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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.03.2022

Coram :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

CMP.No.2446 of 2022
in
W.A. SR.No.12942 of 2022

The Chairman,
Teacher Recruitment Board,
College Road, Chennai - 6.

...Appellant

Vs.

1.E.Agalya

2.The Director of Higher Secondary School,
Education, College Road,
Chennai - 6.

3.The Chief Educational Officer,
Erode District.

4.The District Educational Officer,
Erode District.

... Respondents

Prayer: This Civil Miscellaneous Petition filed under Clause 15 of the Letter Patent praying to condone the delay of 2955 days in filing the above writ appeal against the order dated 05.12.2013 made in W.P.No.33030 of 2013.

Prayer in W.P.No.33030 of 2013:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 and 2 to select and appoint the petitioner to the post of Graduate Assistant based on the Certificate verification held on 12.5.2010 conducted by the Teachers Recruitment Board the 1st respondent herein in respect of the selection to the post of Graduate Assistant for the year 2009-10



without insisting for appearance and pass in the Teachers Eligibility Test.

For Appellant : Mr.R.Neelakandan

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Additional Advocate General
Assisted by Mr.KV.Sanjeevkumar
Special Govt. Pleader

For Respondent 1: Mr.S.Vijayakumar

For Respondents : No appearance
2 to 4

ORDER

This Civil Miscellaneous Petition has been filed to condone the delay of 2955 days in filing the above writ appeal against the order dated 05.12.2013 made in W.P.No.33030 of 2013.

2. The petitioner herein on earlier occasion, had filed W.A.No.2503 of 2021 dated 04.10.2021, challenging the order made in Rev.Appl.No.304 of 2014, in which one of us (SVNJ), while dismissing the said writ appeal held as follows:

".... The original order has not been challenged, as the learned single Judge has confirmed the original order in the writ petition in W.P. No.33030 of 2013 dated 05.12.2013.

2. In view of the same, we are not inclined to interfere with the order. This Court makes it very clear that, if the original order is interfered with, automatically Review order will go, as the Review has not been filed against the modified order, but against the confirmed order in writ petition. It is open to the appellant to challenge the original order and this Court will consider the same, when it is taken up for hearing.

3. In view of the same, the writ appeal is dismissed...."

3. Per Contra Mr.S.Vijayakumar, learned counsel appearing for the 1st respondent herein contended that there was a delay of 2 years in filing the Review Application and that almost a decade has gone by from the date of the order made in W.P.No.33030 of 2013. He further contended that sufficient reasons have not been adduced in support of condonation of delay and therefore this CMP is liable to be dismissed.



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4. By placing reliance on the same, it is submitted by Mr. Neelakandan, learned counsel for the petitioner herein that unless candidates clear the Teacher Eligibility Test (TET), they will not be entitled to any claim in respect of appointment etc.,

5. Heard both sides.

6. We are not inclined to go into the merits of the matter. However, it is made clear that if similarly placed candidates approach this Court, we will not grant any relief to them as their claim would be barred by limitation. The issue involved in this case had already been settled and we do not want to unsettle the issue, which will amount to opening the Pandora box.

7. It is apposite to point out that even if the delay is enormous, if there is any justifiable ground, the delay has to be condoned. Assuming that, the delay is very small and the reasons are not germane, the Court cannot condone the same. In a similar circumstance, a Division Bench of this Court (SVNJ & MVJ), by an order dated 15.02.2018, in the case of M/s. Ruskim Sea Foods Limited vs. M/s. Evergreen Sea Foods Pvt. Ltd., reported in MANU/TN/0876/2018, which were filed to condone the delay of 765 days in preferring the Appeal, dismissed the said Petitions. Relevant Paragraph of the said decision is extracted hereunder:

"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.

8. While dealing with yet another similar issue of condoning a huge delay, a Division Bench of this Court, has observed as follows:

"4. The Court, in exercising discretion, particularly in these types of Petitions, has to see



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the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to nonchalant attitude should be curbed at the initial stage itself.

5 . Considering the above aspects and further the Affidavit filed for condoning the delay, did not contain any details as to how the delay of 1860 days had occurred and that no plausible and proper explanation was assigned for each and every day's delay, we are of the view that it is a fit case where the discretion cannot be exercised for condonation of the delay. Accordingly, the Miscellaneous Petition seeking condonation of 1860 days delay in preferring the Appeal is dismissed. Consequently, the Writ Appeal also stands dismissed."

9. The Hon'ble Supreme Court in a recent judgment in the case of Majji Sannemma @ Sanyasirao vs Reddy Sridevi and others, reported in MANU/SC/1269/2021, has held as follows:

"7.3 In the case of Pundlik Jalam Patil (supra), it is observed as under:-

"The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to



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dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy." 7.4 In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature. 7.5 In the case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and "do not slumber over their rights".

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos.1 and 2 herein - appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning



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given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein - original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.

9. In view of the above and for the reasons stated above, the present Appeal is Allowed. The impugned order dated 16.09.2021 passed by the High Court condoning the delay of 1011 days in preferring the Second Appeal by respondent Nos.1 and 2 herein is hereby quashed and set aside. Consequently, Second Appeal No.331 of 2021 preferred by respondent Nos.1 and 2 herein stands dismissed on the ground of delay. The present Appeal is accordingly Allowed. However, there shall be no order as to costs."

10. For all the reasons stated above, we are not inclined to condone the delay. Thus, the Civil Miscellaneous Petition is dismissed. Consequently, the connected Writ Appeal in SR stage stands rejected. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

smn/mka

To:

1. The Chairman, Teacher Recruitment Board,
College Road,
Chennai - 6.
2. The Director of Higher Secondary School,
Education, College Road,
Chennai - 6.
3. The Chief Educational Officer,
Erode District.



4.The District Educational Officer,
Erode District.

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+1cc to Mr.S.Vijayakumar, Advocate Sr.13317

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srg 23/03/2022