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Ct-08

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MAT 1044 of 2021

with

I.A No. CAN 1 of 2021

CAN 2 of 2021

The State of West Bengal & Ors.

Vs.

Swarup Kumar Saha & Anr.

Mr. Pinaki Dhole

Mr. Avishek Prasad

... For the Appellants

Mr. Ekramul Bari

Sk. Intiajuddin

... For the Respondent no. 1/

Writ Petitioner

Re: CAN 1 of 2021

(Condonation of Delay)

1. There is a delay of 1343 days in presenting the memorandum of appeal. The application for condonation of delay is opposed on behalf of the respondent no. 1/writ petitioner.

2. The appeal is arising out of an order dated 10th June, 2016. In the writ petition the order of the District Inspector of Schools(S.E), Siliguri, was challenged. The prayer for higher scale of pay has been negated by the said authority in terms of paragraph 3 of Government Order No. 155-SE(B) dated 13th July, 1999.

3. The appeal was filed on 28th September, 2021 with a prayer for condonation of delay. In the application for condonation of delay it has been stated that after the impugned order was passed the District Inspector of Schools(S.E), Siliguri

placed a proposal before the Commissioner of School Education, Government of West Bengal on 18th November, 2016 for filing an appeal against the order dated 10th June, 2016. On receipt of the proposal the dealing officer of the office of the Commissioner of School Education prepared the requisite papers and placed the same through the Deputy Director of School Education before the Commissioner of School Education. The Commissioner of School Education considered and approved the draft proposal and it was made ready to be placed before the Secretary, School Education Department for final approval.

4. On 19th December, 2016 the Commissioner of School Education, Government of West Bengal upon receiving such approval requested the office of the Legal Remembrancer, Government of West Bengal, to obtain certified copy of the order dated 10.6.2016.

5. On 10.01.2017 the Secretary, School Education Department had approved the proposal for appeal and sent the file to the learned Legal Remembrancer for engaging an advocate for filing the appeal. Mr. Ansar Ali Mondal, learned advocate, was appointed on 01.3.2017 for filing the appeal.

6. On 21st April, 2017 the file was returned to the Commissioner of School Education through the School Education Department. On 3rd May, 2017 the formal letter of engagement was issued in favour of Mr. Ansar Ali Mondal, learned AGP.

7. On 11th May, 2017 all the relevant papers were handed over to Ms. Srilekha Bhattacharyya, junior to the learned AGP, who received the same with a note without certified copy. On 18th May, 2017 a prayer was made before the learned Legal Remembrancer for handing over the certified copy to the learned advocate in order to enable here to prepare the memorandum of appeal.

8. On 16th December, 2019 the original certified copy was received by the Directorate and on 19th December, 2019 the appropriate authority was requested to engage another advocate in place of Mr. Ansar Ali Mondal. The noting on the file shows that the said change was suggested as Mr. Mondal could not file the appeal and he was no longer in the State panel.

9. The Commissioner of School Education, Government of West Bengal on 8th January, 2020 forward the file to the School Education Department for fresh appointment of State

advocate and the Principal Secretary on 9th January, 2020 sent the file to the learned Legal Remembrancer, Government of West Bengal.

10. On 14th January, 2020 the Legal Remembrancer approved the engagement of Mr. Supriyo Chattopadhyay, learned senior government advocate. An appointment letter was issued in favour of Mr. Chattopadhyay on 17th February, 2020. Mr. Supriyo Chattopadhyay on 19th February, 2020 returned the brief expressing his view that it was not a fit case to file appeal after considerable delay, moreover, the point raised has already been decided by this Hon'ble Court in several other matters. Thereafter, the State had decided to prefer an appeal by initiating a fresh note prepared on 7th July, 2021. However, the appeal was filed on 28th September 2021 with a prayer for condonation of delay. In between due to COVID situation the work was affected.

11. Mr. Avishek Prasad, learned counsel appearing on behalf of the appellants, submits that the facts disclosed in the petition has to be read in a holistic manner and it would show that the appellants were never negligent in conducting the matter. Advocates were engaged to prefer an appeal but they could not file the appeal within the

period of limitation. The decision to prefer an appeal was taken immediately after the order was communicated. Mr. Prasad further submits that the petitioner has meritorious case and in the event the appeal is dismissed on the ground of limitation the appellants would suffer irreparable prejudice. Mr. Prasad has also referred to the decision of the coordinate bench in MAT 1620 of 2019 (***The State of West Bengal & Ors. Vs. Uttam Manna & Ors.***) decided on 10th February, 2021 and has submitted that the order of the learned Single Judge is contrary to the law laid down by the coordinate bench in the said decision and also in an earlier decision in MAT 618 of 2021(***The State of West Bengal & Ors. Vs. Mohitosh Das & Anr.***) decided on 16th December, 2021.

12. Mr. Ekramul Bari, learned counsel representing the respondent no.1/writ petitioner, has opposed the prayer for condonation of delay. It is submitted that there has been an inordinate delay in preferring the appeal. He submits that the explanations offered by the appellants are flimsy and cannot be accepted. The pushing of files from one department to other is a red tapism in the process and this cannot cause the prejudice to the appellants. Mr. Bari has referred to the decision

of the Hon'ble Supreme Court in ***SLP (CIVIL) No. 5301 of 2022 (State of Uttar Pradesh & Ors. Vs. M/s. Satish Chand Shivhare and Brothers)*** decided on 4th April, 2022 and submits that in the said decision the Hon'ble Supreme Court has clearly held that the usual explanation of red tapism due to pushing of files and the rigmarole of procedures cannot be accepted as sufficient cause.

13. Mr. Bari has relied upon the decision of the coordinate bench decided in MAT 618 of 2021(supra) submits that in the aforesaid decision the application for condonation of delay was allowed, subject to the deposit of costs assessed at Rs.1,00,000/- with the State Legal Service Authority due to departed practice of lethargy by the Government department in preferring the appeal.

14. The legislature has consciously incorporated Section 5 under the Limitation Act, 1963, to confer a jurisdiction upon the Court to condone the delay on sufficient cause being shown for the delay. The approach of the Court in deciding the application for condonation of delay would be justice oriented hedged with a cautious approach not to condone casual, indolent and culpable negligence. The Government is not a

favoured litigant. The Government is required to behave responsibly. It is noticed in **State of Uttar Pradesh & Ors.(supra)** in paragraph 17, which reads:-

“17.The explanation as given in the affidavit in support of the application for condonation of delay filed by the Petitioners in the High Court does not make out sufficient cause for condonation of the inordinate delay of 337 days in filing the appeal under Section 37 of the Arbitration and Conciliation Act. The law of limitation binds everybody including the Government. The usual explanation of red tapism, pushing of files and the rigmarole of procedures cannot be accepted as sufficient cause. The Government Departments are under an obligation to exercise due diligence to ensure that their right to initiate legal proceedings is not extinguished by operation of the law of limitation. A different yardstick for condonation of delay cannot be laid down because the government is involved.”

15. However, the Hon’ble Supreme Court has also approved of a liberal approach in **State of Uttar Pradesh & Ors.(supra)** where the Court is satisfied that there is a prima facie merit in the appeal. This is reflected in paragraph 22 of the said judgment, which is produced below:-

“22. When consideration of an appeal on merits is pitted against the rejection of a

meritorious claim on the technical ground of the bar of limitation, the Courts lean towards consideration on merits by adopting a liberal approach towards 'sufficient cause' to condone the delay. The Court considering an application under Section 5 of the Limitation Act may also look into the prima facie merits of an appeal. However, in this case, the Petitioners failed to make out a strong prima facie case for appeal. Furthermore, a liberal approach, may adopted when some plausible cause for delay is shown. Liberal approach does not mean that an appeal should be allowed even if the cause for delay shown is glimsy. The Court should not waive limitation for all practical purposes by condoning inordinate delay caused by a tardy lackadaisical negligent manner of functioning."

16. From the narration of facts given in the application for condonation of delay, the decision to prefer an appeal was immediate. However, the process through which it had culminated in filing the appeal with the prayer for condonation of delay appears to be tardy but not deliberate. Undoubtedly, the long delay is undesirable but at the same time the Court cannot disregard the fact that some officers at the relevant time had taken a conscious decision notwithstanding a view expressed by Mr. Supriyo Chattopadhyay, learned State advocate for not preferring an appeal. The

issue raised in the appeal requires consideration. The Court is, prima facie, satisfied that the appellant has been able to make out a strong arguable case on merit. We do not find that there has been a culpable negligence and deliberate inaction on the part of the appellants in pursuing the appeal.

17. On such consideration, we allow the application for condonation of delay, subject to payment of costs of Rs.50,000 (Fifty Thousand) to the State Legal Services Authority within two weeks from date, in default, the appeal shall stand dismissed without any further reference to this Court.

18. The application for condonation of delay being CAN 1 of 2021 stands disposed of.

19. Liberty to mention upon compliance of the aforesaid order.

20. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

