

**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 No. 679 of 2018

With

CAN 1 of 2018

With

CAN 2 of 2018

The State of West Bengal And Ors.

-Versus-

Durga Rani Roy

For the Appellants : **Mr. Bhaskar Prasad Vaisya,
Mr. Sagnik Chatterjee.**

For the Respondent : **Mr. Kalyan Kr. Panda,
Mr. Uttam Kumar Roy.**

Delivered on : **19.07.2024**

Prasenjit Biswas, J:-

In Re: CAN 1 of 2018

1. By way of this application brought under Section 5 of the Limitation Act, the appellants have sought condonation of delay of 384 days in preferring this appeal. The respondents filed reply opposing the application which followed a rejoinder from the applicant. Let all those replies and rejoinder be kept with the record.

2. An application was submitted at the behest of this private respondent before the District Inspector of Schools (P.E.), Hooghly for getting family pension on the event of death of her husband who was a teacher but the same was not considered by the authority concerned. Being aggrieved with the said order of rejection a writ petition was taken out by the private respondent being WP 10578 (W) of 2017 with a prayer for getting family pension in connection with the service of her deceased husband. The said writ petition was disposed of by the order dated 17.05.2017 passed by a Single Bench of this Court giving direction upon the District Inspector of Schools, Hooghly to communicate to the writ petitioner the amount of money on the ground of contributory provident fund together with interest @ 12% per annum and with a further direction to pay family pension as well as arrear family pension from the date of death of the husband of the writ petitioner till date and also to start paying the current family pension. The order of the learned Single Bench was

communicated to the office of the District Inspector of Schools, Hooghly vide letter dated 24.07.2017 and it was also communicated to the office of the Commissioner of School Education, West Bengal by the District Inspector of Schools (P.E.), Hooghly. After getting communication the concerned Director of School Education took decision that an appeal may be preferred against the said order dated 17.05.2017 passed by the learned Single Bench. The appellants/petitioners (herein) prayed for getting certified copy of the order passed by the learned Single Bench and ultimately they got the said copy of the order and filed this instant appeal challenging the impugned order causing delay of 384 days.

3. Mr. Bhaskar Prasad Vaisya, learned Counsel appearing on behalf of the appellants submitted that there is every chance of success in the instant appeal and learned Single Judge committed error of law and facts in deciding the matter in dispute. It is further submitted by the learned Counsel that there was no intentional laches or negligence on the part of the appellants in preferring this appeal. It is submitted by him that there was a long seize work conducted by the Bar Association, High Court, Calcutta from 19th February, 2018. As the learned Advocate of the appellants could not attend the Court in pursuance of the resolution taken by the Bar Association the delay has been occurred in filing the instant appeal and if this application for condonation of delay is not allowed, the appellants would suffer irreparable loss and injury which cannot be compensated by any means. So, it is submitted by the learned Counsel that the application filed by the appellants for condoning the delay in

preferring the instant appeal may be allowed and the matter should be heard on merit.

4. Per contra, Mr. Kalyan Kr. Panda, learned Counsel appearing on behalf of the private respondent submitted that there is inordinate delay in filing this instant appeal on behalf of the appellants and such delay has been caused for their intentional latches as it would evident from the application filed under Section 5 of the Limitation Act. It is further contended by the learned Counsel that there is negligence or inaction on the part of the appellants and the explanation made out in the application cannot be accepted as in the instant matter there is no arguable points of fact and law are involved. As per submission of the learned Counsel that if the application for condonation of delay is allowed that would cause enormous loss and irreparable injury to the private respondent/writ petitioner. It is further submitted by the learned Counsel that as the delay has not been properly explained in the application for condonation of delay so it may be dismissed outright.

5. We have anxiously considered the submission advanced by both the parties. Perused the grounds as stated by the appellants in the application for condonation of delay filed under Section 5 of the Limitation Act.

6. The general principle underlying the condonation of delay is that courts have discretionary power to extend the time limit in cases where the delay was due to genuine and valid reasons. The courts examine each case on its merits and consider factors such as the explanation for the delay, the sufficiency of the cause shown, the absence of negligence, and the potential prejudice caused

to the other party. The term “sufficient cause” is not defined explicitly and varies on a case-to-case basis. The Court has a wide discretion in determining what constitutes as sufficient cause, depending upon the facts and circumstances of each case.

7. Can a mere narration of facts showing the slow-paced manner in which the files move from one table to another in an administrative set-up be considered a sufficient explanation for breaching the limitation? Is it fair to take away a very valid ground for a counter-attack on the part of the private respondent merely because the state can provide an ‘explanation’ of how it may have caused an inordinate delay in making a filing? An ‘explanation’ is when all of the facts and layout of the cause are provided which helps to clarify the circumstances of a particular event to point out that something has happened due to no fault of the person seeking condonation. 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 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.

8. The State is to be treated at par with any other litigant and no special favour is to be bestowed on them while considering their petition for condonation of delay merely by virtue of the fact that they are the Government. The State Government as any other litigant is to explain what “sufficient cause” prompted them to require the indulgence of the Court to condone the delay, by

exercising its discretion. The Court is also to consider if there was gross negligence, deliberate inaction, or lack of bona fides on the part of the litigant or its Counsel, each case would have to be considered on the peculiarity of its own facts

9. It is true that the legislature has conferred the power to condone the delay by enacting Section 5 of the Indian Limitation Act in order to enable the Court to do substantial justice to the parties by disposing of the matter on merit but it is also equally true that by taking advantage of the said provision one cannot be allowed to deprive the other side and frustrate the very purpose of disposal of such type of cases within the stipulated period. Appellants have failed to show the sufficient cause in not preferring the appeal within the stipulated period. The appellant has not explained the delay by submitting cogent reasons. The explanation is very vague in nature and made in a casual manner.

10. The Supreme Court very recently in case of **Pathapati Subba Reddy (Died) By L.Rs. & Ors v. The Special Deputy Collector (LA)** reported in **2024 SCC OnLine SC 513** has dealt extensively with the law of limitation and after considering various judgements of the Supreme Court and has laid down certain principles to be followed while applying the law of limitation. The Bench mentioned the following principles:-

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

11. In view of above referred judgment we are of the view that the discretionary power is only to be exercised when sufficient cause is made out and compelling reasons are provided for condonation of delay. In the present

case, one does not find any such reason provided which would enable this Court to condone the delay. In fact, it is crystal clear that the appellants have acted in a lackadaisical manner and filed this appeal belatedly.

12. It is apparent from the record of the case that in the instant case, there is huge delay of 384 days in filing the present appeal and no sufficient cause for such huge delay, supported by relevant documents, has been established. In this case, it is difficult to fathom any logic or rationale which can impel this court to condone the delay after holding the same to be justifiable. Therefore, in the considered opinion of this Court, such huge delay cannot be condoned.

13. Hence, the application filed by the appellants/State under Section 5 of the Limitation Act being CAN 1 of 2018 (Old CAN 4921 of 2018) is dismissed. Resultantly, the appeal filed by the appellants is also dismissed as time barred.

14. Consequently, the application being no. CAN 2 of 2018 (Old CAN 4922 of 2018) is hereby also dismissed.

15. There will be no order as to costs.

16. 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.)