

(2020) 09 J&K CK 0036

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 4146, 4148 Of 2020, Latter Patent Appeals No. 82 Of 2020, SWP No. 441 Of 2014

Union Territory Of J&K And Others

APPELLANT

Vs

Mushtaq Ahmed

RESPONDENT

Date of Decision : 21-09-2020

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 323, 341, 458, 497

Citation : (2020) 09 J&K CK 0036

Hon'ble Judges : Rajesh Bindal, J;Javed Iqbal Wani, J

Bench : Division Bench

Advocate : Raman Sharma

Judgement

CM No. 4146/2020

1. The present appeal has been filed by the Government of Jammu and Kashmir, challenging the order dated 25.02.2014, passed by the Learned Single Judge. Alongwith the appeal, an application seeking condonation of delay of 2,131 days, has also been filed.

2. Learned counsel for the applicant submitted that delay in filing the appeal is on account of impersonal machinery in the Government set-up and red-tapism. The files have to be moved from one department to another, which consumes more time in taking final decision regarding filing or non- filing of appeal. In the case in hand, immediately after receipt of copy of the order passed by the Learned Single Judge of this Court, complete details have been furnished regarding different stages, where the file remained pending. Finally, when approval was received, the appeal was filed.

3. He further submitted that Hon'ble the Supreme Court has opined that while condoning the delay in filing appeal by the State, liberal view has to be taken. The merits of the case are also required to be considered. It is a case in which the Learned Single Judge had allowed the writ petition, without even issuing

notice to the Government and a direction was issued for issuance of appointment letter in favour of the petitioner, who had a criminal record, in police force,. The selections were made way back in the year 2009. The writ petition was filed in the year 2014.

4. Heard learned counsel for the applicants on the issue of condonation of delay in filing the appeal. At this stage, it would be relevant to note down certain facts :

DATE

EVENTS

24.02.2007

The respondent, who was tried as an accused in case FIR No. 46/2006 under section 341 RPC, was acquitted by the Court on the basis of compromise between the parties.

31.12.2012

The respondent was acquitted by the Principal Sessions Judge, Ramban, in FIR No. 35/2007, registered under sections 497,458, 323 RPC and 4/25 I.A. Act.

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The representation filed by the petitioner to the competent authority, for issuance of letter of appointment.

25.02.2014

The writ petition filed by the petitioner, seeking a direction to the respondents to issue appointment letter to him, was allowed, without notice to the respondents in the writ petition.

24.03.2014

Copy of the order passed by this Court, was received by Armed Police Headquarter.

26.03.2014

Claim of the petitioner, for issuance of letter of appointment, was rejected by the competent authority, keeping in view his criminal background.

There is nothing pointed out from record to show that the aforesaid communication was ever challenged by the writ petitioner in Court.

09.04.2014

The matter was taken up with Police Headquarter for opinion regarding filing of appeal in the matter.

28.05.2014

The Police Headquarter had taken up the matter with the Home Department seeking opinion regarding the filing of appeal against the order dated 25.02.2014.

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SWP No. 590/2015 was filed by the respondent challenging order dated 19.11.2014 deleting his name from the record of JKAP-9 th Battalion.

Direction was also sought for issuance of formal appointment letter in terms of order passed by this Court on 25.02.2014 in SWP No. 441/2014.

16.03.2015

Police Headquarter informed the APHQ that the Law Department had returned the case through Home Department with the opinion that there is no ground for assailing the order as passed by the Single Bench.

17.06.2015

APHQ again took up the matter with PHQ for taking of the matter with the Law Department for re-consideration of its opinion regarding filing of appeal.

20.07.2015

PHQ took up the matter with the Home Department for reconsideration of the matter.

21.10.2015

Home Department informed the PHQ that the earlier opinion regarding the case being not fit for filing appeal, still holds good.

09.06.2016

After re-examination of the matter, PHQ again referred the matter to the Home Department for re-consideration.

23.08.2016

PHQ sought comments/views in the matter from APHQ.

03.09.2016

APHQ furnished details comments and ground for filing appeal to Police Headquarter.

28.09.2016

Police Headquarter again took up the matter with the Home Department with a request to grant sanction for filing appeal.

25.03.2017, 17.07.2017, 03.08.2017, 07.12.2017 and 10.03.2018

Reminders were sent by Police Headquarter to Home Department regarding

sanction for filing appeal.

23.04.2018

APHQ received a communication from Police Headquarter regarding comments on the proposal sent for sanction for filing appeal, which read as under :

"Returned: The opinion already conveyed in the matter vide U.O. dated 13.02.2015 and 28.09.2015 is reiterated. However, if the department still believes to file LPA in the matter, then the concrete grounds for filing of LPA and convincing reasons for justifying the delay may be furnished to this Department."

12.05.2018

Detailed comments/views were submitted to Police Headquarter.

23.05.2018

Police Headquarter had again taken up the matter with the Home Department for grant of sanction for filing appeal.

11.10.2018

Law Department granted sanction for filing appeal.

22.10.2018

APHQ received necessary information regarding sanction for filing appeal and was asked to furnish documents and information to Learned AAG (Home), Jammu for filing appeal.

31.12.2018

Learned Dy. AG wrote to Secretary Law to re-consider the desirability of filing appeal as in fresh SWP No. 590/2015 filed by the respondents, objections had been filed and the matter was pending in this Court. Further there was extraordinary delay of about 05 years in filing the appeal.

14.01.2019

Police Headquarter requested Law Department to share up to date status of filing of appeal.

23.02.2019

Police Headquarter wrote a letter to the Additional Director General of Police with a request to submit record of the writ petition alongwith comments, for forwarding the same to the Home Department.

12.03.2019

Armed Police Headquarter had written a letter to Director General of Police Jammu and Kashmir, communicating that they should agree with the opinion of the State counsel for reconsideration on the issue of filing of appeal.

Contempt Petition No. 495/2019, was filed by the respondent alleging non-compliance of the order passed by this Court on 25.02.2014 in SWP No. 441/2014.

17.10.2019

Copy of the Contempt Petition bearing No. 495/2019 alongwith, comments were submitted to the Police Headquarter.

21.10.2019

Learned AAG was asked to file appeal against the order dated 25.02.2014.

04.11.2019

Learned AAG asked for the relevant record for filing the appeal.

06.12.2019

Learned AAG was provided with factual note and complete record for filing appeal.

02.03.2020

Appeal was filed after a delay of 2,131 days.

5. From the facts as noticed above, it is evident that there was total lack of coordination between different departments, as a result of which a simple matter regarding decision to file appeal against an order passed by the Learned Single Judge kept on shuttling between different departments. Time and again, the Police Department had been requesting the Home Department to grant sanction for filing the appeal, however, the Law Department had been rejecting the same. It was in third round that the permission was granted. From a perusal of the dates and events, as have been noticed above from the application for condonation of delay, it is evident that file remained pending with different departments for months together, as if there is no period of limitation for filing appeal or the attempt was deliberate to let the appeal be time barred. In the process more than four years lapsed. Not only this, about one year passed even after sanction was accorded and the matter was sent to the State counsel to file appeal. At that stage, even he also sent his opinion that keeping in view delay in the matter it would be an exercise in futility, to file appeal.

6. From the facts as noticed above, it is evident that none of the authority had considered the merits of the controversy to examine as to whether the order passed by the Learned Single Judge, was required to be challenged or not. They had further failed to appreciate that the limitation to file intra-court appeal against the order passed by Learned Single Judge was sixty days. All the authorities in different departments/offices had been taking their own time at leisure to examine the matter or forwarding the same either upside or down

marking. Admittedly, copy of the order dated 25.02.2014 passed by this Court, which has been challenged by filing the present appeal, was received in the office of APHQ on 24.03.2014 and appeal was filed on 02.03.2020.

7. Another issue, which may require consideration in the present case is that the Learned Single Judge had allowed the writ petition directing the issuance of appointment letter in favour of the respondent, without even issuing notice in the petition. Another important fact, which required consideration by the authorities for taking decision to challenge or not to challenge the order passed by the Learned Single Judge was that when the writ petition was allowed on 25.02.2014, a representation filed by the petitioner seeking issuance of appointment letter, which was pending with the authorities, was rejected on 26.03.2014. The rejection was never challenged by the respondent. However, he filed a subsequent writ petition bearing SWP No. 590/2015, challenging the communication dated 19.11.2014, whereby the name of the respondent was deleted from the record of JKAP-9th Battalion. As per the information from the Registry, The aforesaid writ petition was last listed in Court on 01.11.2017 when it was kept for 09.11.2017. Thereafter, no date was fixed in the said petition and the same is still pending. The fact remains that the government did not take any interest to pursue that matter, as is the normal practice.

8. The issue regarding the condonation of delay in proceedings initiated by the State/Government Authority has been considered by Hon'ble the Supreme Court time and again and it has been opined that State though, can be given some latitude in condoning delays but the time cannot be in infinity. Its officers are liable to be held responsible for inaction.

9. It is further evident from the facts of the case that there is no system in place in various departments as to how to deal with the litigation. Apparently, no one is responsible or accountable for its action/inaction, though we had an Accountability Commission in the then State of Jammu & Kashmir. That is why, in a simple matter, like the case in hand, to take decision to file an appeal, about four years were taken and thereafter one year was taken in filing appeal.

10. The correspondence between different departments also reflects that the grounds on which the order was sought to be challenged, were asked by the Law Department. Meaning thereby, there is no set procedure regarding opinion of the counsel, to be attached with the copy of the order passed by the Court, when the same is forwarded to the concerned department. The same would enable the competent authority to examine the same in the light of the opinion of the law officer, whether it is a fit case for filing the appeal or not. Time bound action is required by all the authorities involved in the process, keeping in view the period prescribed for filing appeal.

11. It is a matter of common knowledge, for which judicial notice can be taken is that there is hardly any case/appeal filed by the Government, which is not delayed. The possible conclusion for this can be either inefficiency in the system

or in some cases even the connivance also cannot be ruled out. Many a times belated appeals are filed just to get the stamp of the Higher Courts/Forums to close the file with the note that the matter was taken to the Higher Court but still the department failed. Such an attitude, cannot be accepted. There has to be a proper system in place with accountability of the persons dealing with files, so that they just don't sleep over the files. Not only this there had been instances where selectively the orders passed by the courts are challenged in similar matters. In some cases the orders are challenged, whereas in some cases those are complied with. Another example of mismanagement of litigation is that the departments concerned do not intimate the court about pendency of any similar matter either before the same bench or other bench of this court. This some times results in passing of different orders in similar matters, creating anomalous position. Non-compliance of orders passed by this court and the matters, which have attained finality upto Hon'ble the Supreme Court is another issue, which is required to be taken into consideration. And also abnormal delay in filing of replies/objection to the petitions.

12. Before we proceed to take up the matter regarding condonation of delay, we would require the government to respond, as to what corrective steps they have taken or proposed to be taken, to ensure that in future none of the matters go in default. Not only in the matter of filing cases/appeals but even filing affidavits/objections to the cases filed against the government. We have cases pending in court including the Contempt Petitions, where no response has been filed by the government for decades as a result of which, many of the cases are either decided without any response from the government and some times in the absence of the state counsel.

13. Response is also required on the issue as to which is the final competent authority to decide as to whether the order passed by any Court, is required to be challenged or not. The role of the State counsel after instructions have been issued for filing appeal, is also required to be examined to find out as to whether, at that stage, he can return the file, stating the case to be unfit for filing appeal. Especially when there is nothing on record to suggest that any opinion is given by the Law Officer conducting the case when it was decided, regarding it being a fit or unfit for filing appeal. Further there is nothing on record to suggest that opinion of the state counsel was sought when the case was entrusted to him for filing appeal. At some stage finality has to be attached to the decision making process and the authorities have to take decision with responsibility and not by shirking the same.

14. Issue regarding condonation of delay in the present appeal shall be considered after this court is apprised about its stand by the government on the issues noticed above. Streamlining of system is required seeing the present situation, as has been briefly noticed above.

15. Copy of the order be sent to Chief Secretary, Home Secretary and Law Secretary, Union Territory of Jammu & Kashmir, through email by Registrar

Judicial of this Court.

16. Adjourned to October 06, 2020.