



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Special Original Jurisdiction)

Wednesday, the Seventh day of October Two Thousand and Twenty

WEB COPY

PRESENT

The Hon'ble Mr. Justice S.M.SUBRAMANIAM

WMP(MD). No.15693 of 2019

in

WP(MD).No.4104 of 2008

R.Udayakumar, Asst Professor in Mechanical Engineering,
BITS, Pilani-Dubai Campus, Post Box No.500022,
Academic City, Dubai, U.A.E.
Rep by His Power of Attorney U.SUGANTHI ..Petitioner/Petitioner

Vs

- 1 The National Institute of Technology,
Rep by its Board of Governors, Trichy - 620 015.
- 2 The Director, National Institute of Technology, Trichy.
- 3 The Registrar, National Institute of Technology,
Trichy. ...Respondents/Respondents

Prayer in WMP(MD). No.15693 of 2019 :-

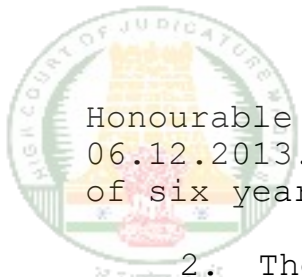
Writ Miscellaneous Petition filed Under Article 226 of the Constitution of India, praying this Hon'ble Court to condone the delay of 2033 days in filing the restoration petition.

Prayer in WP(MD).No.4104 of 2008 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the proceedings of the 2nd respondent in Rc. No. A1/512/2005 dated 05/03/2008 and quash the same as illegal

ORDER:-Writ Miscellaneous Petition coming upon for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.Kadarkarai, Advocate for the Petitioner and of M/s.J.Maria Roseline, Advocate for the respondents No.2 and 3, this Court made the following order:

This Miscellaneous Petition on hand is filed to condone the delay of 2033 days in filing the restoration petition. This



Honourable Court dismissed the writ petition for non-prosecution on 06.12.2013. This miscellaneous petition is now filed after a lapse of six years seeking restoration of the writ petition.

2. The reasons stated in the affidavit filed by the writ petitioner are that the Counsel on record had not taken any steps to inform the dismissal of the writ petition to the petitioner. It is stated that the petitioner was under impression that the further proceedings in the writ petition would be going on and the petitioner has admitted that more specific enquiry was not made by him to the learned Counsel regarding the writ petition. It is stated that the writ petitioner was patiently waiting in abroad.

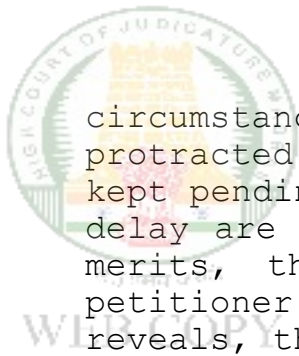
3. Learned Counsel now appearing on behalf of the writ petitioner states that the petitioner had gone to abroad (Dubai) and continued to reside there. Therefore there was a communication gap between the Counsel and the petitioner and thus there is a delay of 2033 days in filing the restoration petition.

4. The Courts cannot condone the uncondonable delay. Long delay can be condoned only on certain genuine reasons. Particularly condonation of enormous delay is impermissible. The power discretion vested with the Courts are expected to be exercised in a cautious manner. Discretionary powers are to be exercised only by recording reasons and casual condonation of enormous delay will create a bad precedent and therefore, the Courts must cautious while condoning the long delay in restoring the main cases. The reasons stated in the accompanying affidavit filed in support of the miscellaneous petition are neither candid nor convincing. The only reason stated that there was a communication gap between the Counsel and the petitioner is insufficient to condone the long delay of 2033 days.

5. When the learned Counsel understood the view of the Court in condoning such a long delay, made a submission that the merits also to be considered.

6. Without going into the merits with reference to the grounds raised, the impugned order in the main writ petition reveals that the petitioner was working as an Assistant Professor in Mechanical Engineering Department and he had not reported duty for many years. He had initially applied for leave and went abroad and thereafter the leave was not sanctioned or extended. Several notices were issued to the writ petitioner by the respondents and in spite of that, he has not joined duty.

7. It is pertinent to note that even in the present Miscellaneous Petition filed seeking restoration of the writ petition, the writ petitioner has stated that he is living in abroad. Thus the fact remains that all along the petitioner is residing in abroad and there is no intention to resume duty in the



circumstances, this Court is of the considered opinion that such protracted proceedings cannot be restored and the matters cannot be kept pending for a long time. The reasons stated for condonation of delay are unacceptable and the delay cannot be condoned and in all merits, this Court is of the considered opinion that the writ petitioner is not entitled to get any relief. This being the factum reveals, the Writ Miscellaneous Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

- 1 The Board of Governors, National Institute of Technology, Trichy - 620 015.
- 2 The Director, National Institute of Technology, Trichy.
- 3 The Registrar, National Institute of Technology, Trichy.

+1cc to Mr. J.Maria Roseline, Advocate Sr.No.19348

+1cc to Maruthu Pandiarajan, Advocate Sr.No.6820

W.M.P. (MD) No.15693 of 2019

in

W.P. (MD) No.4104 of 2008

07.10.2020

VB (14.10.2020) 3P 6C