



WEB COPY



C.M.P. No. 586 of 2022
in
W.A.SR No. 3576 of 2022

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S. VAIDYANATHAN,J.

AND

MOHAMMED SHAFFIQ,J.

The above C.M.P. is filed to condone the delay of 1336 days in filing the writ appeal.

2. The delay is sought to be explained by means of a better affidavit and one of the main contentions is that due to *Gaja Cyclone*, which hit Tamil Nadu in November, 2018, from December 2018 to March, 2019, the petitioner was engaged in inspection of schools and conduct of final examination in the schools under his control. During April, 2019 to May, 2019, the appellant was engaged in duties relating to General Election of Parliament followed by inspections and conduct of examinations in the



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Elementary Schools for the academic year 2019-2020 and he was not in a position to prefer the appeal well within time. The petitioner would further state that there was lockdown on account of pandemic from 22.03.2020. Therefore, it is submitted on behalf of the petitioner that taking note of the aforesaid reasons, the delay may be condoned.

3. Though the learned counsel for the respondent vehemently opposed the delay petition and submitted that *Gaja cyclone* has got nothing to do with the work of the petitioner and that there is enormous delay and hence, the petition has got to be dismissed. Further, he would argue that there is no reason given in the better affidavit filed with regard to the delay as each day's delay has to be explained for the period from January, 2021 to December, 2021.

4. In response to the above submissions, Mrs. Mythreyee Suresh, learned Special Government Pleader would submit that the delay may be condoned as the petitioner has got a good case on merits in the appeal in



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terms of Rule 23 of Tamil Nadu Pension Rules, 1978, which provides for forfeiture of service in case the employee resigns from service. The said Rule would squarely apply to the case of the respondent as the respondent, apart from being on leave for more than 5 years, had also resigned from service and therefore, the order of the learned Single Judge is liable to be interfered with on merits. The learned Special Government Pleader would submit that the delay may be condoned on terms.

5. Heard both sides.

6. Though it has been contended on behalf of the respondent that each and everyday's delay has got to be explained, in the light of the judgment of the Hon'ble Apex Court in ***Shakuntala Devi Jain V. Kuntal Kumari [(AIR 1969 SC 575)]***, wherein it was held that the words “sufficient cause” under Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, we are of the view that it is suffice that the petitioner has explained the delay upto the date of lockdown



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and further, based on the interpretation of Rule 23 of aforesaid Rules and its applicability, the case of the respondent has to be decided, we are inclined to condone the delay, however, on payment of costs.

7. Accordingly, the delay of 1336 days in filing the writ appeal is condoned imposing cost of Rs.50,000/- (Rupees Fifty Thousand only) payable by the petitioner within a period of two weeks from the date of receipt of a copy of this order, 50% of which is to be recovered from the officer, who is responsible for not following up the matter and bringing up the writ appeal well within time. It is open to the Officer concerned to pay the amount in five instalments by allowing the appellant to deduct the money from his salary. If he/she refuses to pay the cost, disciplinary proceedings can be initiated against him/her for not discharging his/her duties and not maintaining absolute integrity and devotion to duty, which is unbecoming of a member of the service and adverse entry can also be entered in the service records. Out of the total sum of Rs.50,000/-, a sum of Rs.25,000/- shall be paid to the respondent/writ petitioner and the remaining



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sum shall be paid to ***"Winner Society for Disabled Care and Women Empowerment, No.181, Sri Mahalakshmi Nagar, Vazhapet – 607 105."***

8. The C.M.P. is ordered accordingly.

nv

(S.V.N.J.) (M.S.Q.J.)
18.03.2022



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