
(2016) 04 GAU CK 0060

In the Gauhati High Court

Case No : M.C. No. 1315 of 2015 in W.A. SI. No. 250208

State of Assam and Ors.

APPELLANT

Vs

Ranjit Ch. Talukdar and Anr.

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2016) 3 Civil LJ 812 : (2016) 4 Gau LJ 96 : (2016) 4 Gau LR 110 :
(2016) 2 NEJ 258

Hon'ble Judges : Ajit Singh, C.J. and Suman Shyam, J.

Bench : Division Bench

Advocate : Mr. U.K. Goswami, learned counsel and Mr. S. Saikia and U. Choudhury, Advocates, for the Appellant; Mr. C. Goswami, learned counsel and Mr. S. Chakraborty, Mr. D. Sarma and Mr. S. Saikia, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Singh, C.J.—; Heard on admission.

1. This is an application for condonation of delay of 329 days in filing writ appeal against the order dated 1.4.2014 passed by the learned Single Judge of this High Court whereby he has allowed non-applicant's WP(C) No.48/2011.

2. By order under challenge, the applicants have been directed to pay the salary arrears to non-applicant No.1 through his wife non-applicant No.2 from 17.2.2001 till his date of retirement and also the pension and other benefits admissible in accordance with law.

3. The learned Single Judge has held that non-applicant No.1 was suffering from mental illness for which he was not allowed to join in Dirma Jhakhili High School where he was transferred vide order dated 2.2.2001. The learned Single Judge has also held that none of the applicants had promptly bothered to take any action to give non-applicant No.1 some valid pension or some other form of

retirement admissible to him. The learned Single Judge was even held that the applicants did not dispute in the petition that non-applicant No.1 was entitled to salary from 17.2.2001 till the date of his retirement i.e. 7.6.2011.

4. As there is delay of 329 days in filing the appeal against the order of learned Single Judge, we shall examine whether there is "sufficient cause" for condonation of such a huge delay.

5. The application for condonation of delay is filed by the applicants along with an affidavit of Sri Ramesh Chand Jain, Secretary, Government of Assam, Education (Secondary) Education, Assam. The relevant paragraphs 3 and 4 of the application read as under:

"3. That the applicants most respectfully begs to state before Your Lordships that the copy of the Judgment and order dated 1.04.2014 passed in W.P.(C) No.48/2011 was submitted by the petitioner No.2 vide letters dated 4.06.2014 to the Director of Secondary Education, Assam. It is reported by the Director that he pursued the matter for filing an appeal with the then departmental counsel, but appeal was not filed. Thereafter, the petitioner No.2 submitted the copy of the Judgment on 3.12.2014 and immediately, the matter was examined in different level in the office of the Secretary to the Government of Assam, Education Department to file an appeal against the Judgment and order dated 1.04.2014. The Secretary vide letter dated 24.12.2014 requested the Senior Standing Counsel, Education (Secondary) Department Gauhati High Court to move the Court for filing either a review or an appeal against the said Judgment and order dated 1.04.2014. Though, the said letter and the connected papers were dispatched to the office of the Senior Standing Counsel, Education (Secondary) Department, Gauhati High Court, but received after the winter vacation.

In this context, it is pertinent to mention here that though the matter was disposed of on 1.04.2014, but prior to 3.12.2014, the Secretary of the Department did not know about the Judgment and order dated 1.04.2014.

The applicants craves leave of the Hon"ble Court to produce the copies of the forwarding letters dated 4.06.2014 and 3.12.2014 at the time of hearing of the case.

4. That the applicants beg to state that thereafter, necessary steps has been taken for preparing the appeal, but some of the vital documents could not be trace out in the office records. Moreover, the required document such as affidavits of the respondent which were not readily available in office records and due to winter holiday of the court, the same could not be procured either from the court record. Thereafter, no effective steps could be taken as the "Magh Bihu" holiday forthcoming and the concerned Counsel entrusted with the duty of filing the appeal went out of station. For which the appeal could not be prepared during the month of January,2015. The appeal was prepared and make it ready for filing on 26.02.2013. In the meanwhile, already a delay of 337 days occurred

in filing the appeal. There is no laches and negligence in filing the writ appeal and the delay of 337 days occurred in filing the appeal due to the unavoidable circumstances as has already been mentioned herein above."

6. The decision of Supreme Court in *Office of Chief Post Master General v. Living Media India Ltd.* AIR 2012 SC 1506 is directly on the point. In this case there was a delay of 427 days in filing the appeal before the Supreme Court against the judgment of the High Court and the certified copy of the High Court Judgment was applied after four months with no explanation why it was not applied for within a reasonable time. The Supreme Court after examining other dates mentioned in the affidavit of the person-in-charge of the case to justify the delay found that there was delay at every stage with no explanation for the cause of delay. The Supreme Court also took serious note of the casual manner in which the Government departments are functioning showing virtually no respect to the law of limitation. And, while dismissing the appeal on the ground of delay, the Supreme Court has made the following observation:

"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.

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 bona fide 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 department. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

7. In yet another decision, the Supreme Court in *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* AIR 2012 SC 1629 has held that in cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

8. It is to be noted that although order dated 1.4.2014 under challenge was passed in the presence of learned counsel for the applicants; the application for its certified copy was made as late as on 19.2.2015 i.e. after 10 months. This fact is evident from the certified copy of the order filed along with the application

for condonation of delay. No explanation is given why application for obtaining certified copy was not made within a reasonable time. It is admitted by the applicants that on receiving the letter from non-applicant No.2, Director of Secondary Education came to know about the order dated 1.4.2014 on 4.6.2014. Sadly even then, no effective steps were taken to file the appeal within reasonable time.

9. Though it is stated that the delay in filing the appeal is bona fide, the fact remains that from day one the authorities concerned have not evinced diligence in pursuing the matter by taking appropriate steps. The applicants have miserably failed to give any acceptable and cogent reason to condone the delay in filing the writ appeal required to be filed in the same High Court building.

10. Having regard to the above referred decisions of the Supreme Court in Office of the Chief Post Master General (*supra*) and Maniben Devraj Shah (*supra*) in the fact situation of the present case, we find no sufficient cause to condone the delay of 329 days.

11. The application is, accordingly, dismissed. In the result, the appeal also fails and is dismissed on the same ground of delay.