

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

MAT 32 of 2020

With

CAN 1 of 2021

With

CAN 2 of 2021

The State of West Bengal & Ors.

-Versus-

Sri Basant Kumar Singh & Ors.

For the Appellants : **Mr. Supriyo Chattopadhyay,
Ms. Suman Dey.**

Hearing Concluded on : **18.11.2024**

Delivered on : **03.12.2024**

Prasenjit Biswas, J:-

In Re: CAN 1 of 2021

1. This is an application seeking for condonation of delay in preferring this appeal challenging the order dated 08.01.2019 passed by the learned Single Judge in connection with W.P. No. 3927 (W) of 2015.

2. It is said by the appellants/petitioners that the impugned order was passed on 08.01.2019 and it was communicated upon them on 24.01.2019 by the learned Advocate for the writ petitioner. It has further been averred by the petitioners that they made an application to obtain a certified copy of the impugned order on 09.01.2019. Thereafter several discussions were again held at the office of the appellant no. 2 amongst the officials and a prayer was made on 16.01.2019 before the School Education Department. It is further said by the appellants that thereafter several discussions were held at the office of the Secretary/ School Education Department on various occasions and ultimately they found that the writ petitioner was actually appointed in the year 1985 and, therefore, related records in respect of appointment of the writ petitioner was required to be called for from the concerned School and it took some time to procure the same. On perusal of the said record another round of discussion was held with the learned State Advocates from time to time and decision was taken about the reliability of a letter dated 17.12.2022 by which the concerned school had sent prayer of the writ petitioner for getting prior permission from the District Inspector of Schools. It has been further said on behalf of the

petitioner that after prolonged discussion it was decided by the Secretary, School Education Department that an appeal would be filed against the impugned order dated 08.01.2019 and ultimately it was filed after prolonged delay.

3. As per reports submitted by the Additional Stamp Reporter that there is delay of 324 days in preferring this appeal. It has been said by the petitioners that due to such reasons as referred above the instant appeal could not be preferred within the stipulated period of time as enshrined in the Act.

4. It appears that a casual and deliberate attempt was made to delay the filing of appeal for a considerable period of 324 days. The impugned order was within the knowledge of the State and as such the appeal had to be filed within the statutory period of limitation but the appellants did not make any sincere effort in order to file the appeal within the period stipulated under the law. It appears from the averments as made in the petition that the file was being moved from one place to another for holding discussion and several discussion were held either between the officials of the State or with the learned Advocate for the State. There is no plausible explanation on behalf of the State as to why several discussions were required for preferring this appeal and virtually it is not known why this was done.

5. From the reading of the statements as made in the petition for condonation of delay it appears that the file was moved from one authority to another and to the learned Advocate for the State in a most apathetic manner without adhering to the requirement of law. It is clear that at every stage delay

was caused and it was done deliberately by the appellants/State and the appellants/State cannot claim any privilege and they are to be treated at par with the private individual. In the case of condonation of delay the Court cannot exercise jurisdiction in arbitrary, vague or fanciful manner, but on the established judicial principles. After expiry of the period of limitation, a right accrues to the other side and the Court ought not to be light hearted so to disturb that legal right accrued to the one of the parties to the case. There is no sacrosanct immunity to the State and its officers from the provisions of the Limitation Act.

6. In the writ application it is specifically averred by the writ petitioner that he was appointed as an Assistant Teacher in Science Group (Mathematics) and Physical Science in Garden Reach K.C. Mills High (H.S.) School on 01.08.1985. Despite that statement made by the writ petitioner in the writ application several discussions were held at the office of the Secretary, School Education Department and ultimately it is stated by the appellant that it was found that the petitioner was actually appointed in the year 1985. It is quite astonishing that when specific averment was made by the writ petitioner regarding his date of appointment in the concerned school despite that several discussions were held at the office of the Secretary, School Education Department to find out his actual date of appointment which they ultimately found that the date of appointment was made in the year 1985,

7. Insofar as the question as to condonation of delay by resorting to Section 5 of the Limitation Act is concerned, delay can be condoned if 'sufficient cause'

is shown and the approach of the courts should be liberal guided by the legal principles. At the same time, dilatory tactics, if borne out from materials, shall be treated sternly and liberal approach cannot be extended to those persons. It is noticed that the State and its instrumentalities are used to filing appeals with prayer to condone delay and in almost all the cases of the said nature, except a few, there are some hidden forces, which had worked in preventing timely filing of appeals. We have to say that there is callous negligence or lackadaisical attitude on the part of the officials of the Government to conduct litigations, timely and properly, to protect the interest of the State, though they are duty bound to be vigilant in this regard.

8. We have gone through the entire limitation petition and it is found that there is no allegation or negligence against anyone. The petition does not disclose whether any particular person was responsible for not filing this appeal within the stipulated period of time. In our opinion the period of delay has not at all been accounted for and no sufficient cause has been made out for executing the delay in filing the appeal. There is no doubt that whether department or government or a private party the provision of law of limitation would be applicable in the same manner unless the statute itself makes any distinction. The government department cannot be treated differently. It is needless to point out that the expiration of the period of limitation as prescribed by law for making an appeal gives rise to a valuable right in whose favour the order has been passed.

9. In the case at hand, we are of the opinion that the Appellant/State is guilty of such inaction or negligence as it would deprive it of the protection of Section 5 of the Limitation Act. The application for condonation of delay sans merit and is liable to be dismissed.

10. Considering the facts mentioned above the delay condonation application being CAN 1 of 2021 have no legs to stand and accordingly it is rejected.

11. Consequently, the present appeal is held barred by limitation and on this ground alone it is a fit case to be dismissed.

12. Consequently, the application being CAN 2 of 2021 is also dismissed.

13. There shall, however, be no order as to costs.

14. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)