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RESERVED

Court No.02

Case :- CIVIL MISC REVIEW APPLICATION No. - 4 of 2021

Applicant :- State Of U.P.Thru.Prin.Secy.Medical Health & Others

Opposite Party :- Khushnoor Khan & Others (In Serb)

Counsel for Applicant :- C.S.C.

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Manish Kumar,J.

(Per Manish Kumar, J.)

Heard Shri Raghvendra Singh, learned Advocate General appearing for the review applicants-State Authorities on the prayer for condonation of delay in filing the review petition and perused the records.

The State of U. P. seeks review of the judgment and order dated 19.04.2016 passed by this Court in Writ Petition No.1701 (S/B) of 2000 whereby the writ petition was dismissed. There is a delay of about 1730 days in filing the review petition from the date of judgment under review herein.

The judgment and order dated 19.04.2016 which is under review before us was earlier challenged by the State of U. P. by way of filing Special Leave Petition No.7563 of 2017 with a delay of 252 days and the same was dismissed on the ground of delay by Hon'ble Supreme Court vide its order dated 05.07.2017. Thus, from the date Special Leave Petition was dismissed, there is a delay of about 1335 days in preferring the review petition.

Writ Petition No.1701 (S/B) of 2000 was filed by the State challenging the judgment and order dated 08.10.1999 passed by

the State Public Service Tribunal whereby parity in pay scale was granted to the respondents herein with the pay scale made available to one Shri Sheo Kumar Singh. The judgment of the Tribunal dated 08.10.1999 was based on an order dated 15.07.1998 passed by this Court in Writ Petition No.3055 (S/S) of 1997 which was filed by Shri Sheo Kumar Singh and Shri Shafat Ali. This writ petition was finally disposed of by this Court by means of the order dated 02.11.2007 whereby the State was directed to provide the petitioners of the said writ petition, namely, Shri Sheo Kumar Singh and Shri Shafat Ali all service benefits and pay scale which were available to them while they were discharging their duties on the post of Electrician.

As noticed above, against the judgment dated 19.04.2016 which is under challenge in the review petition, the State had filed the Special Leave Petition bearing No.7563 of 2017 which was dismissed by Hon'ble Supreme Court by means of the order dated 05.07.2017 on the ground that State had failed to give any justifiable reasons to condone the delay of 252 days in filing the said Special Leave Petition. It is also noteworthy that the order dated 08.10.1999 passed by the Tribunal was implemented by the State vide an order dated 18.10.2017. After dismissal of the Special Leave Petition by means of the order dated 05.07.2017 and after compliance of the order passed by the Tribunal on 18.10.2017, this matter ought to have been put at rest, however, now the review petition has been filed after lapse of a period of about 1335 days from the date when the Special Leave Petition was dismissed. As observed above, delay in preferring this review petition from the date of judgment under review is about 1730 days, whereas such delay from the date of dismissal of Special Leave Petition is about 1335 days.

In the affidavit filed by the review applicants-State certain explanation has been sought to be given for such huge delay in preferring this review petition. However, on a conscious consideration of the averments made in the application seeking condonation of delay and the affidavit filed in support thereof, what we find is that the delay has not been sufficiently explained; rather in the facts of the case, what we conclude is that there has been unjustifiable laches and callousness on the part of the State in preferring this review petition.

It has been stated in the application seeking condonation of delay that the order dated 19.04.2016 which is under review was served upon the State on 02.05.2016 and thereafter the matter is said to have been examined by the Director General, Medical and Health Services. On 19.05.2016 the Joint Secretary of the State Government in the Department of Finance wrote a letter to the Principal Secretary of the Medical and Health Department for a meeting and thereafter on 31.12.2016 it was decided to file Special Leave Petition. The application further states that on 06.03.2017 the Directorate of Medical and Health Services requested the Advocate on Record to file Special Leave Petition and accordingly the Special Leave Petition was filed which, as already noted above, was dismissed as it was filed with unexplained delay of 252 days. The explanation given in the affidavit filed along with the application for condonation of delay is that after the judgment dated 05.07.2017 rendered by the Hon'ble Supreme Court in Special Leave Petition bearing No. 7563 of 2017, the judgment and order dated 19.04.2016 order impugned in the present petition was implemented by the State Government vide its order dated 18.10.2017.

It has also been stated that other similarly situated persons approached this Court by filing writ petitions for granting the parity or for extending the benefit of the judgment and order dated 19.04.2016. The judgments were passed by this Court therein from time to time against which the special appeals were preferred and the same were also dismissed by this Court by means of the orders dated 24.10.2019, 04.11.2019 and 05.11.2019 resulting in huge financial burden on the State exchequer. Thereafter the matter was referred to the Finance Department of the State Government in the month of December, 2020, after 1688 days, since the date of judgment impugned in the present review petition; after 1246 days from the judgment dated 05.07.2017 passed by the Hon'ble Supreme Court and after 393 days from 05.11.2019 when the last decision was given in the special appeal against the judgment in the writ petition preferred by the other persons.

The application whereby the delay has been sought to be condoned further makes averment to the effect that large number of similarly circumstanced persons started claiming parity in pay scale and since in the opinion of the State Government they were not entitled to the same and it caused huge financial burden on the State Exchequer, the matter was referred to the Finance Department of the State Government which in December, 2020 expressed certain discrepancies in the order dated 19.04.2016 passed in Writ Petition No.1701 (S/B) of 2000 parity of which had been claimed in successive writ petitions. The application further states that the State Government after deliberations vide letter dated 11.01.2021 requested the learned Chief Standing Counsel for filing a petition seeking review of the judgment and order dated 19.04.2016 and accordingly this review petition has been filed.

Learned Advocate General taking the Court to aforementioned submissions made in the affidavit filed in support of the application seeking condonation of delay in filing the review petition has submitted that delay is genuine, bona fide, and unintentional. He has further submitted that review petition could not be filed as it took time in completing the administrative formalities by following certain norms and procedure of disciplined and systematic performance of official functions, including preparation of office notes etc., scrutinizing various records, movement of files step by step through different sections and lastly referring the matter to the Head of the Department. Learned Advocate General has further argued that this process takes some time as it depends upon so many factors and circumstances, such as preparation of office notes, non-availability of certain necessary information, non-availability of concerned official/officers, various holidays and certain unavoidable and unspoken circumstances. His further submission is that since large number of employees are claiming parity in pay scale on the basis of judgment dated 19.04.2016 which is under review herein, the same is causing huge financial burden on the State Exchequer and accordingly it was felt imperative to file the instant review petition.

We have given our conscious and serious consideration to the submissions made by the learned Advocate General, however, what we find is that the delay and laches in preferring the review petition are not satisfactorily explained. The reasons as argued by the learned Advocate General rather are, in fact, manifestation of callousness and non-seriousness on the part of the officials and officers of the State Government. What has been stated in para 24 of the affidavit filed in support of the application seeking condonation of delay reflects proverbial

bureaucratic red tapism wherein the review applicants-State has attempted to take shelter in the usual functioning of the administrative machinery. We find it appropriate to extract para 24 of the affidavit filed in support of the application seeking condonation of delay which is as under:

"24. That the delay in filing of the Review Application is genuine, bonafide and unintentional. the Review Application could not be filed earlier as it took time in completing the administrative formalities by following certain norms and procedure of disciplined and systematic performance of official functions, which includes preparation of office notes etc., after scrutinizing various records, movement of files step by step through different sections and to different officers and lastly to the head of the department and thereafter forwarding the matter to the Administrative Department in the Government for appropriate decision. The similar procedure is adopted in the Administrative Department also. The aforesaid process takes some time as it depends upon so many factors/circumstances, such as preparation of office notes etc., as stated above, non-availability of certain necessary informations, non-availability of concerned official/officers, various holidays in between and certain unavoidable and unspoken circumstances. It also took time in obtaining the requisite permission of the law department and also in preparation of the Review Application and its appendices. "

Hon'ble Supreme Court time and again has not only expressed words of caution in respect of casual manner in which the State Authorities approach the Courts without any plausible ground for condonation of delay but has even counselled the State Authorities in this regard. Regard may be had at this juncture to the latest pronouncement made by Hon'ble Supreme Court on 04.02.2021 while dismissing the *Special Leave Petition (Civil) Diary No(s). 19846/2020, Union of India vs. Central Tibetan Schools Admin & Ors.* The Hon'ble Supreme Court dismissed the Special Leave Petition, which was preferred with the delay of 532 days from the date of rejection of

restoration application and 6616 days from the date of original order and made certain observations are quoted below:

"We have heard learned Additional Solicitor General for some time and must note that the only error which seems to have occurred in the impugned order is of noticing that it is not an illiterate litigant because the manner in which the Government is prosecuting its appeal reflects nothing better! The mighty Government of India is manned with large legal department having numerous officers and Advocates. The excuse given for the delay is, to say the least, preposterous.

We have repeatedly being counselling through our orders various Government departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the legal department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake!"

In the case of *Central Tibetan Schools Admin & Ors. (supra)* while observing that the appellant therein had approached the Court in casual manner without any cogent ground for condonation of delay, Hon'ble Supreme Court has referred to the cases of *Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr.*, reported in [(2012) 3 SCC 563] and also the case of *Balwant Singh (Dead) vs. Jagdish Singh & Ors*, reported in [AIR 2010 SC 3043]. Relevant extract of the said judgment in the case of *Central Tibetan Schools Admin & Ors. (supra)* runs as under:

" In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No.22605/2020 decided on 11.01.2021]. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This

position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. vs. Living Media India Ltd & Anr.- (2012) 3 SCC 563. Despite this, there seems to be a little change in the approach of the Government and public authorities. "

In the case of *Living Media India Ltd. & Anr. (supra)* Hon'ble Supreme Court noticed the advancement in modern technology and observed that the claim of seeking condonation of delay 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. In the said case, it was further observed by Hon'ble Apex Court that all the government bodies, their agencies and instrumentalities need to be informed that unless they have reasonable and acceptable explanation for delay, there is no need to accept usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process.

Paras 28 and 29 of the judgement in the case of *Living Media India Ltd. & Anr. (supra)* are extracted hereinbelow:

"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.

29. 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."

Similarly, the Hon'ble Apex Court in the case of *State of Madhya Pradesh and others vs. Bherulal*, reported in *[(2020) 10 SCC 654]* has held that the law of limitation undoubtedly binds everybody including the Government and unless the government authorities, their agencies and instrumentalities have reasonable and acceptable explanations for the delay and there was bona fide efforts on their part, there is no need to accept the usual explanation in the garb of procedural red tape of process. The condonation of delay is an exception and should not be used as anticipated benefits for the Government.

When we examine the explanation of delay of 1730 days in filing the review petition from the date of judgment dated 19.04.2016 which has been sought to be reviewed and delay of 1335 days from the date of dismissal of Special Leave Petition on 05.07.2017, what we find is that the State has once again sought shelter in usual slow pace of State machinery in preparation of office notes, movement of files, non-availability of certain necessary information, non-availability of concerned officials/officers etc. The said explanation cannot be said to be sufficient in view of the law laid down by Hon'ble Apex Court in the case of *Living Media India Ltd. & Anr. (supra)*. The State while seeking condonation of delay in this case has gone even to the extent of taking ground of certain "**unavoidable**" and "**unspoken**" circumstances. In our considered opinion such "unavoidable" and "unspoken" circumstances cannot be taken shelter of to claim condonation of delay in approaching the Courts. In fact the course adopted by the State in preferring the review petition reflects gross negligence and inaction which in

our considered opinion cannot be said to be bona fide. We are aware that a liberal view needs to be adopted by the Courts to advance substantial justice. However, in the facts and circumstances of this case, what we find is that the approach of the State all along has been casual and that of manifest negligence. As observed by Hon'ble Apex Court in the case of *Living Media India Ltd. & Anr. (supra)*, law of limitation binds every one including the Government.

From the date date of judgment till dismissal of Special Leave Petition by the Hon'ble Apex Court on the ground of delay of 252 days, the same period cannot be reconsidered by this Court for condoning the delay. From the date of dismissal of Special Leave Petition i.e. on 05.07.2017 till December, 2020 when the matter was referred to the Finance Department, the reasons indicating the delay for that period is not a satisfactory explanation for delay in filing this review petition. The reasons indicated in the affidavit are only the details of filing of the writ petitions by the other similarly situated persons and the judgment in the special appeals. During that period the review applicants were not stopped by any provision or law to file the review petition.

Considering the fact that the State has grossly failed to offer any proper explanation for huge delay other than mentioning different dates on which notes were prepared and files have been moving from one desk to other and from one officer to other, in our opinion the explanation furnished are neither sufficient nor acceptable to condone such a huge delay.

In the light of the discussions made above, the review petition fails and is hereby **dismissed** on the ground of delay.

Before parting with the case, we may express our solemn hope and trust that the State authorities shall in future be guided by the law laid down by Hon'ble Supreme Court in the case of *Living Media India Ltd. & Anr. (supra)* and in the case of *Central Tibetan Schools Admin & Ors. (supra)*.

Order Date :-17.02.2021

akhilesh/

[Manish Kumar, J.] [D. K. Upadhyaya, J.]