

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.348 of 2021
In
Civil Writ Jurisdiction Case No.15423 of 2019

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1. The Dy. Development Commissioner- cum- C.E.O. District Board, Saran (Chhapra).
 2. District Programme Officer (Establishment) Saran (Chhapra).

... .. Appellant/s

Versus

1. Mamta Kumari D/o Ajay Kumar Chaurasiya Resident of Kamalpur, P.s.- Khagaria, District- Khagaria.
2. The State of Bihar Through the Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Principal Secretary Education Department, Government of Bihar, Patna.
4. The Director Secondary Education Department Government of Bihar, Patna.
5. The Regional Deputy Director of Education Saran (Chhapra).
6. The District Education Officer Saran (Chhapra), District- Chapra.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Nikesh Kumar, Adv.
For the Respondent No.1 : Mr. Shashi Bhushan Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

9 24-02-2023 **Re. I.A. No. 3 of 2023 and L.P.A. No. 348 of 2021**

No good ground has been made out by the appellants/applicants for condonation of delay of 1 years and 232 days in preferring this appeal.

It would be worth mentioning here that earlier



I.A. No. 1 of 2021 was filed for condonation of delay. However on finding no sufficient material on record to justify the delay in filing appeal, the aforementioned I.A. No. 1 of 2021 was rejected, but reserving the liberty to file fresh interlocutory application for the needful within a period of three months, subject to payment of cost of Rs.3,000/-.

Pursuant to the aforesaid order, another I.A. No. 03 of 2023 has been filed. However, this time again, the application, only states that the appellant is Zila Parishad, Saran through its Chief Executive Officer who has to act upon after complying the official formalities including getting approval from the State Government.

It is contended that the Chief Executive Officer vide his letter no. 38 dated 07.02.2020 had sought guidelines from the Director, Secondary Education, Bihar, who in turn vide his letter no. 536 dated 03.03.2020 issued the required guidelines. Soon thereafter, the entire nation went into complete lock-



down on account of Covid-19 Pandemic. Hence some delay occurred in preferring the memo of appeal.

It is needless to say that the order under appeal was passed on 31.07.2019 and the present LPA has been preferred on 20.04.2021 after a huge delay of one year and 232 days i.e. 597 days.

Times without number, this Court as well as the Apex Court have repeatedly discouraged the State Government and public authorities in adopting a stance that they can approach the court as and when they please, ignoring the period of limitation prescribed by the statute. It is true that even upon showing a sufficient cause, a party is not entitled to condonation of delay as a matter of right; yet it is trite that in construing the sufficient cause, the Courts generally following liberal approach, particularly, when no negligence, inaction or mala fide can be imputed.

The Hon'ble Apex Court, while considering the identical matter in the case of ***Postmaster General Vs.***



Living Media India Ltd, (2012) 3 SCC 563, has deprecated such practice on the part of the Government authorities/departments in the following words:

"27. *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.*

28. *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 fides, 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.

29. *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 bona fide 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."*

Recently in a two Judges' Bench decision of the



Hon'ble Supreme Court in the case of ***Union of India and Others Vs. Vishnu Aroma Pouching Private Limited and Another, (2022) 9 SCC 263***, relying on the aforesaid judgment, it has been held as follows:

"4. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in Postmaster General v. Living Media India Ltd. [Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] Despite this, there seems to be little change in the approach of the Government and public authorities.

5. We have also categorised such kind of cases as "certificate cases" filed with the only object to obtain a quietus from the Supreme Court on the ground that nothing could be done because the highest Court has dismissed



the appeal. The objective is to complete a mere formality and save the skin of the officers who may be in default in following the due process or may have done it deliberately. We have deprecated such practice and process and we do so again. We refuse to grant such certificates and if the Government/public authorities suffer losses, it is time when officers concerned responsible for the same, bear the consequences. The irony, emphasised by us repeatedly, is that no action is ever taken against the officers and if the Court pushes it, some mild warning is all that happens.”

In view of the aforesaid settled proposition of law and the facts showing no sufficient cause, I.A. No. 3 of 2023, for condonation of delay of 1 years and 232 days in preferring this appeal, is dismissed.

Consequently, the appeal also stands dismissed.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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