



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 4th August, 2023**
+ **CM APPL. Nos. 20019/2019 and 20017/2019 in W.P.(C)
3613/2004 & CM APPL. 20068/2022 & CM APPL. 20069/2022**

DEPTT.OF HEALTH, GOVT.OF NCT OF DELHI Petitioner
Through: Mr. Sujeet K. Advocate

versus

KAMLA MEHNDIRATTA & ORS. Respondents
Through: Mr. Anuj Aggarwal, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. No. 20019/2019 (Condonation of Delay in filing restoration application)

1. The instant application has been filed on behalf of the petitioner seeking condonation of delay of 691 days in filing the application CM APPL. No. 20017/2019 seeking restoration of the petition which was dismissed in default *vide* order dated 3rd May, 2017.
2. The applicant/petitioner filed the Writ Petition bearing No. 3613/2004 challenging the order of the Labour Court and *vide* order dated 15th March, 2007 the matter was listed in the category of Regular Matters. However, the matter was dismissed in default by this Court *vide* order dated 3rd May, 2017



due to non-appearance of the advocates on behalf of the petitioner. Therefore, the petitioner has filed the present application seeking condonation of delay of 691 days in filing the application seeking restoration of the petition.

3. The respondent was appointed in Delhi Development Authority, New Delhi (D.D.A. hereinafter) on a temporary post of Auxiliary Nurse Midwife (ANM hereinafter) for a period of three months (extendable) *vide* letter bearing No. F.1(1)(D.D.A-App./70-GA-PF-20/5402) dated 29th September, 1970. In 1973, the dispensaries which were run by the D.D.A. were taken over by the petitioner, and the staff working in the said dispensaries was also transferred to the petitioner department, the same day.

4. The non-applicant/respondent was appointed on regular basis *vide* Office Order No. 640 dated 17th April, 1978 and the terms and conditions laid down by the petitioner were duly accepted by the respondent and the other workers. During the course of work, due to an internal arrangement, the respondent was directed to temporarily look after the work of the Staff Nurse, OPD and thereafter of the physiotherapy department as a time gap arrangement in place of the staff delegated to the said departments.

5. In 1995, the respondent filed a case for promotion/appointment as a 'A' grade staff nurse and Physiotherapist before the Labour Court. The Labour Court, *vide* order dated 16th May, 2003, held that the respondent was not entitled to get appointed as 'A' grade staff nurse or a Physiotherapist, but was entitled to salaries for the duration she worked in those capacities.

6. Aggrieved by the award passed by the Labour Court, the petitioner



filed the W.P. (C) No. 3613 of 2004 and the matter was listed in the category of Regular Matters. This Court *vide* order dated 3rd May, 2017, dismissed the matter by default, due to non-appearance of the advocates on behalf of the petitioner. Thereafter, the petitioner filed the present application seeking condonation of delay of 691 days in filing the application seeking restoration of the petition.

7. It is submitted that the present case has been dealt with by different panel advocates engaged by the petitioner at different points of time. Thus, the petitioner department was not aware of the pendency of the present case and only got to know about the dismissal of the case after getting notices from the office of the Executing Court.

8. It is further submitted that the earlier engaged advocate did not return the case files to the petitioner and the same could be retrieved only after sometime, leading to delay in filing the instant applications.

9. Hence, in view of the foregoing submissions, the applicant/petitioner seeks that the application filed for condonation of delay in filing the application seeking restoration of the petition to the original stage and number be allowed.

10. *Per contra*, the learned counsel appearing on behalf of the non-applicant/respondent vehemently opposed the present applications submitting to the effect that the non-applicant/respondent is a senior citizen who has already retired from the services in December, 2008 and the present applications, if allowed, would cause grave prejudice, irreparable loss and injury to the respondent despite a favorable award granted by the learned



Labour Court.

11. It is also submitted on behalf of the respondent that the applicant/petitioner has been already given notice by the office of the Execution Court to comply with the order of the learned Labour Court *qua* disbursement of the salaries which the respondent is entitled to. It is further submitted that a delay of 691 days is not an ordinary delay and cannot be condoned on the grounds taken by the petitioner.

12. Hence, in view of the foregoing submissions, the Non-applicant/respondent prayed that the instant application be dismissed being devoid of any merit.

13. Heard the learned counsel for the parties and perused the reasons explaining delay in filing the application.

14. To condone the delay of 691 days in filing the application seeking restoration of the petition, it is imperative to discuss the nature of delay, and whether such delay can be condoned based on the grounds raised by the petitioner.

15. Section 5 of the Limitation Act, 1963 ('Act' hereinafter) provides for extension of prescribed period for filing an application under any provision except Order XXI of the Code of Civil Procedure, 1908 ('Code' hereinafter) thereby giving powers to the Court to admit the application by condoning the delay after the prescribed period of limitation. The said provision is reproduced herein:

"Section 5. Extension of prescribed period in certain cases.



Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.--The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

16. On perusal of the aforesaid provision, it is clear that the phrase ‘*sufficient cause*’ is a necessary condition for the extension of the prescribed period under the Act. Therefore, the petitioner/applicant needs to satisfy the Court that there arose ‘*sufficient cause*’ for delay in not preferring the petition/application within the prescribed time.

17. The term ‘*sufficient cause*’ as mentioned in the provision has been interpreted in different manner by different Courts and it is well settled that the question of what constitutes sufficient delay cannot be laid down by hard and fast rule, rather the same is to be decided by the courts on facts of the intervening circumstances of each case.

18. In the instant application, the petitioner has urged the grounds of frequent changes in the panel advocates which led to the dismissal of the matter due to non-prosecution as well as considerable delay in filing the application seeking restoration.

19. The petitioner though a State Department having numerous resources



at its disposal, has still been unable to file the application of restoration in a timely manner. It is a well settled principle that the Government is under a special obligation to perform duties with diligence and commitment. The condonation of delay is an exception which should not be used as per convenience of the Government Departments.

20. In *State of Kerala v. Appunny*, 1982 SCC OnLine Ker 38, the Division Bench of the Kerala High Court held that the delay in appointment of public prosecutor cannot be a ground for condonation of delay and mere fact that they are State Department, cannot work in their favour for condoning the delay. The relevant paragraphs are reproduced herein:

"4. The office of the Public Prosecutor in the High Court is one of great prestige, carrying with it considerable duties and responsibilities. We would be justified, we believe, in presuming that the State Government had known sufficiently early that Sri Sreedharan was due to retire on 23-4-1981, and that his retirement was not an event that happened suddenly to the surprise of the Government. It is mandatory under sub-section (1) of section 24 of the Code that for every High Court a Public Prosecutor shall be appointed for conducting prosecutions, appeals, or other proceedings on behalf of the State Government. The failure or delay on the part of the State Government in fulfilling this statutory obligation, for whatever reasons it might be, could not be taken advantage of by the State Government to deny or abridge the vested rights of the accused who ordinarily is entitled to claim the benefit of an order of acquittal unless an appeal against such order of acquittal



was preferred within the time prescribed in that behalf. The parties have to thank themselves for their laches, and the State, which has all the resources at its command, could not be an exception to this position.

5. It looks rather strange that the State should have thought it fit to file appeals for the second time against the orders of acquittal while the appeals filed by the State earlier against the very same orders on the strength of leave granted by this court were pending.

6. To crown everything said above, we find that none of these petitions was filed before 5-10-1981 (not to mention of the fact that some of them had been filed only as late as 20-10-1981). No explanation, whatsoever has been offered for the delay after 14-8-1981 in filing the petitions and the applications for leave accompanying them. No party, much less the State, could assume that delay would be condoned as a matter of course, on the mere asking for it. Delay would normally be condoned only in the interest of justice; and that would be done only on every day's delay being explained to the satisfaction of the Courts."

21. In ***Postmaster General vs Living media India Ltd, (2012) 3 SCC 563***, the Hon'ble Supreme Court discussed the term '*sufficient cause*' as used in Section 5 of the Act and held that it cannot be construed liberally merely because the party is an instrumentality of the Government. The relevant paragraphs of the judgment are reproduced herein:

"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 a 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.

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.”

22. Hence, from the foregoing discussion, it is clear that the Court must not treat the Government agencies differently while deciding the applications for condonation of delay and the Government is under special obligation to ensure that the duties enshrined are properly performed.

23. It is common knowledge that many cases filed before this Court are barred by limitation, however, the courts adopt liberal approach while dealing with the cases filed, despite delay. Even though there is no threshold of the delay to be condoned, it is well settled that the courts generally



condone the delay which is reasonable and where the party concerned show sufficient *bona fide* reasons for such delay.

24. The instant application has been filed seeking condonation of delay in filing the application seeking restoration of the petition, which was not only dismissed due to non-appearance on behalf of the petitioner but also due to non-compliance of the directions of the Court, despite the fact that the matter was pending for a long time. The order dated 3rd May, 2017 is reproduced as under:

"None appears for any of the parties, though the matter has been kept pending till after lunch. It is a matter of record that the respondent is a senior citizen and when the matter was taken up on 29.9.2015, taking note of the fact that the petition was filed way back in 2004 and the fact that over the years none has been appearing on behalf of the petitioner, which is none else, but, Govt. of NCT of Delhi, time bound directions for filing affidavits for ascertainment of the requisite factual conspectus, came to be passed, besides issuance of notices for the parties. It does not surface on record that the said directions even came to be complied with by the petitioner nor anyone has turned up on behalf of the petitioner.

If the Govt. Department does not respond inspite of the fact that the court notice came to be issued for it, any adjudication on the case of the respondent cannot be kept in limbo indefinitely.

Petition is therefore, dismissed in default and for nonprosecution."

25. On perusal of the aforesaid order, as well as the averments made in



the application seeking condonation delay in filing restoration application, it is apparent that the petitioner never had any intention to pursue the matter and had significantly delayed the matter in earlier hearings as well. The petitioner neither took steps to take recourse available, nor gave sufficient and reasonable explanation for such laxity on earlier occasions. This Court expresses its displeasure for such a state of affairs in the petitioner department and is not fully satisfied with the grounds taken by the petitioner for delay in filling the application seeking restoration.

26. In spite of the knowledge of the dismissal of the said petition due to non-appearance, the petitioner failed to file the application seeking restoration on time and chose to do so only after two years and as per its own convenience. The said situation can only be termed as non-seriousness of the petitioner department and the other parties cannot be left suffering and desolated. Therefore, this Court cannot accept the reasons provided for delay in filing the application when it is evident that there was dereliction of duty by the petitioner to comply with the orders of this Court on earlier occasions as well. Thus, the averments made in the application *qua* delay of 691 days cannot be classified as a reasonable delay in any manner.

27. The petitioner, being a Government agency, should act in a timely manner and justify the reasons for an inordinate delay, if any. It is a well-known fact that the red-tape in Government agencies sometimes leads to delays in filing applications, however, at the same time, the delay of 691 days without plausible justification cannot be permissible, as it also has the potential to open the floodgates for similar applications on such grounds.



28. Therefore, in light of the above facts and circumstances and application of law, this Court does not find any merit in the instant application as the applicant/petitioner has failed to satisfy that there exists sufficient cause for delay in filing the application seeking restoration, a condition necessary for condonation of delay under Section 5 of the Act.

29. In view of the foregoing discussions, this Court does not find cogent reasons to condone the inordinate delay of 691 days in filing the application seeking restoration of the petition.

30. Accordingly, the instant application, being devoid of any merit, stands dismissed.

CM APPL. 20017/2019 (Restoration)

31. In terms of the order passed on the even date in CM APPL. No. 20019/2019, it is held that since the application seeking condonation of delay stands dismissed, the application seeking restoration of the petition also stands dismissed.

32. Pending applications, if any, also stand dismissed.

33. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 4, 2023

SV/AV

[Click here to check corrigendum, if any](#)