

(2024) 05 SHI CK 0092

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition (Main) No. 950 Of 2023

State Of Himachal Pradesh & Others

APPELLANT

Vs

Ravi Sharma

RESPONDENT

Date of Decision : 22-05-2024

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2024) 05 SHI CK 0092

Hon'ble Judges : M.S. Ramachandra Rao, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Anup Rattan, Pranay Pratap Singh, Atharv Sharma

Final Decision : Dismissed

Judgement

M.S. Ramachandra Rao, CJ

1. This application is filed by the applicants-State under Section 5 of the Indian Limitation Act, 1963 to condone delay of one year and one month in filing this appeal challenging the judgment dt. 23.03.2022 passed by the learned Single Judge in CWP no. 7002/2021.

2. In the application filed seeking condonation of delay, it is stated by the applicants-State that the judgment was pronounced by the learned Single Judge in the CWP on 23.03.2022, copy of the judgment was applied by the Advocate General on 30.03.2022 and copy was delivered on 05.05.2022. It is stated that the copy was also delivered on 28.06.2022 by the office of the Advocate General, State of Himachal Pradesh to the applicant department.

3. It was also stated that the applicant department had also downloaded the same from the web portal of the High Court on 05.04.2022.

4. It is stated that the matter was deliberated at different levels and after detailed deliberation, it was taken up with the State Government of HP through a letter dt. 28.05.2022 for advice regarding its implementation.

5. The State Government then sent a letter on 26.07.2022 that the High Court had only directed for consideration of the case of the petitioner on the basis of the policy prevalent at the time of death of his father and therefore action should be taken as deemed fit.

6. It is further stated that the matter was then examined and a letter dt. 20.10.2022 was again sent to the Government requesting for clarification regarding appointment to be given to the petitioner or not; that the Government again sought certain information on 18.11.2022 which was provided on 12.01.2023; ultimately the Government on 27.05.2023 informed that the Letters Patent Appeal should be filed in the High Court and thereafter it was filed on 22.06.2023.

7. Reply is filed by the respondent opposing the condonation of delay and it is contended that the no sufficient cause has been shown for condonation of such a long period of delay. He contended that after the expiry of the period of limitation, rights had accrued in his favour which cannot be allowed to be taken away lightly as was being urged by the applicants. He also stated that the applicants had accepted and implemented the judgment through an order dt. 23.08.2022 by offering him employment as Class-IV employee in the Government Department and having done so, they could not have filed the appeal. It is stated that the applicant had been negligent in pursuing the legal remedy and therefore the application for condonation of delay should be dismissed.

8. We have noted the contentions of the parties.

9. In *Postmaster General and others Vs. Living Media India Limited and another*, (2012) 3 SCC 563 the Supreme Court held: -

"25. We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in *Office of the Chief Postmaster v. Living Media India Ltd.* as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months.

26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to

why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. 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.

28. 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 bona fides, 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."

10. The said judgment has been followed by the Supreme Court in several cases such as Commissioner of Customs Chennai vs. M/s Volex Interconnect (India) Pvt. Ltd. (2022) 3 SCC 159 , Pr. Commissioner Central Excise Delhi-1 vs. Design Dialogues India Pvt. Ltd. (2022) 2 SCC 327 , Union of India vs. Central Tibetan Schools Administration & others (2021) 11 SCC 557 , Union of India & others vs. Vishnu Aroma Pouching Private Limited and another (2022) 9 SCC 263 , and State of Uttar Pradesh & others vs. Sabha Narain & others (2022) 9 SCC 266 .

11. Counsel for the applicants relied on the judgment of the Supreme Court in Sheo Raj Singh (deceased) through LRs & Others Vs. Union of India & Another, Civil Appeal no.5867 of 2015 dt. 09.10.2023.

12. In Sheo Raj Singh, the High Court had condoned the delay of 479 days in filing a Land Acquisition Appeal in the High Court and the explanation offered found favour with the Supreme Court. In that case, the Supreme Court observed that it was not hearing an application for condonation of delay, but was sitting in appeal over discretionary exercise of the High Court granting the prayer for condonation of delay; in the case of the former, whether to condone or not, would be the only question, whereas in the latter, whether there has been proper exercise of discretion in favour of grant of prayer for condonation, would be the question; and the law was well settled that a Court of appeal should not ordinarily interfere with the discretionary exercise by the Courts below, and that the appellate power should be exercised only when the order challenged in

appeal is clearly wrong and not when it is merely not right.

13. The said decision therefore cannot help the applicants since in the instant application, this Court has to consider the question whether sufficient cause has been shown to condone the period of delay. It is not considering an order passed by a subordinate forum condoning the delay or refusing to condone it.

14. Having regard to the law declared by the Supreme Court in Postmaster General (supra-1) and other cases where the said judgment has been followed, and since there is no satisfactory explanation offered by the applicants-State explaining the cause for delay from the time the it secured knowledge of the impugned judgment dt.23.3.2022 on 5.4.2022/28.6.2022 till 22.6.2023, when the appeal was actually filed, we hold that the applicants were negligent in taking steps to file the Appeal within the period of limitation of 30 days. So we are not inclined to condone the inordinate delay in filing this appeal, as is also not in dispute that the order of the learned Single Judge had already been implemented by the applicants as alleged by the respondent and not denied by the Additional Advocate General.

15. Accordingly, this application fails and is dismissed. Consequently, the appeal (LPAST No.21305/2023), is also dismissed.

16. Pending miscellaneous application(s), if any, shall also stand disposed of.