

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2034 of 2021

L.Gurusamy

... Petitioner

-vs-

1. The Director General of Police,
Tamil Nadu,
Mylapore,
Chennai 600 004.

2. The Inspector General of Police,
Kanchipuram Range,
Kanchipuram District.

... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the first Respondent to consider and pass orders on the Review Petition dated 17.01.2020 (along with the Petition seeking condonation of delay dated 17.01.2020) preferred by the Petitioner against the order of dismissal from service passed by the second Respondent dated 25.09.2019 within a time frame.

For Petitioner : Mr.S.Balakrishnan
for Mr.M.Ravi

For Respondents : Mr.P.Karthikeyan,
Additional Government Pleader

ORDER

Petitioner has come up with this Writ Petition seeking a direction to the 1st Respondent to consider and pass orders on the Review Petition dated 17.01.2020 along with the Petition dated 17.01.2020, seeking condonation of delay preferred against the order of dismissal from service, dated 25.09.2019 passed by the second Respondent.

2. According to the Petitioner, while he was serving as Inspector of Police - Traffic, Guduvancherry Police Station, Kanchipuram District, he was implicated in a false criminal case registered in Crime No.4 of 2008 by the Vigilance and Anti-Corruption Unit under Sections 7, 13(2) r/w Section 13(1) of Prevention of Corruption Act, 1988. The Special Judge and Chief Judicial Magistrate, Chengelpet, vide judgment dated 08.11.2018 in S.C.No.15 of 2010, convicted and sentenced the Petitioner to undergo Simple Imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo Simple Imprisonment for six months for the offence under Section 7 of the Prevention and Corruption Act, 1988, and to undergo Simple Imprisonment for a period of three years and to pay a fine of Rs.5,000/- in default to undergo Simple Imprisonment for six months under Section 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Challenging the said judgment of conviction, the Petitioner preferred Criminal Appeal No.775 of 2018 before this Court, seeking suspension of sentence. By an interim order dated 30.01.2019, this Court suspended the sentence of imprisonment. However, the Criminal Appeal is pending disposal.

3. While so, the Deputy Inspector General of Police, Kanchipuram Range, in and by proceedings vide R.C.No.B2/4131/2019, dated 23.05.2019, issued a Show Cause Notice to the Petitioner under Rule 3(c)(i)(1) of the Tamil Nadu Police Subordinate Service (D & A) Rules, 1955 and PSO No.66(4) and (5), as to the dismissal of the Petitioner from service for his conviction in the said criminal case. Pursuant thereto, the Petitioner was dismissed from service on 25.09.2019.

4. Aggrieved by the order of dismissal, the Petitioner filed a Review Petition dated 17.01.2020 before the 1st Respondent along with a Petition to condone the delay in filing the same. As the same did not evoke any response, the Petitioner is before this Court with the above Writ Petition.

5. Learned counsel for the Petitioner contended that, when the substantive sentence imposed on the Petitioner has been suspended by an order of this Court, the 2nd Respondent ought not to have imposed the penalty of dismissal from service, which is unsustainable.

6. In reply, learned Additional Government Pleader appearing for the Respondents submitted that, an Appeal has to be preferred within 90 days and that, there is a delay of four months in preferring an Appeal.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. As regards condonation of delay, a Division Bench of this Court in the case of M/s Ruskim sea Foods Limited vs. M/s Evergreen Sea Foods Pvt. Ltd (order dated 15.02.2018 in C.M.P.Nos.21784 and 21785 of 2017 in OSA No.SR79476 of 2017), has held as under:

"32. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Concerned Court. Also, it is true that the length and breadth of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with / condone the aspect of 'Condonation of Delay'. However, in this regard, the Petitioner / concerned litigant is to offer / ascribe sufficient reasons or project sufficient cause or good cause to condone the delay with a view to enable the Concerned Court to take a liberal view with a view to secure the ends of justice.

33. It is to be borne in mind that the term 'Sufficient Cause' under Section 5 of the Limitation Act, 1963 is an elastic one to enable the Court to apply the Law in a meaningful fashion, with a view to secure the ends of justice. However, 'Sufficient Cause' / 'Good Cause' is a condition precedent for exercise of discretion by the Concerned Court in regard to the 'Condonation of Delay'. If the delay in question is not either properly or satisfactorily and convincingly explained, the Court of Law cannot condone the delay on sympathetic ground alone, as per decision of Hon'ble supreme Court Brijesh Kumar V. State of Haryana reported in AIR 2014 SCC at Page 1612.

34. In considering a Petition for 'Condonation of Delay', no straight jacket cast iron formula is enunciated to arrive at a conclusion if sufficient / good grounds are made out or not. In short, each case is to be looked into based on the facts and

circumstances, in which a litigant acts / conduct himself, in the considered opinion of this Court. 'Where a sufficient cause' or 'good cause' is not shown, then, no question of 'Condonation of Delay' arises, as opined by this Court."

9. Hard and fast Rule cannot be made applicable in not approaching the Authority within the time limit. Discretion vests with the Authority concerned to condone the delay. Also, it is true that the length and breadth of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with the aspect of 'Condonation of Delay'.

10. Hence, the 1st Respondent herein is directed to consider the Review Petition dated 17.01.2020 filed by the Petitioner along with the Petition to condone the delay, and if there are any specific reasons, the delay can be condoned by the Authority concerned and thereafter, the Review Petition can be entertained, after affording an opportunity of hearing to the Petitioner, so that, there can be finality to the issue in question. The 1st Respondent is expected to pass final orders within a period of four months from the date of receipt of a copy of this order.

This Writ Petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

(aeb)

To:

1. The Director General of Police, Tamil Nadu, Mylapore, Chennai 600 004.
2. The Inspector General of Police, Kanchipuram Range, Kanchipuram District.

W.P.No.2034 of 2021

sr-II[co]
srg 14/07/2021