



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2020

CORAM

**THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN**

**and**

**THE HON'BLE MR.JUSTICE P.RAJAMANICKAM**

C.M.P.(MD)No.8793 of 2019  
in W.A.(MD)SR.No.66104 of 2019  
(Through Video conferencing)

1.The Director of School Education,  
Office of the Director of School Education,  
Chennai-600 006.

2.The District Educational Officer,  
Tenkasi, Tirunelveli District.

Now at District Educational Officer,  
Sankarankovil,  
Tirunelveli District.

... Petitioners/Appellants

-Vs-

1.Gurunathan

2.The Manager,  
C.M.M.L.High School,  
Vadamalapuram-627 755  
Mullikulam via, Sivagiri Taluk,  
Tirunelveli District.

...Respondents

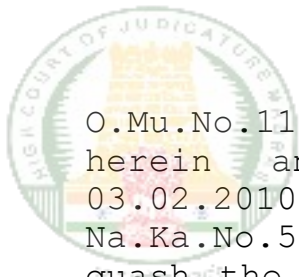
Prayer: Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 1011 days in filing the Writ Appeal as against the order in W.P.(MD)No.6783 of 2011, dated 04.10.2016.

Prayer in WA(MD).SR66104 of 2019:

This Writ Appeal Petition filed under clause 15 of Letters Patents to set aside the order dated 04.10.2016 passed in W.P.(MD) No.6783 of 2011.

Prayer in WP(MD). 6783 of 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 proceedings



O.Mu.No.114394/D2/E3/09 dated 21.12.2009 of the 1st respondent herein and consequential letter O.Mu.No.2061/A1/2009 dated 03.02.2010 of the 2nd respondent herein and consequential letter Na.Ka.No.58/2008 dated 17.06.2011 of the 3rd respondent herein and quash the same and consequently direct the respondents herein to count the matriculation service rendered by the petitioner for the period 27.10.1980 to 23.07.1992 for pay fixation and pensionary benefits with all attended benefits.

For petitioners : Mrs.S.Srimathy,  
Special Government Pleader.  
For R1 : Mr.T.Pon Ramkumar  
For R2 : Mr.P.Santhoshkumar

**ORDER**

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

The official respondents in W.P.(MD)No.6783 of 2011 are the appellants. The first respondent/writ petitioner made a challenge to the proceedings of the first appellant dated 21.12.2009 and the consequential proceedings of the second appellant dated 03.02.2010 as well as the consequential letter dated 17.06.2011, by filing the writ petition.

2. The long and short case of the first respondent/writ petitioner is that he prayed for counting the service rendered by him for the period between 27.10.1980 and 23.07.1992 in an un-aided minority institution to be taken into consideration for pay fixation and pensionary benefits with all attendant benefits. The said plea was strongly opposed by the official respondents.

3. The learned Single Judge, having taken note of the judgments rendered by the Hon'ble Supreme Court of India reported in **1995 (Sup) (1) SCC 18 (Sahib Ram Vs. State of Haryana and others), 2009 (3) SCC 475 (Syed Abdu Qabir and others Vs. State of Bihar and others)** and as regards the recovery of the amount has also placed reliance upon the judgment reported in **2015 (4) SCC 334 [State of Punjab and others Vs. Rafiq Masih (White Washer) and others]** as well as a judgment dated 12.11.1999 in W.A.(MD)Nos.291 and 292 of 1999, had allowed the writ petition with a further direction to count the service rendered by the petitioner in the matriculation school between 27.10.1980 and 23.07.1992 for pay fixation and pensionary benefits with all benefits.

4. The official respondents, aggrieved the said order, have filed the writ appeal on 16.09.2019. The reasons for the delay  
<https://hcservices.ecourts.gov.in/hcservices/>



was stated in paragraph No.7 of the affidavit and it is relevant to extract the same:

'7. I respectfully submit that the order was passed on 04.10.2016 and the copy of the order was made ready on 01.11.2016 and I received the copy of the order on 29.11.2016. I submitted the papers for further course of action and the higher officials had directed to obtain legal opinion from the Special Government Pleader and the opinion was rendered as not fit for appeal. Thereafter the file was placed before the higher authorities for further course of action along with the opinion and the papers were lost. On reminder the higher authorities had directed to produce the entire file. In the meanwhile the higher authorities had received several such cases and on reviewing the entire issue had decided to file an appeal. Thereafter the papers were placed before the Special Government Pleader for filing the appeal for second opinion. The Special Government Pleader had rendered an opinion that in a similar case a review had been preferred and the same is pending. Since there are two different judgments on the same issue and the claim is an illegal one the Special Government Pleader had directed to file an appeal. 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 review application. The delay is neither wanton nor wilful 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 official respondents would submit that admittedly, the service rendered by the petitioner in the School viz., St.Marris Matriculation Higher Secondary School, Sembium, Chennai-11, for the period between 27.10.1980 and 23.07.1992, cannot be counted for any service benefits for the reasons that, it is not an aided institution and would further submit that there are subsequent orders in W.P.(MD)Nos.4494/2009, 649/2012, 8661/2011, 20419/2015 and 20326/2008, wherein similar stand taken by the writ petitioners/teachers had been rejected and she would further add that since the appellants are having strong case on merits, this



Court may condone the delay by imposing costs.

6. The learned counsel appearing for the first respondent/writ petitioner strongly opposes this petition by submits that the reasons stated by the petitioners / appellants are merely administrative in nature and the delay is nearly three years and odd and in the absence of proper and sufficient reasons, the huge delay cannot be condoned and he would further add that initially, an opinion was given not to prefer the writ appeal and on the basis of the subsequent opinion, the present writ appeal has been preferred with a huge delay and therefore, it cannot be condoned and prays for dismissal of this petition.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. In **(2012) 3 SCC 563 [Postmaster General and others Vs. Living Media India Limited and another]**, there was a delay of 427 days by the postal Department in filing Special Leave Petition against the order of the Division Bench of Delhi High Court, upholding the order passed by the learned Single Judge and the Hon'ble Supreme Court after surveying and taking into consideration the various judgments, has held that the explanation of delay offered by the petitioner namely Postmaster General have not been convinced and also took note of the observation in paragraph No.30 of the judgment reported in **(2018) 17 SCC 448 [Pundlik Jalam Patil (D) By Lrs Vs Exe. Eng. Jalgaon Medium Project & Another]**, wherein it has been observed that "the settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest'.

9. In **2010 5 SCC 459 (Oriental Aroma Chemical Industries Limited Vs. Gujaraj Industrial development Corporation and another)**, a Special Leave Petition was preferred challenging the order passed by the Division Bench of the Gujarat High Court condoning the delay of more than 4 years in filing the appeal and the Hon'ble Supreme Court of India, after considering the earlier judgments has held that delay has not been properly explained and therefore allowed the appeal and thereby dismissed the petition for condonation of delay.

10. This Court, keeping in mind the principles set out in the said judgments for condoning huge days of delay, had carefully gone through the affidavit filed in support of this petition.



11. In paragraph No.7 it is averred that the impugned order in the writ appeal was passed on 04.10.2016 and order copy was made ready on 01.11.2016 and was taken delivery on 29.11.2016 and thereafter, the papers travelled to various places for getting opinion and there was an initial opinion given the advice not to prefer appeal, but the present writ appeal preferred as per second opinion. The appeal came to be filed on 16.09.2019, though the certified copy of the order was received as early as on 29.11.2016. Though it is not obligatory on the part of the petitioners/appellants to explain each and every days delay in filing appeal, the facts remains that except stating the administrative reasons, no specific averments have been made as to the reasons for such an enormous administrative delay.

12. Therefore, this Court is of the view that the delay of 1011 days in filing the appeal against the impugned order allowing the writ petition, have not been properly explained. At this juncture, the learned Special Government Pleader would represent that dismissal of the delay petition may prejudice the case of the education department in pending writ appeals/writ petitions which were preferred against the similar kind of matters.

13. This Court heard the submission of the learned counsel appearing for the first respondent/writ petitioner. Since this Court is dismissing the condone delay petition and not going to the merits of the matter, especially, the questions of law pleaded in other writ appeals, it may not prejudice the interest of the Department in pending writ appeals.

14. In the result, C.M.P.(MD)No.8793 of 2019 is dismissed and consequently W.A.(MD)SR.No.66104 of 2019 is rejected at SR stage. No costs. However, it is once again made clear that the question of law as to the entitlement of a teachers to count their past services rendered in unaided Educational Institutions left open to be decided in the pending writ appeals/writ petitions.

Sd/-

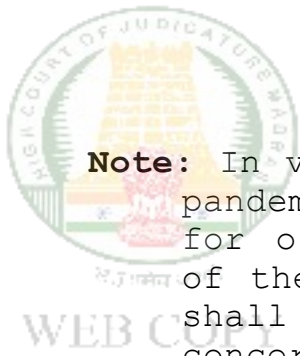
Assistant Registrar(AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsm/gns



**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 Director of School Education,  
Office of the Director of School Education,  
Chennai-600 006.
- 2.The District Educational Officer,  
Tenkasi, Tirunelveli District.  
Now at District Educational Officer,  
Sankarankovil,  
Tirunelveli District.

Order made in  
C.M.P. (MD)No.8793 of 2019  
in W.A. (MD)SR.No.66104 of 2019  
16.07.2020

AL(CO)  
TR(23.07.2020) 6P 3C