IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 2053 of 2024

In F/MISC. CIVIL APPLICATION NO. 9626 of 2024

With
F/MISC. CIVIL APPLICATION NO. 9626 of 2024
In
R/LETTERS PATENT APPEAL NO. 838 of 2022
With
R/CIVIL APPLICATION NO. 2060 of 2024
In
F/MISC. CIVIL APPLICATION NO. 9519 of 2024
With
F/MISC. CIVIL APPLICATION NO. 9519 of 2024
In
R/LETTERS PATENT APPEAL NO. 170 of 2023
With
R/CIVIL APPLICATION NO. 2061 of 2024
In
F/MISC. CIVIL APPLICATION NO. 9537 of 2024
With
F/MISC. CIVIL APPLICATION NO. 9537 of 2024
In
R/LETTERS PATENT APPEAL NO. 172 of 2023

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THE SECRETARY
Versus
YATINKUMAR BABUBHAI PANCHAL & ORS.

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Appearance:
MS ARCHANA R ACHARYA(2475) for the Applicant(s) No. 1
MR DG SHUKLA(1998) for the Respondent(s) No. 4
MS DHARA M SHAH(5546) for the Respondent(s) No. 1,2
RULE SERVED for the Respondent(s) No. 1,2,3,4

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CORAM: **HONOURABLE MR. JUSTICE UMESH A. TRIVEDI**
and
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 20/09/2024

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE UMESH A. TRIVEDI)

[1] These applications are filed, though no provisions are mentioned in the title under which law it is filed, praying for condonation of 328 days delay caused in preferring the applications for review of the common judgment and order dated 27.03.2023 passed in Letters Patent Appeal No.838 of 2022 and other allied matters. These applications are filed praying for condonation of delay for three of such cases out of the group determined being Letters Patent Appeal Nos.838 of 2022, 170 of 2023 and 172 of 2023 respectively.

[2] It is averred in the applications that the order passed by this Court dated 27.03.2023 was received by the Office of the applicant on 25.04.2023. It is further averred that the applicant was advised by their panel advocate to either file SLP in the Supreme Court or to file speaking to minutes with regard to rectification of the words “Revised Provisional Recommendation List” instead of “Merit List” in LPA judgment. It is further averred that since the judgment and order passed in LPA affects whole recruitment process and it may further affect recruitment process in future, applicant sent a copy of the order to the higher authorities on 25.04.2023, seeking its opinion. The communication dated 25.04.2023 is annexed along with affidavit in rejoinder filed by the applicant, which is at page No.N/7 as Annexure-R1. Though in reference opinion of panel advocate through e-mail dated 19.04.2023 is referred, copy

thereof is not produced at all in these entire compilation. Despite that, it is averred that the applicant was advised by panel advocate to either file the SLP or to file speaking to minutes for rectification, as aforesaid. However, the very said communication at page No.N/7 dated 25.04.2023 is seen, by communication through e-mail dated 19.04.2023, panel advocate has advised to implement the judgment.

[3] It is further averred in the applications that higher authorities gave oral opinion on 27.07.2023 and gave opinion in writing on 28.07.2023 to file speaking to minutes in these matters. As further averred, as per the instructions, the applicant, after consulting with the panel advocate, proceeded to do the same. Therefore, on 27.07.2023 the applicant was asked by their panel advocate to file speaking to minutes before High Court and it came to be filed by the advocate of the applicant on same day.

[4] As such, as averred in para-2 of the applications, cause for delay is shown to be due to administrative reasons. The order on speaking to minutes note dated 22.12.2023 is claimed to be dispatched by the High Court on 10.01.2024 and its certified copy was received by the applicant on 28.02.2024. It is again averred that thereafter on 04.03.2024, applicant’s advocate advised to file SLP in the Supreme Court. But Panchayat Department gave opinion on 04.03.2024 to file MCA for clarification in LPA No.838 of 2022 and allied matters. So, as per the applicant – Department’s instruction, applicant contacted their panel

advocate on 07.03.2024 for filing MCA for clarification in LPA No.838 of 2022 and allied matters.

[5] As such, after the opinion of their panel advocate to prefer SLP before the Supreme Court, if at all the department's opinion was to be followed, it guided applicant to file MCA for clarification and not the review application which is filed. Therefore, it appears that applicant is conveniently avoiding either accepting the judgment and order or avoiding filing SLP before the Supreme Court, as advised by their panel advocate since long. As stated hereinabove, on the contrary, learned panel advocate of the applicant vide e-mail communication dated 19.04.2023, advised them to accept the judgment but the applicant, being super authority, sought opinion from the State Government, despite applicant is local self government.

[6] However, pursuant to their communication seeking opinion of their higher department, it advised applicant to first state its own opinion since it did not form part of their communication, that too, with clear-cut opinion of Development Commissioner, through it. The said communication dated 10.05.2023 addressed to the applicant by Under Secretary, Panchayat, Rural Housing and Rural Development Department is a classic example of typical red tapism. Still, however vide communication dated 16.05.2023, applicant wrote a communication to Development Commissioner seeking opinion as there is a

common judgment and order in five different petitions arising from a selfsame recruitment process and it involves policy matters whether to implement the same or to prefer an appeal in the Supreme Court.

[7] Interestingly, the office of Development Commissioner vide communication dated 24.05.2023 addressed to the applicant that in view of para No.1.4 of circular dated 04.08.2020 of the Panchayat Department, Gandhinagar, if any decision either by Labour Court or by High Court, is against prevailing policy or Rules of the State and if anyone determines to prefer an appeal, then District Panchayat has to take a decision to prefer an appeal, that too, within limitation. As it is further mentioned in that para, in such cases, no guidance is to be sought for whether to prefer any appeal or not. Despite this clear guidance by way of a circular of the State Government, applicant believes itself to be above all and is trying to get a favourable opinion to prefer an appeal only to delay implementation of the impugned judgment and order. All these things have happened till May, 2023 and surprisingly, neither any clarification application, as advised by the higher authority – Panchayat Department, nor any appeal before higher forum is preferred. Therefore, it appears that their attempt is only and only to delay the implementation of the impugned judgment and order. If the applicant is aggrieved by the impugned judgment and order and in reality, review application is required to be filed, it has to

be filed within no time when all the authorities have opined to the applicant to take their own decision. If they were to rely on a decision of the higher authority – Panchayat Department, it had asked them to prefer an application for clarification in the judgment and despite that, the learned panel advocate of the Panchayat Department has preferred the present review applications, that too, after a delay of 328 days. Such delay is sought to be attributed to the administrative reasons but as stated hereinabove, there appears no administrative reasons but it appears that the applicant - the original respondents, in the main proceedings are adamant not to implement the judgment and causing delay even if they were to prefer the SLP before the Supreme Court.

[8] Even these applications for review are filed on 19.03.2024, however, in a contempt petition preferred against the applicant, though applicant was served, they did not proceed with the contempt petition and sought for time by replacing different advocates. Even mention made for replacing the advocate, that is also disputed and speaking to minutes note was also filed in that application. It is only after notice in contempt proceedings issued, even against the opinion of their higher department, who advised them to file clarification application, review applications are filed by the applicant, ignoring all the opinions of their higher department, though sought for. Not only that, twice speaking to minutes note was filed in LPA itself. One such

order in speaking to minutes note is dated 01.12.2023 which was accepted, as prayed for, by the applicant in speaking to minutes note dated 21.12.2023. Another application for speaking to minutes note was filed dated 06.12.2023 which was also accepted and an order came to be passed on 22.12.2023. However, such clarification by way of speaking to minutes note did not satisfy the applicant and they were already served with the notice in contempt proceedings but they did not think it fit to prefer even review application, determined by the panel advocate against the advise of even higher authority of the applicant, and though it came to be filed in March, 2024 but came to be moved only after an order of cost, for adjournment repeatedly sought, in contempt proceedings was passed by this Court dated 09.04.2024. Again there is a communication dated 27.08.2023 by the Under Secretary to the Panchayat Department of the State addressed to the applicant to file an affidavit in the contempt proceedings bringing facts to the notice of the Court and asking the applicant to file speaking to minutes note in an order dated 09.02.2022 passed by the High Court for correction of factual matter in it. The order dated 09.02.2022 is passed by the learned Single Judge of this Court and not even in LPA. Therefore, though guidance and opinion is sought for from the higher department, ignoring every opinion of even higher department, applicant is bent upon to further delay the implementation and even not challenging it before the higher forum. The order passed in LPA is review, which is

sought for, of the said judgment by way of applications before this Court which are filed in delay of 328 days, that too, on administrative reasons which are very very far to seek. There appears no administrative reasons for not filing application even for review, though not advised by any of the higher authorities or even their panel advocate and the present applications are filed praying for condonation of 328 days delay in it.

[9] As such, very first opinion of the panel advocate dated 29.04.2023 is to accept the decision. Though applicant may be at liberty to ignore that opinion of that panel advocate but applicant is supposed to take decision whether to challenge the same before the higher forum or what steps should be taken in respect thereof immediately. Its decision should not be based on any opinion of any higher authority, if it is not to be even followed. Thus, since 19.04.2023 no such application for even review is filed by the applicant and it is sought to be canvassed that it has occurred for administrative reasons. Even further e-mail opinion dated 21.07.2023 by panel advocate of the applicant, which is on record on page No.N/16, he has advised to file SLP before the Supreme Court. So, if not on 19.04.2023, it was clear to either accept the decision or to challenge the same before the Supreme Court, as advised by the panel advocate, as also higher department of the applicant whose opinion was sought for, who has also advised them to file speaking to minutes note, that too,

informed long back, ignoring that, these review applications are filed which are also in delay by 328 days without any satisfactory explanation.

[10] Since there appears no explanation, not to say reasonable explanation, there appears deliberate inaction for preferring these applications for review and no explanation is offered, except to say that it is for administrative reasons, we do not find any explanation to be acceptable, and therefore, these applications praying for condonation of 328 days delay are hereby rejected.

[11] Learned advocate for the applicant stated that her contention may be recorded, which are already referred to in para – 6 of the application. Paragraph - 6 of the application is quoted here as under:

> *"After going through the papers, the advocate appearing before the Hon'ble High Court informed the applicant that the applicant is required to move the Misc. Civil Application for recall/ review of the judgment and order before this Hon'ble Court as the Provisional Selection List, Final Selection List, Provisional Revised Selection List and Final Revised Selection List were already before this Hon'ble High Court and therefore the judgments relied by this Hon'ble Court are not applicable in the present case as in the said judgments appointments were given on the basis of the Final Merit List. However in the present case, the petitioners are seeking*

appointments on the basis of the Provisional Selection List and it appears so the said facts were not brought to the notice of this Hon'ble Court."

[12] However, considering the said contention raised in aforesaid paragraph, it is all on merits of the case. If at all it is to be considered, it should have been raised before the Appellate forum while challenging the order passed in LPA. Even if there is any strong case on merits, in absence of any reasonable explanation lacking in bonafides, it cannot be accepted for condonation of delay.

[13] In view thereof, these applications stand rejected.

(UMESH A. TRIVEDI, J.)

(HASMUKH D. SUTHAR,J.)

Lalji Desai