
(2007) 01 GUJ CK 0037

In the Gujarat High Court

Case No : Civil Application - For Condonation of Delay No. 1334 of 2007 in
Miscellaneous Civil Application (St) 2130 of 2006

Pushpaben M. Thakkar

APPELLANT

Vs

President and Another

RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Citation : (2007) 01 GUJ CK 0037

Hon'ble Judges : B.J. Shethna, J;A.L. Dave, J

Bench : Division Bench

Advocate : Megha R Chitalia, for Petitioners No. 1, for the Appellant; Jitendra M Patel, for Respondent(s) No. 1, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The applicant is the original appellant petitioner. She had challenged the impugned order dated 6.5.1985 passed by the President of mahemdavad Nagar Panchayat terminating her services on the ground that her initial appointment was not in conformity with the staff set up sanctioned by the Government for the purpose of grant by way of writ petition i.e. Special Civil Application No.3231 of 1985. The said writ petition was dismissed by the learned Single Judge (M.S. Shah, J.) by his Judgment and order dated 29.7.1999 as His Lordship was of the considered opinion that it was mistake of the President of Nagar Panchayat who initially gave appointment to the petitioner. But, her appointment was made by the President who has no authority, therefore, it cannot be said that her services were wrongly terminated. This decision of the learned Single Judge, rendered on 29.7.1999 dismissing the petition, was challenged by her by way of LPA No. 1487 of 1999 through her Counsel Shri Prem Ghanshyani. When the said LPA was placed before this Court on 1.5.2003 the matter was called out twice, but the learned Counsel Shri Ghanshyani, who had filed Appeal on behalf of the appellant, was not present. He had not filed either Leave Note or Sick Note. Nobody made mention on his behalf. Therefore,

this Court had no option but to dismiss the matter for non-prosecution. Accordingly, it was dismissed on 1.5.2003.

2. After a period of more than 3 years i.e. on 19.8.2006 the applicant appellant original petitioner had filed the above Miscellaneous Civil Application for restoration of her above LPA which is hopelessly barred by the period of limitation by 1154 days. For condoning the gross delay of 1154 days the present Application came to be filed only on 1.12.2006, that too, without any Affidavit, which is must. Be that as it may.

3. The applicant had tried to explain the gross delay of 1154 days by submitting that initially she was in contact with her Advocate Shri Prem Ghanshani, but after some time her Advocate gave assurance that her matter was pending before the Court and her presence was not required before the High Court and she may not worry about her case. Therefore, she did not take care for the matter and thought it not fit to again and again disturb her Advocate. She has further stated in the Application that on 13.7.2005 after a period of more than two years of dismissal of her case for non-prosecution by this Court her son, while searching on the Internet, came to know that her matter was already dismissed for non-prosecution as her Advocate failed to remain present when the matter was called out. She made the inquiry and on inquiry she came to know that her Advocate Shri Prem Ghanshani had already left the country and settled down in abroad. Thereafter, on 18.7.2005 she applied for legal aid though she had all facilities, including the facility of Internet. Be that as it may.

4. She has further alleged in Para : 8 of Application that initially she was given assistance of Advocate Ms. Rupalben Patel, but she had also stopped giving services to the Legal Aid. When she again approached for Legal Aid on 10.8.2005 she was given assistance of another Advocate. She had not received any letter thereafter from the Legal Aid Committee till January, 2006. For the first time she was asked to remain present with all relevant case papers but the papers were with Advocate Shri Ghanshani and, therefore, she could not get any papers. She even tried from the High Court to get the copy of papers and at last she got the papers only on 4.8.2006 and handed over the papers to the Legal Authority and accordingly the matter was filed.

5. From the above, it is clear that though the matter was dismissed for default in absence of Advocate way back on 1.5.2003 by this Court she did not bother about her case for a period of more than 2 years as, according to her own statement, she came to know about the dismissal of her case on 13.7.2005. Thereafter also her conduct left us much desire. She has tried to throw the burden on one and all for such a gross delay. The way in which she got the employment also speaks volumes about her conduct.

6. For all these reasons we are not inclined to condone such a gross delay of 1154 days which have not been satisfactorily explained.

7. In view of the above discussion this Application fails and is hereby summarily

dismissed.