

(2018) 03 MP CK 0084
In the Madhya Pradesh High Court
Case No : R.P. NO. 397 OF 2018

Narendra Kumar Tiwari

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 19-03-2018

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2018) 03 MP CK 0084

Hon'ble Judges : SANJAY YADAV, J;ASHOK KUMAR JOSHI, J

Bench : Division Bench

Advocate : Tej Singh Mahadik

Final Decision : Dismissed

Judgement

Learned counsel for the petitioner appears and tenders his unconditional apology for being not present when the matter was taken up in early hours.

In view whereof, the order dismissing the Review Petition for want of prosecution is recalled.

There is a delay of 3806 days (approximately 10 years) in filing this review petition, whereby the petitioner seeks review of order dated 07/09/2007

passed in MCC No. 372/2007. Incidentally, the Miscellaneous Civil Case was also a review petition filed by the petitioner seeking review of order dated

03/01/2007 passed in Writ Appeal No. 392/2006.

The writ appeal was directed against the order dated 21/09/2006 passed in Writ Petition No. 3460/2003(S). The writ petition filed by the petitioner was

against his non-selection on the post of Lower Division Teacher in the examination held by Madhya Pradesh Junior Services Selection Board in the

year 1985. The petition was dismissed by order dated 21/09/2006 on the finding that the roll number which was allotted to the appellant was 21067803

and not roll No. 2106783. Learned Single Judge found that the said roll No. i.e., 2106783 was allotted to one Dinesh Gupta and not to the petitioner.

In an intra court appeal, the Division Bench affirmed the finding arrived at by the learned Single Judge, by holding :-

“We have heard the learned counsel for the parties. On our direction original record have been produced including the allotment of original roll No.

to the appellant as well as to Dinesh Gupta as well as copy of the enquiry report, examination sheets and other relevant documents. We have perused

the entire record in the presence of appellant Narendra Kumar Tiwari and his counsel Shri D.K. Katare, Shri Saxena, Assistant Director, School

Education present in the court along with the record submitted that in MCC No.37/06 correct facts were placed before the court that the appointment

letter was wrongly issued to the appellant and thereafter an enquiry was conducted by three member committee of the senior officers including Dy.

Director of Education, Gwalior, Dy. Controller, M.P. Junior Service Selection Board and Chairman-cum-Under Secretary of M.P. Junior Service

Selection Board. From the perusal of the aforesaid record, it is clear and rather admitted by the appellant present in the Court that roll No.21067803

was allotted to him. He appeared in the examination on that roll No. He also verified the answer sheets which was allotted to him for the roll

No.21067803. Thus, from the aforesaid record and the admission of the appellant, it is clear that roll No. which was allotted to appellant Narendra

Kumar Tiwari was 21067803 and not 2106783. It is admitted position that roll No. 2106783 was allotted to one Dinesh Gupta. It is also clear that

appellant Narendra Kumar Tiwari on roll No.21067803 was not selected in the examination conducted by the Board and the appointment was given to

him on the basis of some wrong notions as the appellant has himself suppressed the facts and subsequently claimed the roll No.2106783 which was

the roll No. of selected candidate. Therefore, from the aforesaid facts, it is clear that appellant Narendra Kumar Tiwari who appeared in the

examination on roll No.21067803 was not selected and the appointment was wrongly issued to him on some mistake in the office and subsequently

now after enquiry and verification of record it has been corrected and his services have been terminated. Thus, under the facts and circumstances of

the case we have no hesitation to hold that the appellant appeared on roll No.21067803 and was not selected in the examination and, therefore, he is

not having any right of appointment and the appointment was wrongly given to him and that has rightly been set-aside and his service have rightly been terminated. When he was not selected on the aforesaid roll No. there is no question for grant of any relief in his favour. Learned Single Judge has rightly considered the aforesaid aspect of the matter and has rightly held that appellant got the appointment suppressing the facts and taking the advantage of some mistake in the office record, to which he may be party, but that has now been corrected by the respondents. Thus, after perusal of the record, seeking the finding of the enquiry committee as well as the learned Single Judge, we are of the view that no case is made out in favour of the appellant for grant of any relief. The action taken by the department is totally justified. Accordingly, this writ appeal has no merits and hence it is dismissed.

The original record is returned back to the Assistant Director, School Education present in the court as all the photocopies of the aforesaid original record are available in M.C.C. No.37/06.

Parties are directed to bear their own costs.â??

Against the said order, petitioner preferred a review petition No. 372/2007 which was dismissed on 07/09/2007 in the following terms:-

â??Heard.

This is a review petition. While hearing the writ appeal No. 392/2006, this Court had examined the entire record. Appellant has admitted that his Roll

Number is 21067803 and he appeared on that Roll Number and the Answer Book was also examined by us of that Roll Number. The candidate who

was selected was of Roll Number 2106783. The examination took place in the year 1985 by M.P. Junior Service Selection Board for the post of

Lower Division Teacher. The petitioner cannot take the advantage of his own misdeeds. He is trying to confuse the Court as well as the counsel.

It is settled law that even in cases where persons are selected they have no right to claim appointment on the selected post and that too after 22 years.

Accordingly, we do not find any merit in this review petition. There is no mistake apparent on the face of the record. This review petition is

dismissed.â??

After more than 3806 days (approximately 10 years), petitioner filed this review petition seeking review of the order dated 07/09/2007 passed in

M.C.C. No. 372/2007. Certain explanation has been tendered vide I.A. No. 1313/2018, whereby petitioner seeks condonation of delay of almost 10

years (3806 days) in filing the present review petition.

It is urged that the petitioner was pursuing the matter under Right to Information Act and only after getting the certain information, he has approached this Court seeking review of order dated 07/09/2007 passed in M.C.C. No. 372/2007.

It is, however, borne out from the explanation tendered by the petitioner that in an application under Right to Information Act, no such information

given to the petitioner as would cause any dent to the finding arrived at by the learned Single Judge in Writ Petition No. 3460/2003(S) and the Division

Bench in Writ Appeal No. 392/2006 as can be said to be that the petitioner was prevented by just a cause.

As regard to sufficient cause, it has been held in *Lanka Venkateswarlu (dead) by LRs vs. State of Andhra Pradesh* [(2011) 4 SCC 363], wherein their

Lordships were pleased to observe:-

19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this

country, including this Court, adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under

Section 5 of the Limitation Act. This principle is well settled and has been set out succinctly in the case of *Collector, Land Acquisition vs. Katiji* (1987)

2 SCC 107.

23. The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this

Court in the case of *Balwant Singh vs. Jagdish* (2010) 8 SCC 685 as follows:-

25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable

time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of

reasonableness" as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of party to arise. These principles should be

adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one

party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take

away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party.

Justice must be done to both parties equally. Then alone 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

28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be

unjustifiable. The concepts such as "liberal approach", "justice oriented approach"; "substantial justice" can not be employed to jettison the substantial

law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the

High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the

parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to

blatant sarcasms.

29. Whilst considering applications for condonation of delay, under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled

discretionary powers. All discretionary power especially judicial powers have to be exercised within reasonable bounds, known to law. The discretion

has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of

exercising discretionary powers.

In view whereof, we find no justifiable sufficient cause tendered by the petitioner for condoning the delay of almost 10 years (3806 days).

Consequently, I.A. No. 1313/2018 is dismissed.

The Review Petition is dismissed being barred by limitation. However, no costs.