

Petitioner Vs. Respondent

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Court : Chennai

Decided On : Mar-09-2016

Judge : Satish K. Agnihotri & M. Venugopal

Appeal No. : C.M.P. No. 3764 of 2016 in W.A. Sr. No. 15891 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

M. Venugopal, J.

1. The Petitioners/Appellants have filed the present Civil Miscellaneous Petition praying for passing of an order by this Court to condone the delay of 1388 days in projecting the Writ Appeal Sr.No.15891 of 2016 as against the order dated 09.04.2012 in W.P.No.8869 of 2012.

2. According to the Petitioners/Appellants, the particulars of Writ Petitioners were not readily available together with the order copies immediately and therefore, the Director of School Education, Chennai (2nd Petitioner/2nd Appellant) sent a communication to all the Chief Educational Officers in Rc.No.3841/C5/ E4/2011 dated 22.03.2013 by issuing instructions to send the particulars of the orders passed by this Court in similar cases. As a matter of fact, the 2nd Petitioner/2nd Appellant had received the entire information in detailed format from the respective

Chief Educational Officers during the last week of March 2013 pertaining to 500 Writ Petitions covered by 3444 Writ Petitioners, who obtained final orders from this Court. Thereafter, the available particulars with the 2nd Petitioner/2nd Appellant were forwarded to the Government for finalising to grant the benefit of Selection Grade/ Special Grade to the individuals concerned as per Rc.No.3841/C5/E4/ 2011 dated 17.04.2013.

3. After circulating the files to the Advisory Departments of the Government, the Government had issued G.O.Ms.No.180, School Education Department, dated 06.09.2013 and G.O.Ms.No.181, School Education Department, dated 06.09.2013 as amendments to the G.O.No.69, School Education Department, dated 18.04.2013 extending the benefit of granting Selection Grade/Special Grade to the persons who obtained the Court orders and who had attained Selection Grade/ Special Grade during the period from 01.06.1988 to 31.12.1995 in order to compliance with the High Court's order etc.

4. The stand of the Petitioners/Appellants is that the grounds of Writ Appeal approved by the Special Government Pleader on 20.12.2013 and later, on 26.02.2016 the present Writ Appeal was filed. In that process, there had occasioned a delay of 1388 days in preferring the instant Writ Appeal, which is neither wilful nor wanton but due to the administrative reasons.

5. At this stage, this Court, to prevent an aberration of Justice and in furtherance of substantial cause of Justice, aptly cites the decision of the Hon'ble Supreme Court in H.Dohil Constructions Company Private Limited V. Nahar Exports Limited and another, (2015) 1 Supreme Court Cases 680 at Special page 681, wherein in paragraph Nos.19 and 24, it is observed as follows:

19. It is true that the delay in filing the appeals was only 9 days and that the longer delay was only relating to the refiling of the appeal papers. But even if it is related to refiling of the appeals, the net result is that the appeals could be taken into records only when such a delay in refiling is condoned. Therefore, if the refiling had been made within the time granted by the Registry of the High Court, no fault can be found with anyone much less with the party concerned or whomsoever was entrusted with the filing of the papers into the Registry. But when an enormous

delay of nearly five years occurred in the matter of refiling, it definitely calls for a closer scrutiny as to what was the cause which prevented the party concerned from refiling the papers in time to enable the Registry to process the papers and ascertain whether the papers were in order for the purpose of numbering the appeals.

24. The failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona-fides in its approach.

Also, in the aforesaid decision, at page 682, in paragraph 25, it is held as follows:

25. Thus, there is total lack of bona fides in its approach and the impugned order of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained.

6. On a careful consideration of the stand taken on behalf of the Petitioners/Appellants in regard to the delay of 1388 days in filing the present Writ Appeal in Sr.No.15891 of 2016, this Court is of the considered view that the administrative reasons, assigned on behalf of the Petitioners/Appellants for the delay in question, are not bona fides and also that, they are not valid in the eye of Law. The delay of 1388 days is on the higher side and it appears that the Petitioners/ Appellants are not quite diligent in preferring the Appeal in time. After all the 'Rules of Limitation' are based on the principles of sound public policy and principles of Equity. Viewed in that perspective, this Court is not subjectively

satisfied as to the reasons ascribed on behalf of the Petitioners/Appellants pertaining to the delay of 1388 days in question in regard to the filing of the present Writ Appeal. Therefore, the Miscellaneous Petition sans merits.

7. In fine, the Civil Miscellaneous Petition is dismissed. No costs.

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