



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Thursday, the Fifth day of November Two Thousand and Twenty

PRESENT

The Hon`ble Mr.Justice N.KIRUBAKARAN
and
The Hon`ble Mr.Justice B.PUGALENDHI

CMP (MD) No.1519 of 2020
in
WA (MD) SR.NO.6092 of 2020

1 THE PRINCIPAL SECRETARY CUM COMMISSIONER,
REVENUE ADMINISTRATION,
EZHILAGAM, CHEPAUK,
CHENNAI - 600 005.

2 THE DISTRICT COLLECTOR
PUDUKOTTAI DISTRICT, PUDUKOTTAI. ... PETITIONERS/ APPEALANTS

Vs

M.PALANICHAMY ... RESPONDENT/ RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 938 days in filing the above Writ Appeal against the order dated 06.06.2017 made in W.P.(MD) No.5051 of 2017 on the file of this Hon'ble Court.

PRAYER IN WA(MD)SR.NO.6092 of 2020:

To set aside the order made in W.P.(MD) No.5051 of 2017 dated 06.06.2017 by this Hon'ble Court.

Prayer in W.P.(MD) No.5051 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying for issue a Writ of Certiorari, to call for the records on the file of the 2nd respondent in connection with the impugned order of suspension passed by him in his Proceedings in Rc.A2 4704/2017 dated 20.03.2017 (served on 21.03.2017) and quash the same as illegal and arbitrary.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.SRICHARAN, Additional Advocate General assisted by Mr.M.MUTHU GEETHAYAN, Additional Government Pleader for the petitioners and of Mr.SRINIVASA RAGHAVAN, Advocate on behalf of the Respondent, the court made the following order:-



[Order of the Court was made by **B.PUGALENDHI, J**]

This civil miscellaneous petition has been filed for condoning the delay of 938 days in filing the writ appeal, as against the order of this Court passed in W.P(MD)No.5051 of 2017 on 06.06.2017.

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2.The Principal Secretary / the Commissioner of Revenue Administration, Ezhilagam, Chennai and the District Collector, Pudukottai, Pudukottai District the petitioners herein / the respondents in the writ petition, filed the present miscellaneous petition, wherein it has been stated that the order passed in the writ petition on 06.06.2017, was made ready on 29.06.2017 and due to administrative reasons, the delay of 938 days has occurred in filing the writ appeal.

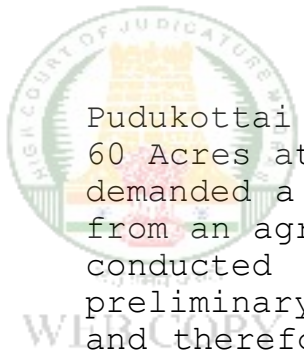
3.This Court being not satisfied with the reasons assigned in the affidavit, for condoning the delay, directed the petitioners/appellants to file a better affidavit and thereafter, the District Collector, Pudukottai filed a better affidavit on 29.07.2020 that after the order dated 06.06.2017 passed in the writ petition, they have obtained a legal opinion from the learned Government Advocate and the learned Government Advocate gave his opinion that it is not a fit case for appeal. But the Government did not agree with the opinion, has taken a decision to file an appeal and by letter dated 31.12.2017, the 1st petitioner herein directed the 2nd petitioner / the District Collector, Pudukottai to obtain an opinion from the learned Additional Advocate General. But the papers were misplaced. Since the concerned Clerk has been transferred, the papers could not be traced out immediately. Subsequently, only when the Government reminded the 2nd petitioner herein, on 06.12.2019, they have traced the papers and the appeal was made ready on 31.01.2020.

4.Mr.Srinivasa Raghavan, learned Counsel for the respondent vehemently opposed this petition that the writ appeal is hit by the Limitation Act and the reasons assigned by the petitioners are not satisfactory. Further the writ appeal is filed after the respondent/writ petitioner filed another writ petition in W.P(MD)No.4214 of 2020 praying for a direction for the disbursement of the retirement benefits. The learned Counsel further submitted that the retirement benefit is a constitutional right, guaranteed under Article 300 A of the Constitution of India and no employee can be deprived of his gratuity and the terminal benefits without any authority of law and therefore, prayed that this petition be dismissed on the ground of laches.

5.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

6.A perusal of the records show that the respondent / writ petitioner, while serving as a Tahsildar in Ponnamaravathy Taluk,

<https://hcservices.courts.gov.in/hcservices/>



Pudukottai District for issuing certificate for harvest of paddy in 60 Acres at Athavathur Village in Pudukottai Village is said to have demanded a sum of Rs.9,000/- and garments to the tune of Rs.2,000/- from an agriculturist. Based on a complaint, preliminary enquiry was conducted by the Vigilance and Anticorruption Department. The preliminary enquiry revealed that the allegations were substantiated and therefore, departmental proceedings were also initiated against the writ petitioner. Pending departmental proceedings, the petitioner was placed under suspension in the year 2017 under Rule 17(e) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, which has been set aside by this Court in W.P(MD)No.5051 of 2017 on 06.06.2017 and aggrieved over the same, the present appeal has been filed with this delay condonation petition.

7. It would be relevant to refer to the order passed by the the Hon'ble Supreme Court in ***Post Master General and Others Vs. Living Media India Limited and another [(2012) 3 SCC 563]***, wherein while dealing with the application to condone the delay in filing the appeal, it has been held as follows:

"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. 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.

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8. Following the above cited decision, the Hon'ble Supreme Court in a recent judgment in the case of the ***State of Madhya Pradesh and Others Vs Bherulal [SLP(C) Diary No.9217 of 2020, dated 15.10.2020]*** has held as follows:

" 6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner- State of Rs.25,000/- (Rupees twenty five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time.



10. We make it clear that if the aforesaid order is not complied within time, we will be constrained to initiate contempt proceedings against the Chief Secretary."

9. Further it would be apposite to refer to the order passed by this Court in the case of **P.Gunasekara Senthil Vs The Assistant Electricity Engineer (Operation and Maintenance), TANGEDCO, Tiruppur** [W.P.No.5 of 2019, decided on 08.01.2019] has issued the following directions:

"11. In this regard, the judgments / orders signed by the Hon'ble Judges, shall be uploaded in the official website of the Hon'ble High Court of Madras without causing any undue delay and at the earliest possible. The respective learned counsels appearing for the parties to the lis can download the orders / judgment copies from the official website of the Hon'ble High Court of Madras and the copy of the order shall be attested with the Name and Seal of the learned counsel on record along with the enrollment number and communicate the same to all the parties concerned for implementation of the orders / judgments of this Court. In the event of communicating any such orders / judgments downloaded and printed from the official website of the Hon'ble High Court of Madras, the authorities concerned / competent are bound to receive the same and verify the authenticity of the copy of the order with the official website of the Hon'ble High Court of Madras and thereafter, initiate action for effective implementation without any further delay.

12. It is clarified that the authorities concerned cannot reject or refuse the printed copy of the downloaded orders / judgments communicated by the respective learned counsels. All concerned officials are directed to acknowledge all such orders / judgments and act accordingly. In the event of any violation in this regard, the persons aggrieved are at liberty to approach the Court by filing an appropriate application for violation of the Court orders / judgments."

10. As directed by this Court in **P.Gunasekara Senthil's** case, the Chief Secretary to Government, Public (CCMS) Department has issued a Circular vide No.5196/CCMS/2019-1, dated 12.02.2019, directing all the Heads of the Department to scrupulously follow the directions of this Court in its letter and spirit.

11. All daily orders and judgments, except the cases relating to the matrimonial matters (Family Court), Juvenile Justice Act, Official Secrets Act, Intelligence Agencies, Domestic violence,



Sexual offences against Women and Children, etc., are uploaded in the High Court's website. All the Departments can very well monitor the cases, through the High Court's website about the progress of the case.

12. Most of the appeals by the Government are filed with enormous delay. It would expose the lack of follow up with the cases, which results in facing of contempt proceedings before the Court. Approximately there are 960 contempt petitions and 4232 contempt petitions pending before this Bench and the Principal Seat at Chennai respectively.

13. Most of the orders passed by the Court are not taken to the knowledge of the Heads of the Department deliberately or by oversight. The lack of follow up on the Court cases end up with facing of contempt proceedings and statutory notice. The valuable times of the Heads of the Department are wasted on account of these delays. The Heads of the Department must have a meeting at least once in a month and review the progress on the Court cases, which can ensure the compliance of the orders of the Court, wherever possible and if could not be complied with, appeals can be filed without any loss of time.

14. In this case though there is a huge delay, considering the fact the delay in filing the appeal has occurred due to the administrative reasons in getting the legal opinion and misplacement of the papers, this Court deems it fit to condone the delay.

15. Accordingly, the petition is allowed. The Registry is directed to number the writ appeal, if it is otherwise in order and list the matter in its usual course along with W.P(MD)No.4214 of 2020.

16. The learned Additional Advocate General is directed to communicate this order to the Chief Secretary to Government, Secretariat, Chennai, so as to sensitize the Officials concerned about the importance of the compliance of the Court orders and filing of appeals in time, wherever necessary, in order to avoid facing of contempt proceedings.

sd/-
05/11/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE PRINCIPAL SECRETARY CUM COMMISSIONER,
REVENUE ADMINISTRATION,
EZHILAGAM, CHEPAUK,
CHENNAI - 600 005.

2 THE DISTRICT COLLECTOR
PUDUKOTTAI DISTRICT, PUDUKOTTAI.

COPY TO:

THE ADDITIONAL ADVOCATE GENERAL,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CMP(MD) No.1519 of 2020 IN

WA(MD) SR.NO.6092 of 2020

Date :05/11/2020

MS/PN/SAR-4/26.11.2020/7P.4C