Proc. Na.Ka.No.295/A2/11, dated 26-05-2011 and quash the same as illegal and consequently to direct the 1st Respondent to release salary grant and other monetary benefits without any interruption.



For Appellants : Mrs.S.Srimathy
Special Government Pleader
For Respondent : Mr. H.Mohammed Imran

ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

Heard the submissions of the learned Special Government Pleader appearing for the petitioners/appellants and perused the affidavit filed in support of this petition, to condone the delay of 1026 days, in filing the Writ Appeal.

2. The learned Special Government Pleader appearing for the petitioners/appellants has drawn the attention of this Court to paragraph No.7 of the affidavit filed in support of this petition and would submit that after the impugned order dated 01.03.2017, passed in W.P.(MD).No.5841 of 2011, there was a bifurcation of office and therefore, there was some delay in despatching the records to the concerned office and in the light of the crucial question of law involved in this Writ Appeal and considering the reasons assigned, prays for condonation of delay with cost.

3. However, this petition is strongly opposed by the learned Counsel appearing for the respondent/writ petitioner by submitting that the delay is nearly three years and in the absence of any acceptable explanation, such a huge delay cannot be condoned and would submit that though the respondent/writ petitioner had awaited for nearly three years for implementation of the order, still it has not been done and therefore, he has been advised to file a petition for contempt.

4. This Court has carefully considered the rival submissions and also perused the materials placed on record.

5. The condonation of huge delay has been considered by the Hon'ble Supreme Court of India in (i) ***Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation & another*** reported in **2010 (5) SCC 459** and (ii) ***Office of the Chief Post Master General & Ors., v. Living Media India Ltd & another*** reported in **2012 (3) SCC 563** and in both the decisions, the Hon'ble Supreme Court of India had surveyed and considered its earlier decisions and found that in the event of gross negligence or deliberate inaction and lack of *bona fides*, the Court is not expected to take a liberal attitude in condoning such a huge delay, for the reason that the rights of the concerned parties have also to be taken into consideration.



6. As rightly pointed out by the learned Counsel appearing for the respondent/writ petitioner, the delay is administrative in nature and the petitioners/appellants/official respondents are ought to have acted with due diligence in filing the Writ Appeal, at least, with minimum delay. However, the present petition has been filed to condone the delay after nearly three years.

7. In the considered opinion of this Court, in the absence of any tenable, plausible or acceptable explanation, such a huge delay cannot be condoned.

8. At this juncture, the learned Special Government Pleader appearing for the petitioners/appellants/official respondents would submit that the question of law as to the interpretation of G.O.Ms.No.39, School Education (D1) Department, dated 21.03.2003, needs adjudication for the reason that this order may be cited as a precedent and in that event, the Government may face other litigations which would also involve financial implications.

9. This Court has heard the submissions of the learned counsel for the respondent/writ petitioner also.

10. In the result, this **Civil Miscellaneous Petition is dismissed** and the Writ Appeal in W.A(MD)SR.No.3501 of 2020, stands rejected. It is also made clear that this Court is dismissing this petition for condonation of delay for want of plausible and acceptable reasons and did not go into the interpretation or otherwise of G.O.Ms.No.39, School Education (D1) Department, dated 21.03.2003, and therefore, this order need not be cited as a precedent.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



C.M.P.(MD)No.890 of 2020
in
W.A.(MD).SR.No.3501 of 2020

To

1. The District Elementary Educational Officer,
District Elementary Educational Officer,
Theni District.

2. The Additional Assistant Elementary Educational
Officer,
Periakulam, Theni District.

+1 CC to M/s.Special Govt.Pleader (SR-13997[F] dated 13/08/2020)

C.M.P. (MD) No. 890 of 2020
in
W.A. (MD) .SR.No.3501 of 2020
12.08.2020

pkn

SDS (21.08.2020) 4P-4C