

(2021) 10 J&K CK 0058

In the Jammu And Kashmir High Court

Case No : APLPA No. 41 Of 2017, CDLSW No. 149 Of 2017

Chief General Manager Telecommunication, Jammu And
Others

APPELLANT

Vs

Karnail Singh

RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 114, Order 47 Rule 1
Limitation Act, 1963 — Section 5

Citation : (2021) 10 J&K CK 0058

Hon'ble Judges : Tashi Rabstan, J;Puneet Gupta, J

Bench : Division Bench

Advocate : R.D. Agrawala, Pardeep Kumar Mathur, P.S. Chandel, P.N. Raina, J.A. Hamal

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

APLPA No. 41/2017

This is an application seeking permission to file additional documents. For the reasons detailed in the application, it is allowed. The documents as sought for are taken on record.

APLPA No. 41/2017 stands disposed of.

CDLSW No. 149/2017.

1. This application for condonation of delay being CDLSW No. 149/2017 has been filed by the applicants-petitioners for condoning the delay of 620 days in filing the Review Petition, whereby review of the judgment dated 25.02.2016 passed by this Court in LPA(SW) No. 29/2007 has been sought.

2. Averments made in the application reveal that a SLP(C) No. 16440/2016 was preferred by the applicants-petitioners (herein) before the Hon"ble Apex Court

that met with the fate of dismissal in limine vide order dated 11.07.2016. The petitioner-Corporation, being left with no effective choice, reached DoT, the administrative ministry of the petitioner corporation, and noticed the pendency of the litigation on the same subject matter before the Apex Court by way of SLP(C) No. 34038/2012 arising out of the Division Bench judgment of the High Court of Himachal Pradesh. It is contended by the applicants-petitioners that the matter was referred to Senior Counsel on the panel who, after examining the statutory provisions, advised to prefer a review petition before this Court, as such; the applicants-petitioners have come up with an application for condonation of delay in filing the review petition.

3. Objections have been filed by the non-applicant/respondent, resisting the application for condonation of delay inter-alia on the grounds that the non-applicant (herein) was given forced retirement on account of spinal injury suffered by him while discharging his duty; that the application for condonation of delay has been filed after dismissal of SLP by the Apex Court; that the applicants-petitioners did not implement the judgment despite filing of the contempt petition and instead filed application for condonation of delay after two years on the plea of department having found a contrary judgment of a Division Bench of the High Court of Himachal Pradesh which is not binding on the Division Bench of this Court. At last, it has been submitted that the application for condonation of delay deserves to be dismissed.

4. Rejoinder has also been filed by the applicants-petitioners, in response to the objections filed by the respondent, to the condonation of delay application.

5. Heard learned counsels for the parties and perused the record.

6. Reference here to the brief facts leading to filing of the review petition by the petitioners becomes inevitable in order to appreciate the controversy. Indulgence of this Court has been sought through the review petition to the judgment and final order dated 25.02.2016 passed in LPASW No. 29/2007, whereby the LPA was dismissed. The review is primarily sought on the ground that the judgment dated 25.02.2016 is "per incuriam", being opposed to some statutory provisions of CCS (Pension) Rules, 1972 and also owing to a very comprehensive contrasting judgment delivered by the High Court of Himachal Pradesh on the same subject matter after remand of the case to the High Court by the Hon"ble Supreme Court. Admittedly, prior to filing this review petition, the applicants-petitioners filed SLP before the Hon"ble Supreme Court challenging the decision of this Court rendered in LPA, that stands dismissed in limine. Justifying the filing of review petition after dismissal of SLP it is submitted on behalf of petitioners that filing of the review petition after dismissal of the SLP is no bar in view of the judgment of the Apex Court in "Kunhayammed & Ors. vs State of Kerala &another" decided on 19th of July, 2000.

7. Applicants-petitioners have filed this application whereby they have sought condonation of delay of 620 days in approaching the Court for review of its

judgment dated 25.02.2016. As already pointed out, the main contention for seeking review is a judgment of Division Bench of the Himachal Pradesh High Court taking a contrary view, which according to the applicants-petitioners was the correct legal view in comparison to the view taken by this Court in the judgment sought to be reviewed. The delay of 620 days in approaching the Court is, thus, tried to be explained on the plea that after dismissal of SLP filed against judgment dated 25.02.2016 of this Court, of which, review is being sought, it was decided vide order dated 11th of July, 2016 to file review because the petitioner-Corporation was left with no other effective alternative in the matter. Moreover, when the matter reached DoT, applicants-petitioners came to know that on a similar issue there was a litigation pending before the Hon"ble Supreme Court, arising from the State of Himachal Pradesh. The applicants-petitioners contend that the matter had been referred to a Senior Counsel who advised to file a review petition. It may be noticed that the pleadings are bereft of the details as to on which date the matter was examined by the Senior Counsel or when the said advice was acted upon by the petitioner-Corporation or as to how such a long period of 620 days elapsed in examining the possibility and taking decision to file review.

8. Respondent has vehemently objected to the bona fides of the applicants-petitioners in filing application for condonation of delay because according to him there is absolutely no ground much less just and reasonable for condoning delay of 620 days. Learned counsel for non-applicant/respondent submits that the non-applicant/respondent received spinal injury rendering half of his body paralytic and the said injury was received during his active employment. Responding to the Division Bench judgment of Himachal Pradesh High Court, the learned counsel for non-applicant/respondent submits that the same is not binding on this Court moreover the said judgment of Himachal Pradesh High Court was neither cited nor relied, when the matter, i.e., LPA, was finally heard.

9. Before answering, as to whether or not the applicants-petitioners have made out a case of existence of sufficient grounds for condonation of delay, a very brief reference to the some important facts again becomes necessary.

9.1 Respondent earned a judgment dated 07.12.2009 from the learned Writ Court in SWP No. 369 of 2005. The Division Bench Judgment in LPA filed by applicants being LPASW No.29 of 2007, was passed on 25.02.2016. The judgment had to be complied within three months from the date of receipt of the copy of the judgment. By reference to the grounds taken for review, applicant is basing his case on Division Bench judgment of Himachal Pradesh High Court and now at the argument stage is further basing the case on the judgment in Civil Appeal No.6309 of 2017 titled Sunder Singh and others V. State of Himachal Pradesh, decided on 08.03.2018. Curiously enough, the judgment in Sunder Singh case, even though is granting pension, yet, the applicants-petitioners are pursuing the review petition as such and the condonation delay application.

10. Since for any review application filed under Section 114 of CPC read with

Order 47 Rule 1, the following accepted principles cannot be lost sight of and the principles are:

- i) An error apparent on the face of the record must be such a patent error which in one glance can be detected without advancing long drawn arguments on either side;
- ii) Where there are two possible views regarding the interpretation or application of law vis-a-vis the particular facts of a case, taking one view, even if it is erroneous cannot be said to be an error apparent on the face of the record;
- iii) Even if a decision or order is erroneous in law or on merits, it cannot be accepted that it is an error apparent on the face of record;
- iv) No hard and fast rule can be laid down to declare or to point out certain error to be an error apparent on the face of the record. The exercise of power under review has to depend on the facts of the case.

11. As already discussed, the plea of the applicants for review is based on the premise that the view taken by this court is contrary to a judgment of Division Bench of Himachal Pradesh High Court which was neither cited nor could bind the Division Bench of this Court. The second ground taken during arguments in essence pertains to the judgment dated 08.03.2018, passed in Sunder Singh's case. The said judgment, even though by its date of pronouncement, cannot be made a ground for review as the same was passed much after the judgment dated 25th of February, 2016, when an SLP against the judgment dated 25th of February 2016, had been dismissed, which in fact is a judgment granting pension and not rejecting the same. The twin grounds as such of reference to Division Bench judgment of Himachal Pradesh and the judgment in Sunder Singh's case cannot legally form basis for review.

12. Here, we have to first consider the application for condonation of delay of the applicants-petitioners in filing petition for review of judgment dated 25.02.2016. While considering the said application, the merits of the case are also required to be taken into consideration, as it has been observed in a number of judgments that substantial justice being paramount and pivotal and the technical consideration should not be given undue and uncalled for emphasis. There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for, the courts are not supposed to legalize injustice but are obliged to eliminate injustice. However, reference to some of the judicial pronouncements of the Apex Court would guide us in considering and deciding the application at hand.

13. In *Pundlik Jalam Patil (dead) by LRs v. Executive Engineer, Jalgaon Medium Project and another*, (2008) 17 SCC 448, it has been held by the Supreme Court that:

"29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the

purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

30. Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation/ resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest."

14. The Supreme Court in *Office of The Chief Post Master General v. Living Media India Ltd.*, AIR 2012 SC 1506, has held that:

"12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13. 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 bonafide 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

15. In *Amalendu Kumar Bera v. State of West Bengal*, (2013) 4 SCC 52, it has been held by the Supreme Court that:

"Merely because the Respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in absence of "sufficient cause" delay shall not be condoned."

16. In *Tukaram Kana Joshi v. M.I.D.C.*, AIR 2013 SC 565, the Supreme Court has observed that:

"The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case."

17. In the case of *Esha Bhattacharjee v. Raghunathpur Nafar Academy*, (2013) 12 SCC 649, the Supreme Court made an observation as follows:

"15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of

reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present-day scenario. They are:

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challan manner requires to be curbed, of course, within legal parameters."

18. So far as the application seeking to condone the delay in filing the Review Petition is concerned, a perusal of the file reveals that there is 620 days delay in filing the Review. The applicants-petitioners have failed to give any cogent reason for this delay. Delay in filing Review petition after the statutory period of

limitation prescribed cannot be condoned as a matter of course. The party seeking condonation of delay was required to satisfy the Court that there was sufficient cause justifying condonation of delay. Merely saying that the delay was on account of procedural aspect and having found a contrary judgment of a Division Bench of the High Court of Himachal Pradesh, which is not binding on the Division Bench of this Court, is not sufficient cause to condone the delay. The Hon"ble Supreme Court in SLP (Civil) Diary No(s).19846/2020 titled as Union of India Vs. Central Tibetan Schools Admin & Ors., decided on 04.02.2021 while dismissing it on account of delay observed as under:-

"We have repeatedly being counselling through our orders various Government departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the legal department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake!

The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No.22605/2020 decided on 11.01.2021]...."

19. On a plain reading of the application for condonation of delay filed by the applicants-review petitioners, it is evident that the plea, highlighted by the applicants-review petitioners regarding Himachal Pradesh High Court's judgment, was never urged by the counsel appearing on behalf of the applicants-review petitioners at the time of advancing arguments on the appeal, when it came up for final hearing. Even a ground of challenge reflected in the appeal, if not urged at the time of hearing, will be deemed to have been not pressed. More so, the judgment relied upon by learned counsel for the applicants-review petitioners is also distinguished by the Supreme Court in Meghmala and others v. G.Narasimha and others reported in (2010) 8 SCC 383 after discussing in length both the judgments viz. Kunhayayammed and others V. State of Kerala and another reported in AIR 2000 SC 2587 and Abhai Maligai Parnership Firm and another V. K.Santhakumaran and others reported in AIR 1999 SC 1486.

20. Noticing the aforesaid facts in brief, we find that no sufficient explanation or

justifiable cause to condone the inordinate delay of 620 days in filing the review has been shown. Resultantly, the application for condoning the delay of 620 days in filing the Review Petition is dismissed. As a corollary, the Review petition shall also stand dismissed with no order as to costs.