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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 767/2023 & CM APPL. 61282/2023**

DIRECTORATE OF EDUCATION

.....Appellant

Through: Mr. Sujeet Kr. Mishra, Mr. Pankaj
Balwan, Mr. Utkarsh, Advocates

Versus

POONAM SHARMA & ORS.

.....Respondents

Through: Mr. Deepakirti Verma, Advocate for
R-1

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

08.07.2024

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**CM APPL. 61281/2023 (under Order XVI Rule 3A r/w Section 5 of
Limitation Act)**

1. The present application has been filed by the appellant-Directorate of Education seeking condonation of delay of 198 days in filing the present appeal against the judgment and order dated 03.02.2023 passed by learned Single Judge of this Court in W.P.(C) 4881/2013.
2. Reply to the application has already been filed. On 19.01.2024, learned counsel for the appellant sought time and was granted four weeks to file rejoinder. However, till date rejoinder has not been filed.
3. Today, learned counsel for the appellant submits that rejoinder is not required and he would like to argue the present application without rejoinder. Accordingly, with the consent of learned counsel for the parties,



the present application is heard on merits and taken up for disposal.

4. The brief background of the case is that in the DPC held on 17.06.2011 to fill up one vacancy of PGT (History), respondents No.1 & 2 along with one another candidate, were found to be in the zone of consideration. However, upon scrutiny of the ACRs of these candidates, DPC observed that ACR of respondent No.2 was marked 'average' but in violation of principles of law, same was not communicated to respondent No.2 and thus, direction was issued to convey the same and seek explanation and thereafter to consider the case. On a representation made by respondent No.2, the ACRs were reviewed by the DPC held on 23.12.2011 and he was recommended for the post of PGT, which decision was challenged by respondent No.1 by filing W.P.(C) No. 4881/2013 before the learned Single Bench.

5. The above captioned appeal challenges the impugned order dated 03.02.2023 passed by the learned Single Bench in W.P.(C) No. 4881/2013, however, the same has been filed after an inordinate delay of 198 days.

6. To seek condonation of delay, the applicant-appellant in the present application has averred that there was no intimation of any orders passed by learned Single Judge. In the last week of May, 2024 learned counsel for appellant mentioned before learned Single Judge to know status of final order in petition when he came to know that the Court had already disposed of the writ petition vide order dated 03.02.2023.

7. Learned counsel for appellant applied for certified copy on 03.07.2023 and upon receipt thereof, sent the file for obtaining opinion. However, in doing so, learned panel counsel took some time as his mother had expired. After receipt of opinion from panel counsel, the opinion of



learned Standing Counsel was also sought and in the said process a considerable time had elapsed.

8. Learned counsel appearing on behalf of the appellant submits that the delay of 198 days in filing the present appeal is an unintentional and inadvertent and has thus, prayed for condoning the same and to hear the appeal.

9. In reply to this application, respondent No.1 has averred that the plea of applicant-appellant that it came to know about passing of the impugned judgment in May, 2023 deserves to be rejected in view of the fact that respondent No.1, both *via* post and email, had sent a legal notice dated 18.04.2023 along with copy of the judgment to the applicant-appellant seeking implementation of the same. However, since it failed to comply with the directions, respondent No.1 initiated contempt proceedings by filing Cont. Case (C) No. 751 of 2023, advance copy of which was furnished to the department on 25-26.05.2023. also, at the time of hearing in the contempt petition, the applicant-appellant was represented through counsel on 29.05.2023. However, it did not make any submissions canvassing no knowledge of judgment passed by the learned Single Bench. Even on subsequent dates i.e. 10.08.2023 and 05.10.2023, the applicant-appellant was represented through counsel. Respondent No.1 has pleaded that rotation of file from one desk to another in Government departments is not ground to seek condonation of delay.

10. Upon hearing learned counsel for the parties and on perusal of material placed before this Court, we find that there no averment, as to when the learned Single Bench reserved the petition for orders, has been made in the application. Also, it has not been mentioned as to on which date learned



counsel for applicant-appellant mentioned before the learned Single Judge to enquire about the outcome of the petition.

11. It is relevant to mention here that it is the usual practice in Delhi High Court that once any matter is reserved for writing a judgment by a Court, the order mentioning “Judgment reserved” is uploaded on the relevant date. Also, prior to pronouncement of judgment in a particular case, intimation is sent to the Listing Department to put in the Cause List of the day it is scheduled for a day prior to thereto. In our opinion, learned counsel for the applicant-appellant has shown his sheer negligence in not following up the matter for reasons best known to him. To cover up negligence of learned counsel appearing for the Department, it is pleaded that learned counsel took time to follow up the matter due to death of his mother. However, the present application is neither supported by any affidavit of learned counsel pleading ignorance nor death certificate of his mother has been placed on record to show his *bona fide* explanation.

12. There is no averment in the application as to when application for obtaining certified copy of judgment was made and when the same was furnished by the concerned department of Delhi High Court. The factual position is that the judgment was pronounced by the learned Single Bench on 03.02.2023 and application for certified copy thereof was made on 03.07.2023, which means that appellant-department was on leisure and pleasure to follow up the matter and did not bother to pursue its remedies within the limitation period.

13. The settled position of law is that while entertaining applications under Section 5 of the Limitation Act, the Courts should not adopt an injustice oriented approach for condonation of delay in filing the appeals and



rather follow a pragmatic line to advance substantial justice.

14. On the aspect of condonation of delay, the pertinent observations of the Hon'ble Supreme Court in ***Pathapati Subba Reddy (Died) By L.Rs. and Other Vs. Special Deputy Collector (LA)*** 2024 SCC OnLine SC 513 are as under:-

“16. Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag v. Katiji, this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of ‘sufficient cause’ for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases ‘liberal approach’, ‘justice-oriented approach’ and cause for the advancement of ‘substantial justice’ cannot be employed to defeat the law of limitation so as to



allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.

17. It must always be borne in mind that while construing ‘sufficient cause’ in deciding application under Section of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.”

15. Not only a party seeking condonation of delay is required to explain delay of each day but also to establish ‘sufficient cause’ for the delay occasioned.

16. On the technical and bureaucratic approach of Government departments in pursuing legal remedies, the Hon’ble Supreme Court in ***Postmaster General Vs. Living Media India Ltd.***, (2012) 3 SCC 563 has observed as under:-

“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.”

17. In our considered opinion, the applicant-appellant has miserably failed to explain the delay in filing the appeal. For the fault of applicant-appellant in not availing its remedies within the limitation period, the respondents cannot be made to indefinitely wait to enjoy the benefits of order passed in their favour by following judicial process of law.

18. The present application is hereby dismissed.

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19. In the light of our observations in CM No. 61281/2023, interim order dated 28.11.2023 stands vacated and the present appeal and pending applications are hereby dismissed.

SURESH KUMAR KAIT, J

GIRISH KATHPALIA, J

JULY 8, 2024
ry/rk/r