



Rev.Aplc.(MD)No.134 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

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and

C.M.P.(MD)No.9604 of 2022

1.The Director of School Education,
College Road,
Chennai -6.

2.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

3.The District Educational Officer,
Valliyur,
Tirunelveli District.

...Appellants

/Vs./

1.J.Jasmine

2.The Correspondent,
T.D.T.A.Middle School,
Talavaipuram,
Tirunelveli District.

...Respondents



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PRAYER:- Review Application - filed under Order 47 Rules 1&2 of CPC r/w. Section 114 of CPC, to review the order passed by the Division Bench of this Court in C.M.P.(MD)No.2272 of 2021 in W.A. (MD)No.SR11686 of 2021 and allowing the Review Application.

For Appellant : Mr.D.Sadiq Raja
Additional Government Pleader
For Respondents : Mr.S.Chellapandian (R1)

JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

This review application has been filed as against the order passed in CMP(MD)No.2272 of 2021 and WA(MD)No.SR11686 of 2021 on 08.06.2021, this Court finding that no sufficient cause existed for condonation of delay of 662 days.

2. At the outset, the Review Application is of the year 2022 and there was no action taken to pursue the same till, all of a sudden, a mention was made for urgent listing. The urgency expressed was that the writ petitioner had moved a contempt petitioner before this Court and orders adverse to the state were imminent in that contempt petition.



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3. At first blush, we found no necessity whatsoever to consider review of order dated 08.06.2021, as the order is categoric to state that the reasons set out in paragraph 7 of the affidavit dated 30.07.2020 filed by the State did not show any cause, let alone sufficient cause, to justify the delay. Paragraph 7 of that affidavit reads as follows:

“I respectfully submit that the order was passed on 05.04.2019, the copy was made ready on 23.05.2019, the copy was issued on 25.05.2019 and the copy was received on 10.06.2019. Thereafter on instructions an opinion was sought from the Special Government Pleader whether this is a fit case for filing appeal. It is submitted that the Special Government Pleader has opined that the case is fit for appeal and was pleased to direct the officials to file an appeal. After obtaining the legal opinion of the Special Government Pleader, sincere efforts were taken to file the appeal petition as early as possible. Hence there was delay and the delay is neither willful nor wanton, but for the aforesaid reasons. Therefore in the interest of justice the delay ought to be condoned.”



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4. Mr.D.Sadiq Raja, learned Additional Government Pleader, who appears for the State now however, sings a totally different tune before us, pointing out that there had been a gross error in the earlier affidavit filed by the State. He would submit that inadvertently, erroneous procedure had been followed and instead of moving a writ appeal, the State had moved a Petition for Special Leave before the Hon'ble Supreme Court, having been of the impression that that was the proper course of action to adopt.

5. That SLP and connected interim application duly notarized, are dated 25.07.2019 falling within the stipulated period of 90 days from the date of receipt of a certified copy of the writ order. Thereafter, the matter had been pending with the counsel at the Supreme Court and had been received back after several reminders on the part of the State, only in December, 2019.



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6. Upon receipt thereof, the matter was followed up in January and February, 2020. An opinion was sought from the learned Additional Government Pleader. Opinion was obtained in March, 2020 to the effect that the appeal ought to have been filed before the Division Bench of the High Court and not before the Supreme Court. While the State was in the process of preparing and filing writ appeal, country wide lockdown was imposed on account of Covid-19 pandemic.

7. The Hon'ble Supreme Court had also taken suo motu cognizance of the same in March 2020 when orders had been passed protection proceedings from the bar of limitation. Such protection extended till 01.03.2022. As the writ appeal had been filed on 25.02.2021, the period between 15.03.2020 to 25.02.2021 would stand covered by the protection afforded by the Hon'ble Supreme Court. As for the period prior thereto, suitable and sufficient justification had been furnished so as to explain the delay. This, in substance were the submissions of the State.



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8. We permitted the State to file an additional affidavit as the entirety of the explanation now put forth by the learned Additional Government Pleader was at variance from what had been filed in the original instance, as seen from para 7 of the original affidavit extracted above. Affidavit dated 28.08.2023 had come to be filed by the present District Educational Officer, Valliyoor, Tirunelveli District and the explanation which had been orally put forth by the learned Additional Government Pleader has been captured therein.

9. In order to convince ourselves that the explanation was indeed correct, we also called for the records including the register maintained by the Notary to verify the date on which the Interim Application had been notarized. A copy of the draft affidavit seeking interim relief in SLP along with the original register has been produced.



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10. We have satisfied ourselves that the affidavit for interim relief in SLP was executed on 25.07.2019 and has been duly notarized on the same date. The originals of the register would support this position. We are now faced with a position where the contents of the additional affidavit dated 28.08.2023 set out reasons for delay wholly at variance with the affidavit filed at the original instance, and we are to decide whether there is sufficient justification in accepting the request for review.

11. Order XLVII Rule 1 of the Code of Civil Procedure, 1908 provides for review of a judgment in the following circumstances:-

- (i) Discovery of new and important matters or evidence;
 - (a) Such discovery not being within the knowledge of the applicant or;
 - (b) Such evidence not being produced at the time when original order was passed;



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- (ii) a mistake or error apparent on the face of the record;
- (iii) any other sufficient reasons.

12. The circumstances at S.Nos.(i) (a) and (b) and (ii) above, the first two limbs of Rule 1, place the burden entirely upon the applicants seeking review. They would have to satisfy the Court that the requisite information or evidence was either (i) available at the time when the original order was passed, but could not be produced on account of a genuine inability on their part, or (ii) was not within their domain of knowledge at the relevant point in time.

13. The trajectory of events as we have noted from affidavit dated 30.07.2020 filed originally, makes it clear that neither of the situation as adumbrated in clauses (i) and (ii) above, apply in this case. That deponent had evidently not applied her mind even minimally to the facts of the matter before her. The drafting of paragraph 7 is mechanical and admits of absolutely no application of mind.



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14. In, fact had the facts that are now placed before us, been placed before the Division Bench at the original instance, we dare say the Bench may have proceeded to condone the delay and admit the appeal. Thus, the first limb of Order XLVII Rule 1 of CPC would not come to the rescue of the State.

15. There is also no mistake or error on the face of the record, since record of the order in respect of which review is sought, proceed on the basis that there is indeed a delay of 662 days in filing the appeal. This clause too thus does not advance the case of the State.

16. The third limb relates to the existence of any other sufficient reasons on the basis of which the Court may be inclined to intervene. It is solely on this account that the State succeeds. We have been taken in some detail through the merits of the matter as well. We do not intend to make any observations herein that would stand in the way of parties in the hearing of the writ appeal. However, we outline the



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issues on merits peripherally, merely in order to satisfy ourselves that the State has a prima facie, arguable case, in appeal.

17. It is on this account and for this purpose that we proceed to record the rival contentions of the parties as follows:-

(i) Prayer of the writ petitioner was for a Writ of certiorarified mandamus seeking a quash of an order holding that, the post to which she had been appointed, was surplus. A consequential direction had been sought to the District Educational Officer to approve her appointment as Pre-Vocational Sewing Instructor in the TDTA Middle School, Thalavaipuram, Tirunelveli, with all service and monetary benefits with effect from 25.10.2018.

(ii) Learned AGP would point out that that post has been declared as surplus as early as on 20.03.2017. In the order holding the post to be surplus, the students strength has been set out at 85 for classes VI to VIII and whereas the minimum student strength should have been pegged at 250 in terms of G.O.132, School Education (M1) Department,



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dated 27.04.1998.

(iii) The appointment of the writ petitioner was on 25.10.2017 when the post had in fact, been declared as surplus.

(iv) Learned counsel for the respondent/writ petitioner would point out that the position as above has already been considered by the Writ Court and has been held in favour of the writ petitioner.

18. While reiterating that we have touched upon the merits only in the interests of completion, we do determine the existence of a prima facie case that supports our conclusion to allow this review application. We are persuaded to accept the submission that the delay in filing the appeal was justified as the draft of the interim application and SLP have been prepared, notarized and sent to counsel at Delhi within the period of 90 days, within which SLP ought to have been filed.

19. The action taken by the State was thus diligent, albeit erroneous misplaced as far as the forum is concerned. It is settled law



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that delay caused by a party approaching a forum should not stand in the way of substantiate justice and this ratio would fully apply to the case on hand.

20. However, substantial efforts of the State as well as judicial time have been expanded in dealing with the dismissal of the writ appeal (in SR stage) and the present review application and for this purpose, we deem it appropriate to put the review petitioners to terms. The review petitioners shall pay a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) to the 'High Court Legal Aid Services Committee' within a period of eight weeks. This Review Application is allowed on such terms. Consequently, connected Miscellaneous Petition is closed.

[A.S.M.J.] & [R.V.J.]
13.09.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Order made in
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