

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 1164 of 2024
With CAN 1 of 2024, CAN 2 of 2024

The State of West Bengal & Ors.
Versus
Sk. Obaidullah & Ors.

For the appellants : Mr. T. M. Siddiqui, Sr. Advocate,
Mr. Tanoy Chakraborty.

For the respondent : Mr. Ekramul Bari,
Md. Mojnu Sk.

For the respondent no. 9 : Mr. Kamalesh Bhattacharyya.

Hearing is concluded on : 12th February, 2025

Judgment On : 18th March, 2025

Partha Sarathi Chatterjee, J.

1. The present application has been filed at the behest of the State of West Bengal and its functionaries, seeking the condonation of a delay of 252 days in filing the proposed appeal, which aims to challenge the justifiability of the order dated 5th September 2023, passed in WPA 25121 of 2016. By this order, the writ petition was disposed of, directing the

concerned respondents to approve the appointment of the petitioners as organising teaching and non-teaching staffs of the school. Furthermore, the respondents were directed to disburse the benefits consequential to the approval of their appointment, including current and arrear salaries, and pension, as the case may be, within the time specified in the order.

2. Sans unnecessary details, the essential facts need to be adumbrated for the effective adjudication of this application are that a second round of litigation began between the writ petitioners/respondents (hereinafter, the petitioners) and the appellants when the aforementioned writ petition, WPA 25121 of 2016, was filed challenging an order dated 3rd December 2015 issued by the Director of Madrash Education. This order was issued in compliance with an order passed in WP No. 13470(W), rejecting the petitioners' prayer for approval of their appointments, citing the reason that their names did not appear in the DLIT report.
3. Before the learned Single Bench, it was argued on behalf of the petitioners that, although petitioner no. 1 and the other petitioners had been serving the school since 1986 and 1994, respectively, their names were not included in the report. As noted earlier, after evaluating the materials on record and considering the arguments of both parties, the learned Single Bench accepted the petitioners' contention and passed the order now sought to be challenged in the proposed appeal.
4. As indicated in the report of the Stamp Reporter, there is a delay of 252 days in the presentation of the memorandum of appeal. Therefore, the present application has been filed seeking condonation of the delay. We

find it appropriate to reproduce the grounds for the delay, as enumerated in paragraph 2 of the application, which are as follows:

“i) The judgment and order was delivered on 5th September, 2023; ii) The inadvertent typographical error was rectified on 15th September, 2023; iii) The judgment and order was communicated by the Learned Advocate for the petitioner on 27th September, 2023; iv) The Department concerned requested the Learned Advocate for the State to prefer appeal vide. communication dated 6th November, 2023; v) Conference were held with the Learned Advocate by the Department on 22nd November, 2023 and 8th December, 2023; vi) on and from 23rd December, 2023 to 1st January, 2024 the Hon’ble Court was on winter vacation; vii) The certified copy of the judgment and order was applied on 23rd November, 2023 and the same was delivered by the concerned of the Hon’ble Court on 3rd January, 2024; viii) Memorandum of Appeal was made ready and forwarded to the Department on 24th January, 2024; ix) The Department though took steps for filing the Appeal in the 1st week of February, 2024 but could not do so due to non-availability of Memo. dated 511-SE (S) dated 29.03.2000 issued by the State; x) In spite of vehement search the said Memo could not be traced, and therefore, finally bereft of such Memo the Appeal was filed on 13.06.2024; xi) Consequently, there has been delay of 211 days in filing the instant Memorandum of Appeal.”

5. Mr. Siddique, learned Additional Government Pleader representing the applicant, argues that the delay in filing the proposed appeal was caused by

reasons beyond the control of the applicants, and that there was no intentional lapse or negligence on their part. He submits that the applicants have presented an arguable case in this appeal, and therefore, such a meritorious matter should not be dismissed on the grounds of delay at the threshold. To buttress his argument, Mr. Siddique referred to the decision reported in (1996) 3 SCC 132 (*State of Haryana vs. Chandra Mani & Ors.*), which emphasizes that a certain degree of flexibility should be granted to the State, taking into account factors unique to its functioning, such as bureaucratic processes and procedural delays in decision-making. Drawing inspiration from the principles laid down in this case, Mr. Siddique contends that, given the challenges involved in running a government institution, a justice-oriented approach should be adopted.

6. In rebuttal, Mr. Bari, learned advocate representing the writ petitioners/respondents, argues that the delay has not been sufficiently explained by the applicants. He submits that delay cannot be condoned merely upon request. The sufficiency of the cause must be considered before granting the condonation. To support his submission, he refers to a decision rendered by a coordinate Bench of this Court, in which one of us (Harish Tandon, J.) was a member, in MAT 472 of 2024 with CAN 1 of 2024 & CAN 2 of 2024 (*The State of West Bengal & Ors. vs. Hemanta Kuti & Ors.*). He informs that a Special Leave Petition was filed before the Hon'ble Supreme Court against this order, but the SLP was dismissed, upholding the principles set forth in that decision. He also cites an unreported decision of the Hon'ble Apex Court in S.L.P. (Civil) Nos. 935-936 of 2021 (*Raneesh Kumar & Anr. vs. Ved Prakash*).

7. As observed in decision of '*The State of West Bengal & Ors. vs. Hemanta Kuti & Ors.*' (supra), the law of limitation is thus founded on public policy. It is enshrined in the maxim '*Interest reipublicae up sit finis litium*' which means '*it is for the general welfare that a period be put to litigation*'. There must be a lifespan for every remedy. A Court while deciding an application for condonation must create a synergy between Section 3 and Section 5 of the Limitation Act. Section 3 is mandatory in nature whereas the latter leaves discretion to the Court to condone the delay. However, such discretion must be exercised in a reasonable and rational manner as opposed to a capricious and/or whimsical exercise of such powers.
8. Undeniably, in a celebrated decision of '*The Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors.*', reported at (1987) 2 SCC 107, it was observed that the expression 'sufficient cause' employed by the legislature in Section 5 of the Limitation Act, 1963 should be liberally construed to render substantial justice to the parties. However, it is also well settled principle that although the term "sufficient cause" should receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of adopting liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general sense.
9. Notably, the law of limitation is a substantive law and has definite consequences on the right and obligation of a party. These principles must be applied appropriately, depending on the facts and circumstances of each case. Once a valuable right accrues to one party due to the failure of the other party to explain the delay with sufficient cause, or due to its own

conduct, it would be unreasonable to take away that right at the mere request of the applicant, especially when the delay results from negligence, default, or inaction. Justice must be done to both parties equally. Then only the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

10. It is axiomatic that the length of the delay is not the deciding factor. The adequacy and/or acceptability of the explanation is the sole criterion. A delay of even the shortest duration may be deemed inexcusable if the explanation provided is insufficient, while in some cases, a delay of considerable length can be condoned if the explanation offered is satisfactory. The conduct, behaviour and attitude of a party concerning its inaction or negligence are relevant factors to be taken into consideration. The fundamental principle is that the courts must strike a balance of justice for both parties and the said principle should not be disregarded in the name of liberal approach. If the explanation offered is concocted or the grounds set forth in the application are fanciful, the courts should ensure that the other party is not unjustly subjected to such unnecessary litigation.

11. Admittedly, in the present case, the judgment sought to be challenged in the appeal was passed on 5th September 2023, in the presence of the applicants' representative. However, the applicants waited for 22 days to receive the communication of the order from the learned advocate of the writ petitioners, which reached them on 27th September 2023. The

Department instructed the advocate to file the appeal on 6th November 2023. However, the application for a certified copy was filed only on 23rd November 2023, and it was delivered on 3rd January 2024. The Memorandum of Appeal was prepared on 24th January 2024, but could not be filed due to the unavailability of a notification (Memo. No. 511-SE (S) dated 29.03.2000) issued by the applicants' department. Ultimately, the appeal was filed on 13th June 2024. It is worth noting, as Mr. Siddique pointed out, that even at the time of pressing this application, the applicants could not be able to locate the notification.

12. Although a day-to-day explanation from the applicants is not required, as per the principles established in the aforementioned judgments, the reasonableness and acceptability of the explanation for the delay must be assessed.
13. In the present case, as noted earlier, the appeal was ultimately filed on 13.06.2024, even though the applicants were unable to locate the notification at the time of filing the appeal and even at the time of pressing this application. Therefore, it appears that the applicants believed the appeal could be filed without the notification. Therefore, it remains unclear what reason the applicants had for delaying the filing of the memorandum of appeal from 27th January 2024 until 13th June 2024. Notably, the order under appeal mentions that Mr. Naskar, who represented the State/respondents (the applicants herein) before the learned Single Bench, referred to the notification. Therefore, the claim regarding the unavailability of the notification is not believable. As such, the explanation provided for the delay between 24th January 2024 and 13th

June 2024 cannot be accepted. Furthermore, the delay from 16th September 2023 (the date set for rectifying the typographical error inadvertently included in the impugned order) to 23rd November 2023 (the date the application for the certified copy was filed) has not been sufficiently explained. Thus, the explanation for the delay in applying for the certified copy is also unsatisfactory. Additionally, the delay from 5th September, 2023 to 6th November, 2023 (the date on which the learned advocate was instructed to prefer the appeal) is also adequately explained.

14. In the decision, reported at (2024) 7 SCC 433 (*Delhi Development Authority vs. Tejpal & Ors.*), the Hon'ble Supreme Court observed that with time, the position of law that government entities ought to be allowed leeway for condonation of delay given factors unique to them like the impersonal nature of their functioning, inherited bureaucratic methodology, and procedural red-tapeism has been diluted and is no longer a precedent to be followed routinely. If delay were to be condoned merely on the basis of a broad general assertion of bureaucratic indifference, without requiring demonstration of bona fide or an act of mala fide on the part of specific individuals, it would create an artificial distinction between the private parties and the government entities vis- - vis the law of limitation. This would not be in conformity with the spirit of equality before law as guaranteed under our Constitution. Allowing such latitude would further distort incentives for the government and encourage more laxity by the bureaucracy in its general functioning, thereby undermining quality governance. (Emphasis supplied by us).

15. Therefore, merely because the State is the appellant/applicant, a leeway is to be granted while considering the application for condonation of delay is no longer considered to be a good law. As such, the ratio of the decision of State of Haryana vs. Chandra Mani & Ors. (*supra*) will not come to the aid to the applicant.
16. Thus, the inevitable conclusion that can be drawn from the discussion in the preceding paragraphs is that, based on the fanciful grounds presented in the application and the unacceptable explanation for the delay, it would not be appropriate to subject the writ petitioners to this litigation. It would also be unjust to deprive the writ petitioners/respondents of the rights they have acquired due to the applicants' negligence in exercising their rights within the legislatively fixed period of limitation.
17. Consequently, for the reasons stated above, the application for condonation of delay is dismissed. However, there shall be no order as to costs. As a result, the appeal and its connected application, if any, is also dismissed.

(Partha Sarathi Chatterjee, J.)

(Harish Tandon, J.)