

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.04.2021

CORAM:

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

C.M.P.NO.11486 OF 2018
IN
REV.APPL.NO.SR46040 OF 2018

1. The Government of Tamil Nadu
rep.by its Secretary to Government,
School Education Department, Secretariat,
Chennai 9.
 2. The Director of Elementary Education,
College Road, Chennai 600 006.
 3. The District Elementary Educational Officer,
Salem.
 4. The Additional Assistant Elementary
Educational Officer, Salem - 1.
-Appellants/Petitioners
- Vs
1. M.Sugantha Jayanthi
 2. The Secretary,
Bala Krishnavilas Aided Primary School,
No.1, Dharmalingam Street,
Linemedu, Salem 1.
- .. Respondents

Prayer:-

Delay petition filed under Section 5 of the Limitation Act to condone the delay of 1291 days in filing the above review petition against the order dated 05.11.2014 in W.A.No.97 of 2012.

W.A.No.97 of 2012:-

Appeal filed under clause 15 of Letter Patent Act against the Order of this Court, dated 21.09.2011 and made in W.P.No.19679 of 2009.

W.P.No.19679 of 2009:-

Petition praying for the issue of a Writ of Mandamus directing the 3rd respondent to approve the appointment of the petitioner as Secondary Grade Teacher w.e.f. 25.09.1998 as per G.O.Ms.No.150 School Education (P1) Department, dated 02.07.2007 with all consequential benefits.

For Petitioners : Mr.C.Munusamy
Special Government Pleader (Education)

For Respondent : Mr.S.N.Ravichandran

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J., through Video Conferencing]

The petitioner, alleging wilful disobedience and deliberate non compliance of the judgment dated 05.11.2014, made in W.A.No.97 of 2012, came forward to file this Contempt Petition No.3391 of 2014. However, the said order has not been complied with for nearly six years and belatedly Rev.Appl.No.SR46040 of 2018, came to be filed on 19.06.2018 with a delay of 1291 days in filing the Review Application.

2. It is relevant to extract paragraph no.10 of the affidavit filed in support of the Civil Miscellaneous Petition:

'10. It is submitted that the learned Special Government Pleader has opined that it is a fit case for filing Review Application, against the orders passed by the Hon'ble Court in W.A.No.97 of 2012. It is most humbly submitted that there were frequent transfer of officers and staff in the office of the Review petitioners/respondents which has also attributed to the delay in filing the Writ Appeal/ review Applications. It is submitted that the review applicants not able to trace out for time from 2014 to 2017 December, after trace out to time got to legal opinion from Law officer and get approval from higher officer and prepare to draft and got to approval from the law officer, hence delay in long time. Subject to explain the delay in details. The delay in filing the review application is neither wilful nor wanton but due to above administrative reasons. Unless the delay is condoned, the Review petitioner's department will be put into irreparable loss and hardship. It is further submitted that if

the order of the Hon'ble Court being implemented in the case of similarly placed persons, the petitioners /respondent department will face undue hardship and will incur heavy financial loss to the Government.''

3. There is absolutely no tenable, reasonable or plausible reasons have been assigned for condonation of such a huge delay. It is a well settled position of law that in the absence of any tenable or acceptable explanation, such a huge delay cannot be condoned.

4. The Hon'ble Supreme Court of India in catena of decisions has considered the said issue and in the decision reported in 2010 [5] SCC 459 [Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation and another], has considered the scope of the discretion of the Court in condoning the delay if sufficient cause is shown and it is relevant to extract paragraphs No.14 and 15 of the said judgment:-

'14 We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15 The expression 'sufficient cause' employed in Section 5 of the Limitation Act, 1963, and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard-and-fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector [L.A] Vs. Katiji [1987 [2] SCC 107] ; N.Balakrishnan Vs. M.Krishnamurthy [1998 [7] SCC

123 and Vedabai Vs. Shantaram Baburao Patil
[2001 [9] SCC 106.]]

9 In the decision reported in 2012 [5] SCC 157 [Maniben Devraj Shah Vs. Municipal Corporation of Brihan, Mumbai], the Hon'ble Apex Court has held in paragraph No.24 as follows:-

''24 What colour the expression ''sufficient cause'' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. It, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.''

10 In Office of the Chief Post Master General and Others Vs. Living Media India Limited and another reported in 2012 [2] SCALE 782, the Hon'ble Apex Court, in paragraphs No.12 and 13, has observed as follows:-

''12 It is not in dispute that the person[s] concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies

being used and available. The law of limitation undoubtedly binds everybody including the Government.

13 In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the 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. Accordingly, the appeals are liable to be dismissed on the ground of delay."

Therefore, this Court is not inclined to condone the delay of 1291 days in filing the review application.

5. In the light of the reasons assigned above, C.M.P.No.11486 of 2018 is dismissed and consequently the Review Application Sr.No.46040/2018 is rejected. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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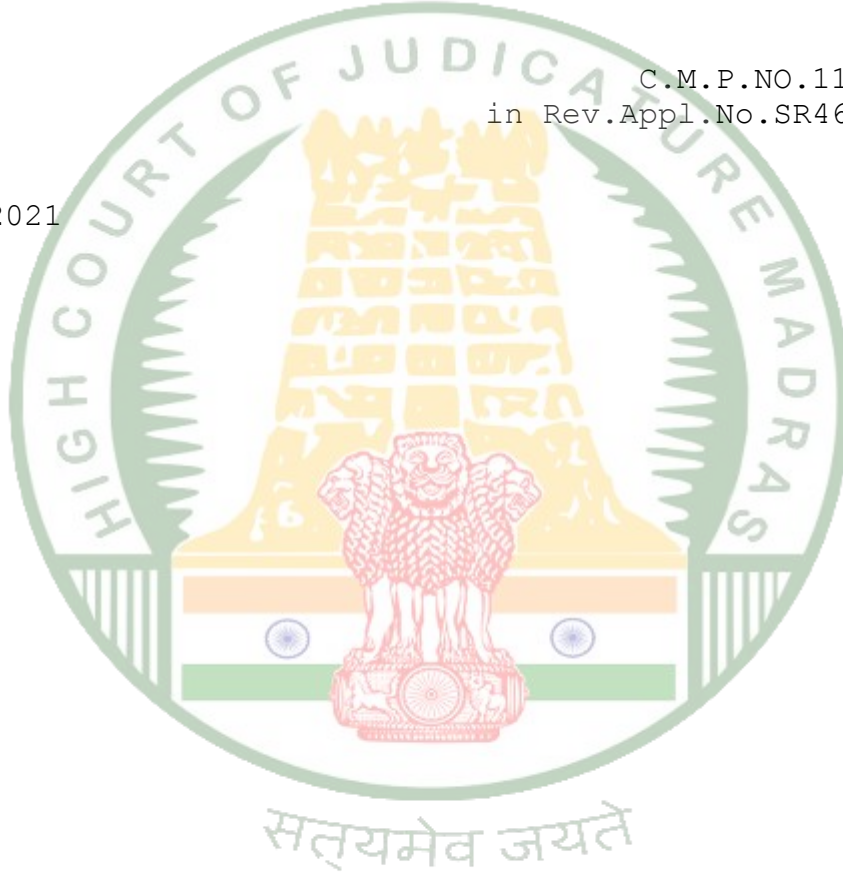
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+1cc to the Government Pleader, S.R.No.27055

C.M.P.NO.11486 of 2018
in Rev.Appl.No.SR46040 of 2018

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CS/28/06/2021



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