



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

Friday, the Ninth day of October Two Thousand and Twenty

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PRESENT

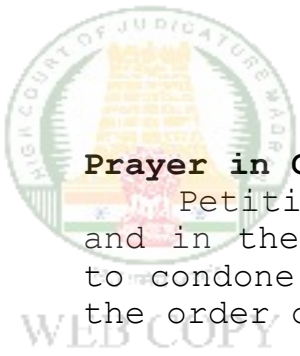
The Hon'ble Mr.Justice N.KIRUBAKARAN
and
The Hon'ble Mr.Justice B.PUGALENDHI

CMP(MD) No.11758 of 2019
IN
WA(MD) SR.No.59251 of 2019

- 1 THE DISTRICT ELEMENTARY EDUCATIONAL OFFICER,
O/O. THE DISTRICT ELEMENTARY EDUCATIONAL OFFICE,
PUDUKKOTTAI, PUDUKKOTTAI DISTRICT.
- 2 THE ADDITIONAL ASSISTANT ELEMENTARY EDUCATIONAL OFFICER,
O/O. ADDITIONAL ASSISTANT ELEMENTARY EDUCATIONAL OFFICE,
PUDUKKOTTAI,
PUDUKKOTTAI DISTRICT. ... PETITIONERS/PETITIONERS

Vs

- 1 K.PRAKASH
- 2 THE HEAD MASTER
TELC MIDDLE SCHOOL,
ARANTHANGI TALUK AND POST,
PUDUKKOTTAI,
PUDUKKOTTAI DISTRICT.
- 3 MR.JUSTICE J.KANAGARAJ,
FORMER JUDGE, HIGH COURT MADRAS,
JUDGE ADMINISTRATOR,
TELC MIDDLE SCHOOL,
P.B.No.86, TRANQUEBAR HOUSE,
TRICHIRAPALLI-620 001.
- 4 THE SECRETARY TO GOVERNMENT,
SCHOOL EDUCATION DEPARTMENT,
FORT ST.GEORGE, CHENNAI-600 009
- 5 THE DIRECTOR OF ELEMENTARY EDUCATION,
DPI CAMPUS, COLLEGE ROAD,
NUNGAMBAKKAM, CHENNAI-600 006
(RR4 AND 5 ARE SUO MOTU IMPEADED AS
PER THE ORDER OF THIS HON'BLE COURT
DATED 09/10/2020 MADE IN CMP(MD) No.11758/2019
IN WA(MD) SR.No.59251 of 2019)



Prayer in CMP(MD) No.11758 of 2019:

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 543 days in filing the Writ Appeal against the order dated 18.01.2018 in WP(MD)No.19546 of 2017.

Prayer in WA(MD)SR.No.59251 of 2019:

Writ Appeal filed under Clause 15 of Letters Patent Act, pleaded to set aside the order dated 18.01.2018 passed in WP(MD) No.19546 of 2017.

Prayer in WP(MD)No.19546 of 2017 :

Writ Petition filed under Article 226 of the Constitution of India, calling for the records relating to the impugned order issued by the 1st respondent in his proceedings in O.Mu.No.552/A3/2017, dated 20.04.2017 and quash the same as illegal and consequentially to direct the 1st respondent to approve the appointment of the petitioner w.e.f. 01.06.2015 with all consequential monetary benefits within the period that may stipulated by this Court.

ORDER : This petition coming on for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mrs.S.Srimathy, Special Government Pleader for the petitioners and taking notice on behalf of the respondents 4 and 5 and of Mr.Mohamed Imran for M/s.Ajmal Associates on behalf of the 1st Respondent and Respondents 2 and 3 are not appeared either in person or by an Advocate, the Court made the following order:-

(Order of the Court was made by N.KIRUBAKARAN, J.)

This Petition has been filed by the Educational Authorities to condone the delay of 543 days in filing the Writ Appeal, against the order passed by the learned Single Judge, dated 18.01.2018, in W.P. (MD)No.19546 of 2017.

2.Mr.Mohamed Imran, learned counsel for M/s.Ajmal Associates, appearing for the first respondent, would vehemently oppose this petition for condoning the delay stating that there is no plausible explanation for the huge delay in the affidavit filed in support of this petition. That apart, after filing the Contempt Petition in Cont.P.(MD)No.1730 of 2018, the Writ Appeal has been preferred along with the present condone delay petition. It is not only, in this case, but also, almost in all the cases, the authorities are not showing any interest for approval of appointment and also disbursement of grant-in-aid.

3.Heard Mrs.S.Srimathy, learned Special Government Pleader appearing for the petitioners and Mr.Mohamed Imran, learned counsel appearing for the first respondent.



4. In paragraph 9 of the affidavit filed in support of this petition, it has been stated by the petitioners that the order was passed on 18.01.2018 and the copy of the order was made ready on 11.07.2018 and subsequently, it was received by them on 25.07.2018. After obtaining an opinion from the learned Special Government Pleader, the petitioners have filed the Writ Appeal and the same was returned for rectifying certain defects. Thereafter, the papers got mixed up with other records and with great efforts, the papers were traced out and then only, the appeal has been filed.

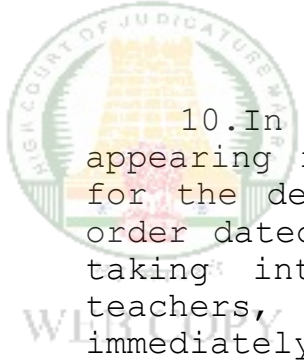
5. Stating the above reasons only, the present petition has been filed.

6. It is evident from the records that the order was passed on 18.01.2018 and the copy of the order was made ready on 11.07.2018. However, the authorities have not shown any interest to receive the order copy immediately and received the same only after 14 days i.e., on 25.07.2018. Thereafter, nothing has been stated elaborately with regard to the huge delay of 543 days. It only shows that the authorities have not acted swiftly to file the appeal. The Government is depending upon the Officials for discharging the sovereign functions and for that, the Officials are being paid from the tax payers money.

7. The first respondent has already filed Cont.P.(MD)No.1730 of 2018 in the year 2018 itself and the same is pending for more than two years. Moreover, even before filing the said Contempt Petition, notice has been issued to the petitioners. At least, thereafter, the petitioners should have been careful enough to file the appeal. Though notice was ordered in the year 2018, the petitioners have filed the appeal along with the condone delay petition only on 14.08.2019. This would show the lethargic attitude of the Education Department and the petitioners cannot put the Department as well as the State's interest in jeopardy. The Officials are supposed to act swiftly, especially, when it affects the State's interest and because of the red tapism, belatedly, the appeals are filed.

8. It is an admitted fact that in the cases filed before the Principal Seat as well as the Madurai Bench, majority of the cases is relating to Education Department. When such being the position, there should be some responsible Officers in the Department to give legal opinion. Therefore, this Court suggests that qualified Legal Advisor has to be appointed in every District. Hence, this Court *suo motu* impleads the Secretary to Government, School Education Department, Fort St. George, Chennai - 600 009 and the Director of Elementary Education, DPI Campus, College Road, Nungambakkam, Chennai - 600 006, as respondents 4 and 5. **Registry is directed to carry out the necessary amendments in the cause title.**

9. Mrs. S. Srimathy, learned Special Government Pleader takes notice for the newly impleaded respondents 4 and 5.



10. In this case, as already pointed out by the learned counsel appearing for the first respondent, there is no proper explanation for the delay of 543 days in filing the Writ Appeal, against the order dated 18.01.2018, made in W.P.(MD)No.19546 of 2017. However, taking into consideration the issue involved, namely, surplus teachers, this Court feels that it is a matter to be dealt with immediately. Further, it is brought to the notice of this Court that, so far, about 6,000 Secondary Grade Teachers, 1,750 B.T. Assistants and 100 P.G. Assistants are found to be surplus. Even though surplus teachers are available with the Aided Schools, the Schools are approaching the authorities as well as the Court for approval of appointment of teachers, without considering the surplus teachers. In this regard, the Government has to spend about Rs.444 Crores every year. The people's money is being wasted for payment of salary to the surplus teachers and therefore, the services of the surplus teachers should be utilized properly. Till that time, there should not be any approval of appointment. This was already laid down by this Court in earlier proceedings.

11. Some kind of responsibility should be fixed on the Officials. Otherwise, they will not bother about the interest of the Government, which they are supposed to discharge very onerously. In many cases, in fearing actions under the Contempt of Court, wherein the Court ordered notice, the Officials have approached this Court by way of appeals, which would definitely cause loss to the Government Exchequer and also affect the State Government's interest.

12. It is the known fact that the Revenue Department has got a Personal Assistant [Legal] to assist the District Collector and every Commissioner of Police is provided with a Legal Advisor. Similar to that, every District Chief Educational Officer should have a Legal Officer to advise them on legal matters.

13. Therefore, it is appropriate to have a Legal Advisor in each and every Educational District, so that, proper legal advice would be obtained before passing any order by the appropriate Educational Authorities. Because of lack of proper legal advice, many times, wrong orders are being passed and because of that, the interest of the Department is affected. Therefore, the newly impleaded respondents shall take a decision in this regard and file a report on or before 10.11.2020.

14. It is a well settled principle by the Hon'ble Apex Court in the case of **Chief Post Master General Vs. Living Media India Ltd., and another** reported in **2012 (3) SCC 563** that the condonation of delay is an exception and should not be used as an anticipated benefit for Government Departments and the law shelters everyone under the same light and should not be swirled for the benefit of a few.



15. Considering the fact that there was no proper explanation offered by the Department for the huge 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. However, this Court considering the issue involved in the Writ Appeal, is constrained to condone the delay. The Officials responsible for the delay should be taken to task. If any further delay is caused by any of the Officials, departmental action can be initiated against him/her, apart from the cost awarded by this Court.

16. This Court is not convinced with the reasons stated in the affidavit and therefore, while allowing this Civil Miscellaneous Petition, directs the petitioners to pay a sum of Rs.5,000/- [Rupees Five Thousand only] equally to the first respondent on or before **10.11.2020**, failing which, this Petition shall stand dismissed.

Call the matter on **10.11.2020**.

sd/-
09/10/2020

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

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.

TO

- 1 THE DISTRICT ELEMENTARY EDUCATIONAL OFFICER,
O/O. THE DISTRICT ELEMENTARY EDUCATIONAL OFFICE,
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- 2 THE ADDITIONAL ASSISTANT ELEMENTARY EDUCATIONAL OFFICER,
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Date :09/10/2020