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

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*Decision delivered on: 08.08.2024*

+ **LPA 766/2024 & CM Nos.45520-22/2024**

GOVT OF NCT OF DELHI & ORS.

.....Appellants

Through: Ms Hetu Arora Sethi, ASC with Mr  
Arjun Basra, Adv. for GNCTD.

versus

SHRI R.S. YADAV

.....Respondent

Through: Mr Vikramaditya Singh, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**[Physical Hearing/Hybrid Hearing (as per request)]**

**RAJIV SHAKDHER, J. (ORAL):**

**CM No.45522/2024**

1. Allowed, subject to just exceptions.

**LPA 766/2024 & CM No.45520/2024** *[Application filed on behalf of the appellants seeking interim relief]* & **CM No.45521/2024** *[Application filed on behalf of the appellants seeking condonation of delay in filing the appeal]*

2. This appeal is directed against the judgment dated 13.04.2023. The appeal is accompanied by an application for condonation of delay, i.e., CM No.45521/2024. The application for condonation of delay, to say the least, has been drafted lackadaisically.



3. The first paragraph, which refers to the impugned judgment, sets out the wrong date. Instead of 13.04.2023, the date of the impugned judgment is set out as 15.04.2024.

3.1 In the second paragraph and the relief clause, the period of delay is left blank. Concededly, the impugned judgment dated 13.04.2023 was received by the office of the Directorate General of Health Services (DGHS) on 28.04.2023. Thereafter, the explanations given, as set out in paragraph 2(iii) to (v), only show how the file moved from one officer to the another.

3.2 In paragraph 3 of the application for condonation of delay, it is averred that on 04.08.2023, the Chief Medical Officer of the Delhi Government Employees Health Scheme (DGEHS), triggered a request to the person in charge of Court Case Cell, DGHS, to file an appeal with the division bench. Apparently, on 21.09.2023, a request was made for issuing necessary authority in favour of the government counsel to lodge an appeal. It appears that, thereafter, a request was made to the Law and Justice Department by DGHS on 19.10.2023 for appointment of a government counsel.

3.3 Ultimately, on 28.11.2023, a decision was taken by the Department of Law, Justice and Legislative Affairs to prefer an appeal against the impugned judgment and order.

4. According to the appellants, on 09.01.2024, the case papers were sent to the government counsel. The case papers were not received by the Additional Standing Counsel up until 12.02.2024.

5. The learned counsel for the appellants says that the Additional Standing Counsel sent a final draft of the appeal to the concerned



department on 30.04.2024. Concededly, the instant appeal was filed on 17.07.2024.

6. It is evident that, at each stage, the appellants have failed to act with alacrity. There are huge time gaps at each stage. For instance, although a copy of the impugned judgment was received on 28.04.2023, the Chief Medical Officer, DGHS, took the decision to file an appeal only on 04.08.2023. Thereafter, it took the appellant more than a month to authorise the government counsel to lodge an appeal. The mandate to the counsel was given on 21.09.2023. October 2023 to February 2024 was spent in crossing more bureaucratic hoops. Although the counsel received the case papers on 12.02.2024, and submitted a draft appeal on 30.04.2024, it took more than two and a half month to lodge the appeal. The appeal was instituted on 17.07.2024. The appellant has displayed apathy at each stage. The explanations given, in our view, are neither satisfactory nor pass muster as sufficient cause. Clearly, the appellants have been callous and thus, as noted above, have not been able to show sufficient cause for condoning the delay.

7. As last ditch effort, the learned counsel for the appellants says that because elections were announced, there was a further delay.

8. In our opinion, the institution of cases need not have waited till the conclusion of general elections as is sought to be argued before us.

9. As noted right at the beginning, even the application for condonation of delay has not been filed with due care. There are typographical errors in the application. There is failure to place on record what according to the appellants is the total period of delay involved in the institution of the appeal.



10. That said, what has been brought to our notice is that there is a difference of opinion between the division benches. The judgment rendered by the division bench in *Government of NCT of Delhi v. Ram Kumar Kaushik*, 2023:DHC:2592-DB is in favour of the respondent, while the judgment rendered by another division bench in the case of *Dal Chand Vashisht v. Government of NCT of Delhi*, 2008:DHC:9636-DB is in favour of the appellants.

10.1 We may also note that another division bench in the matter of *Union of India v Shanti Devi*, 2010:DHC:3372-DB favours the appellants.

11. The root issue which arises for consideration is: if the respondent was not a member of the DGEHS on the date when the expenses were incurred by him, could the medical treatment be reimbursed by the appellants?

12. Before the learned Single Judge, the appellants failed to cite the judgment rendered by the division bench in *Dal Chand Vashisht*.

13. This is an aspect which concerns the merits of the case.

14. Meanwhile the respondent has expired. He passed on 17.05.2023, i.e., within a month of the learned Single Judge rendering his judgment. Although this fact was known to the appellants, they chose not to array the legal representatives of the deceased R.S. Yadav.

15. We are told that the legal representatives of the deceased R.S. Yadav have, in fact, instituted contempt proceedings which are pending before the learned Single Judge.

15.1 The failure to implead the legal representative of the deceased R.S. Yadav, impregnates the appeal with another error.

16. The appeal, as it stands today, is untenable in law as it cannot lie against a deceased person.



17. Thus, for the foregoing reasons, we are not inclined to either condone the delay in filing the appeal or take up the appeal, as framed, for adjudication.

18. The above-captioned application, i.e., CM No.45521/2024 seeking condonation of delay in filing the appeal, is dismissed, in the aforesaid reasons.

19. We, however, make it clear that the question of law shall remain open to be decided in a fit case

20. In view of the order passed in CM No.45521/2024 [seeking condonation of delay in filing the appeal], the appeal does not survive for adjudication.

21. Consequently, the pending application i.e., CM no. 45520/2024 shall stand closed.

**RAJIV SHAKDHER, J**

**AMIT BANSAL, J**

**AUGUST 8, 2024/aj**