

(2006) 03 GUJ CK 0065
In the Gujarat High Court

Case No : Civil Application No. 3097 of 2006 in Civil Revision Application
(Stamp) No. 96 of 2006

State of Gujarat

APPELLANT

Vs

Dr. Bharatbhai Gokaldas Maniar

RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 03 GUJ CK 0065

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : Paurami Sheth, for the Appellant; Party in person, for the Respondent

Judgement

P.B. Majmudar, J.—Rule. Dr Bharatbhai Gokaldas Maniar, respondent herein, who is present as a party-in-person, waives service of Rule. At the joint request of both the sides, Civil Application as well as Civil Revision Application are heard today for final hearing.

2. Heard Ms Paurami Sheth, Assistant Government Pleader for the applicant and Dr Bharatbhai Gokaldas Maniar who appeared in person.

3. By filing this civil application, the State Government has prayed for condonation of 574 days" delay in filing the revision application. The aforesaid revision application is filed against the order of the District Court, Rajkot by which the learned Appellate Judge has rejected Civil Miscellaneous Application No. 125 of 2001 which was filed for condonation of delay of 212 days in filing appeal against the judgment and decree passed by the learned 6th Joint Civil Judge (Senior Division) at Rajkot.

4. The opponent herein is the original plaintiff who has filed Regular Civil Suit No. 1308 of 1995 for a declaration and permanent injunction on the ground that the plaintiff is entitled to have higher pay scale in the cadre of Lecturer and that the

action of the State Government in not giving him the aforesaid senior scale in the cadre of Lecturer is illegal and arbitrary and violative of Articles 14 and 16 of the Constitution of India. The said suit was resisted by the State Government. The learned 6th Joint Civil Judge (Senior Division) at Rajkot by his order dated 6th January 2001 decreed the said suit. The trial Court gave a declaration in favour of the plaintiff to the effect that the plaintiff is entitled to get the senior pay scale in the cadre of Lecturer with effect from 27.7.1992 and directed the State Government to give necessary benefit to the plaintiff in connection with senior scale with effect from 27.7.1992. It is required to be noted that the aforesaid suit was decreed on 6th January 2001 and thereafter nothing concrete was done in connection with filing of appeal before the District Court. Thereafter, the department woke up from its slumber and filed appeal on 20th September 2001. Sincere there was a delay in filing the said appeal, Civil Miscellaneous Application No. 125 of 2001 was filed for condonation of said delay.

5. The learned Joint District Judge, Rajkot by his order dated 1st July, 2004 rejected the prayer for condonation of delay on the ground that there was gross negligence on the part of the State Government. It is interesting to note that the aforesaid order of the learned Joint District Judge, Rajkot was not carried further for a considerable period by the State Government by filing revision application or by availing of appropriate remedy before this Court. However, the revision application came to be filed before this Court on 13th March 2006. Thus, there is a delay of 527 days in filing the present revision application and, therefore, this Civil Application is preferred for condonation of such delay.

6. Learned Assistant Government Pleader, Ms Paurami Sheth has submitted that the delay has taken place in view of the fact that the Education Department had sought for an opinion of the Legal Department and that the Legal Department had twice opined that this is not a fit case for filing further proceedings since no case is made out for condonation of delay. She submitted that thereafter after further persuasion from the Education Department that the Legal Department subsequently gave permission for filing the revision application before this Court. Ms. Sheth also submitted that it is true that it is a case of gross negligence on the part of the State Government but an opportunity may be given to the State Government to contest the matter on merits by condoning the delay in filing the appeal as well as by condoning the delay in filing this revision application.

7. At the request of the Court, learned Assistant Government Pleader has produced on record the necessary files pertaining to the present case. It is required to be noted that in the instant case there was a delay in preferring the appeal before the District Court. The said delay was not condoned. Against the said order of the District Court in rejecting the application for condonation of delay, the present revision application has been filed but there is a delay of 527 days even in filing this revision application. In this connection, the Court has noticed upon going through the file of the Education Department that after the decision of the District Court, the Director of Higher Education sent a proposal to

the Legal Department after a period of one year i.e. on 6th March 2005. As per the noting finding place in the file of the Education Department dated 30th January 2006 the Department has noted that the Government Pleader gave opinion not to file any proceedings in the case. Ultimately, a decision was taken on 30th January 2006 to file an appeal. It is interesting to note that there is also a noting of the Department dated 1.2.2006 and as per the same the following officers were discharging their duty :

- (1) Shri R.P. Gupta, Commissioner of Higher Education
- (2) Shri P.V. Trivedi, in-charge Commissioner of Higher Education
- (3) Shri Rajiv Gupta, Commissioner of Higher Education
- (4) Shri H.C. Patel, Joint Director
- (5) Shri M.M. Bhatt, Joint Director.

8. As per the noting on the file, it is decided to take appropriate action against the erring officers who are responsible for such delay.

9. The aforesaid persons were responsible in not proceeding with the matter in time. It may be true that by the impugned decision of the trial Court the Government may have to suffer financial consequences, but the way in which the matter was dealt with reflects a sorry state of affairs. Ms. Sheth, learned Assistant Government Pleader has also handed over the file of the Legal Department and upon going through the same it is noticed that the Secretary, Legal Department has clearly opined that cogent reasons have been given by the learned Government Pleader not to take further steps in the matter and, therefore, it was not a fit case for filing revision before this Court.

10. Here is a case where there is a delay at the first instance in filing appeal before the District Court and at the second instance there is a delay in filing the present revision application before this Court. Even though the application for condonation of delay in filing the appeal was rejected by the learned Appellate Judge yet, there is a delay of 527 days in filing this revision application. If the concerned officers have not taken any care, it is the bounden duty of the State Government to take appropriate proceedings against the erring officers. It is interesting to note that even before filing this revision application before this Court, the opponent decree holder has already withdrawn the amount that was deposited by the State Government and thereafter this revision application is moved by the State Government. All these facts reveal a very unfortunate state of affairs on the part of the State administration.

11. It is undoubtedly true that while declining the delay application, the Courts should take a liberal approach. But, the officers of the State Government should also understand that the law of limitation is applicable to the State as well and if somebody in the Education Department was not satisfied with the opinion of the Legal Department and if any steps are required to be taken for filing revision

application, they should have acted promptly with a view to avoid any unreasonable delay in filing the revision application. In the instant case, as pointed out earlier, the delay has caused at two stages once at the time of filing the appeal before the District Court and against the order of the District Court by which the District Court had refused to condone the delay. The delay which has occurred in filing revision is still more. It is therefore clearly a case of inaction, lethargy and negligence shown by the Department. Unless somebody is interested in not taking the care of the interest of the State, such delay would not have occurred at least at both the stages as there was hardly any movement of the file. The said fact prima facie shows that some one in the Department must have played some role in delaying the proceedings. However, it is for the concerned Department to find out the erring person by way of conducting appropriate enquiry.

12. Dr. Bharatbhai Gokaldas Maniar, respondent herein, has submitted that he is associated with teaching activity in a law college and he would like to see that the decree of the trial court is tested on merits before the appellate Court. He submitted that the amount which he has withdrawn pursuant to the decree shall be kept in Fixed Deposit account for a period of three years in any nationalised bank and he will deposit the FDRs before the Nazir of the trial Court. He says that he will not withdraw any amount till the appeal is decided by the appellate Court. He says that for no fault on his part, he has to suffer and, therefore, it is prayed that some reasonable cost may be awarded.

13. As pointed out earlier, though no leniency is required to be shown in favour of the applicant, since the respondent has agreed that he has no objection if the delay is condoned, this application for condonation of delay is allowed on condition that the respondent shall deposit Rs.50,000/- towards costs within a period of two weeks from today. Learned AGP, Ms Sheth states that such cost will be deposited within a period of two weeks from today before the trial Court. As and when the said amount is deposited, the respondent herein shall be entitled to withdraw the said amount unconditionally and after ensuring that such amount is deposited, then the District Court will proceed with the main appeal on merits after the same is appropriately numbered by the registry of the District Court. The District Court shall try to dispose of the said appeal within a period of one year from the date of its registration.

14. It is required to be noted that as per the noting of the Education Department it is clear that some of the Government officers are responsible for this inordinate delay. The Government is directed to hold appropriate enquiry in this behalf and the amount of cost should be recovered from such erring officers so that the State exchequer is not burdened further in this behalf. Learned A.G.P., Ms Sheth has fairly submitted that the Government has decided to hold enquiry against the erring officers in this matter. The Government shall try to complete the enquiry expeditiously and at least within a period of six months from today and thereafter shall recover Rs.50,000 from such erring officers. A copy of this order

may also be sent to the Chief Secretary for the purpose of ensuring that appropriate enquiry is initiated by the concerned department and the State exchequer is not put to loss so far as amount of cost as indicated in this petition is concerned. It is clarified that in case the aforesaid amount is not deposited within the stipulated time, the proceedings shall be treated to have been terminated. It is also clarified that the withdrawal of the decretal amount by the respondent shall be subject to the outcome of the appeal before the District Court. In case the appeal is not decided for some reasons within a period of one year, the appellate Judge shall pass appropriate order for renewing the said FDR for a further period till the appeal is decided by the District Court. However, the appellate Court is requested to hear and decide the appeal within a stipulated period of one year as indicated in this order. Ultimately, if the appeal is dismissed, the respondent is entitled to receive the FDRs along with the interest accrued thereon. In case the appeal is allowed, naturally, the State will be entitled to get back the aforesaid amount of the FDR along with the accrued interest.

15. In view of the aforesaid observations and directions, Civil Application No. 3097 of 2006 as well as Civil Revision Application (Stamp) No. 96 of 2006 are disposed of. The order passed by the appellate Court dated 6.1.2001 in Civil Miscellaneous Application No. 125 of 2001 is set aside. Rule is made absolute with costs as indicated in the order. Registry is directed to give regular number to Civil Revision Application, which is also being disposed of by way of this common order.