



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2020

CORAM

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM**

C.M.P. (MD)No.4645 of 2020

in

W.A. (MD) SR No.30795 of 2020

- 1.The Government of Tamil Nadu
Rep. By its Additional Chief Secretary
Department of School Education
Fort St. George, Chennai - 600 009.
- 2.The Director of Elementary Education
DPI Campus, College Road
Chennai - 600 006.
- 3.The District Elementary Educational Officer
The Officer of the District Educational Officer
Tirunelveli District.
- 4.The Assistant Elementary Educational School
Radhapuram - 627 111
Tirunelveli District. ... Petitioners/Appellants

Vs.

- 1.M.Joseph Kal Denika
St.John's Primary School
Vattavilai, Udayathroor (PO)
Radhapuram - 627 111
Tirunelveli District.
- 2.The Correspondent
St.John's Primary School
Vattavilai, Udayathroor (PO)
Radhapuram - 627 111
Tirunelveli District. ... Respondent/Respondent

Prayer in C.M.P. (MD)No.4645 of 2020 : Petition filed under Section 5 of Limitation Act to condone the delay of 1259 days in filing the Writ Appeal in W.A. (MD) SR No.30795 of 2020.



Prayer in W.A. (MD)SR.No.30795 of 2020 : Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P. (MD)No.2024 of 2017, dated 23.02.2017.

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Prayer in WP(MD).No.2024 of 2017:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS or any other appropriate writ or order or direction in the nature of a Writ calling for the records pertaining to the impugned G.O.(Ms) No.181, School Education (C2) Department,1 dated 15.11.2011, on the file of the 1st respondent and the consequential proceedings dated 27.03.2015 in Na.Ka. No. 301/A12015, on the file of the 4th respondent and quash the same in respect of the petitioner based on the Division Bench orders dated 24.08.2016 and made in W.A.No.213 of 2016 and made in W.A.(MD)No.1019 of 2013 dated 24.11.2016, directing the respondents to approve the appointment of the petitioner M.Joshph Kala Denika, working as Secondary Grade Teacher in St.John's Primary School, Vattavilai, Udayathoor(PO), Radhapuram-627 111, Tirunelveli District w.e.f. 07.10.2014, with all service benefits.

For Petitioners: Mrs.S.Srimathy,
Special Government Pleader

ORDER

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

The Official respondents, aggrieved by the order of this Court, dated 23.02.2017, made in W.P.(MD)No.2024 of 2017, has filed this writ appeal.

2. The first respondent/writ petitioner has filed the said writ petition, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records, relating to G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, on the file of the first petitioner/first appellant and the consequential proceedings, dated 27.03.2015 in Na.Ka.No.301/A1/2015, on the file of the 4th petitioner/4th appellant and quash the same, based upon the judgment of the Division Bench dated 24.08.2016, made in W.A.No.213 of 2016 as well as yet another judgment dated 24.11.2016 made in W.A.(MD) No.1019 of 2013, with a consequential direction, directing the petitioners/appellants to approve her appointment as Secondary Grade Teacher with effect from 07.10.2014 in the services of the second respondent school with all service benefits.



3. The said writ petition, after contest, came to be allowed, vide impugned order dated 23.02.2017 and aggrieved by the same, the present appeal is filed with a delay of 1259 days.

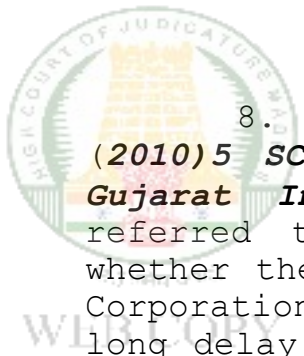
4. It is relevant to extract paragraph No.6 of the affidavit filed in support of this petition:

"6. I respectfully submit that the order was passed on 23.02.2017 and the copy of the order was made ready on 05.06.2017 and I received the copy of the order on 16.04.2019. I submitted the papers for further course of action and the higher officials had directed to file appeal. The appeal ought to have been filed within one month, but I filed the appeal belatedly. The process of getting approval is delayed and hence the appeal was filed with delay. After the papers were handed over for filing appeal the papers got mixed with and there was a delay. There is no deliberate delay in filing the writ appeal. The delay is neither wanton nor willful but for the aforesaid reasons. Therefore it is just and necessary that the delay in filing the review application ought to be condoned in the interest of justice, otherwise there will be monetary loss, several persons would come forward seeking the relief and respondents would be prejudiced and the balance of convenience is in favour of the petitioners herein."

5. The learned Special Government Pleader appearing for the petitioners/appellants would submit that insofar as the prescribe of Teacher Eligible Test qualification is concerned, the petitioners/appellants/Official respondents would not have any case and as regards the approval of the appointment of the first respondent/writ petitioner is concerned, there are surplus post available and therefore, it is not open to the school to go for a fresh appointment and she would further plead that the delay is administrative in nature and in the event of dismissal of this petition, it may be cited as a precedent in many other cases, which would result in mulcting of financial liability on the part of the Government and hence, prays for appropriate orders.

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

7. The Hon'ble Supreme Court, in the decision reported in **(2010)5 SCC 459 [Oriental Aroma Chemical Industries Limited Vs Gujarat Industrial Development Corporation and Another]** as well as the decision reported in **(2012) 3 Supreme Court Cases 563 [Postmaster General and Others Vs. Living Media India Limited and another]** had dealt with the delay in filing the appeals by the Government instrumentalities.



8. The Hon'ble Supreme Court in the decision reported in **(2010)5 SCC 459 [Oriental Aroma Chemical Industries Limited Vs Gujarat Industrial Development Corporation and Another]** has referred to its earlier decisions have formulated a question, whether the respondent therein viz., Gujarat Industrial Development Corporation, had offered any plausible or tangible explanation for a long delay of more than four years in filing of appeal and whether the High Court was justified in condoning the delay.

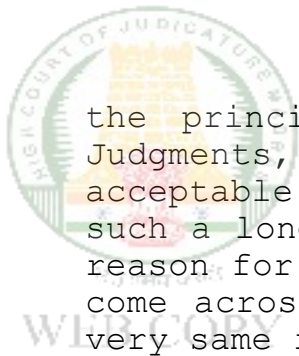
9. In paragraph No.27 of the Oriental Aroma Chemical Industries case, the Apex Court observed that *"the High Court committed grave error by condoning more than four years delay in filing of the appeal ignoring the judicially accepted parameters for exercise of discretion under Section 5 of the Limitation Act"*.

10. In **(2012) 3 Supreme Court Cases 563 [Postmaster General and Others Vs. Living Media India Limited and another]**, the Apex Court, after referring to a catena of decisions, has also referred to it's earlier decision reported in **(1996) 3 SCC 132 (State of Haryana Vs. Chandra Mani)** and has extracted paragraph No.11 of the said decision and it is useful to extract hereunder the same:

"11. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on [the] table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default, no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay."

11. This Court, testing the reasons assigned in paragraph No.6 of the affidavit filed in support of the present petition, with

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the principles laid down by the Apex Court in the above cited Judgments, is of the considered view that no tangible, plausible, acceptable and reasonable explanation have been offered to condone such a long delay of 1259 days in filing the appeal. As usual, the reason for delay is administrative in nature and this Court has also come across very many petitions filed by the Government citing the very same reasons.

12. In the absence of any tangible or acceptable explanations, this Court is of the view that such a long delay cannot be condoned and also finds no merits in the reasons assigned in the affidavit filed in support of this petition.

13. In the result, this Civil Miscellaneous Petition is dismissed and consequently, W.A.(MD)SR.No.30795 of 2020 stands rejected. However, the question of law as to the appointment of a new Teacher despite, the availability of surplus Teacher, left open, to be decided in appropriate proceedings. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar(CS)

vsm

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.

+1cc to Special Government Pleader in Sr.No.18207

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in

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24.09.2020

NR (05.10.2020) 5P 2C