

(2014) 11 MAD CK 0582

In the Madras High Court

Case No : M.P. No. 1 of 2013 in W.A.SR. No. 62196 of 2013

The Director of Elementary Education

APPELLANT

Vs

E.S.T. Backthavachalam

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2014) 11 MAD CK 0582

Hon'ble Judges : Satish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Judgement

1. This is an application to condone the delay of 314 days in filing the writ appeal.
2. The first respondent Challenged the order passed by the District Elementary Education Officer, Thiruvallur, returning the proposal for approval on the ground that appointment was made without following the male/female ratio. The writ petition in WP No. 4346 of 2011 was allowed by the learned single Judge by order dated 09.7.2012. The petitioners were directed to examine the matter afresh. Feeling aggrieved by the said order, the petitioners have come up with this intra-court appeal along with application to condone the delay of 314 days.
3. The affidavit is sworn to by the second petitioner. The District Elementary Education Officer in his affidavit contended that the then Elementary Education Officer met with an accident on 25.6.2012 and he joined duty on 17.8.2012. Thereafter, he took leave from 22. 8.2012 to 3.12.2012. The said officer once again took leave from 8.10.2012 to 2.11.2012. Thereafter, he was promoted as Chief Educational Officer and he left the post on 19.11.2012.
4. The reason that the Elementary Education Officer met with an accident and the resultant absence are taken as ground for condoning the delay. The petitioners have no case that there was no substitute posted to look after the duties of the then Elementary Education Officer, who met with an accident on 25.6.2012. The fact that a particular officer was absent cannot be a reason to

condone the delay. The education department should function through out the year. The post of Elementary Education Officer is a highly sensitive post. We are not in a position to appreciate the contention that the post was kept vacant for months together. The factual matrix very clearly shows that the petitioners slept over the issue and only after considerable delay, they have initiated action for filing appeal.

5. In Commissioner of Wealth Tax -- Amateur Riders Club (1994 Supp(2) 603), Special Leave petition was filed with a delay of 264 days. While refusing to condone the delay, the Supreme Court observed:

" 3..... Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that the Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red tape. But there are limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude to indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest."

6. In Pundlik Jalam Patil (D) by Lrs. Vs. Exe. Eng. Jalgaon Medium Project and Another, , the Supreme Court refused to condone the delay in filing the appeal and observed that Court cannot enquire into belated and stale claims on the ground of equity. The Supreme Court further observed that the Court helps those who are vigilant and " do not slumber over their rights".

7. The Supreme Court, in Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another, , reminded the Government bodies that unexplained delay would not be condoned as a matter of course. The Supreme Court said:

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

8. The Supreme Court, in Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, , considered the expression " sufficient cause" within the meaning of Section 5 of the Limitation Act and observed thus:

" (14). We have considered the respective arguments/submissions and carefully scrutinised the record. The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.

..(23). What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

(24). What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

(25). 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."

9. The reasons given by the petitioners are not sufficient to condone the delay. We therefore, do not find any ground to entertain the miscellaneous petition.

10. In the result, this miscellaneous petition is dismissed. Consequently, W.A.SR.No. 62196 of 2013 is rejected.