

The Chief Postmaster General vs Nirmala S

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Court : Kerala

Decided On : Feb-03-2023

Judge : Honourable Mr.Justice S.V.Bhatti,Honourable Mr.Justice Viju Abraham

Appeal No. : OP (CAT)/190/2015

Appellant : The Chief Postmaster General

Respondent : Nirmala S

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE VIJU ABRAHAM FRIDAY, THE 3RD DAY OF FEBRUARY 2023 / 14TH MAGHA, 1944

OP (CAT) NO. 190 OF 2015 AGAINST THE ORDER/JUDGMENTOA 631/2012 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH PETITIONERS/REVIEW APPLICATIONS/RESPONDENTS: 1 THE CHIEF POSTMASTER GENERAL KERALA CIRCLE, PMG JUNCTION, THIRUVANANTHAPURAM 695 033. 2 UNION OF INDIA REPRESENTED BY THE DIRECTOR, GENERAL, DEPARTMENT OF POSTS DARK BHAVAN, NEW DELHI 110 001. BY ADV SRI.T.V.VINU, CGC RESPONDENTS/RESPONDENTS/APPLICANTS:

1 NIRMALA S PART TIME CONTINGENT EMPLOYEE OFFICE OF CHIEF POSTMASTER GENERAL KERALA CIRCLE, THIRUVANANTHAPURAM 695033, RESIDING AT KARIMAPALIVILA VEEDU, ANATHANAM, NEMCAUD, KARAMANA PO, THIRUVANANTHAPURAM 695 006.

2 A.RADHAMONY ALIAS RADHA PART TIME CONTINGENT EMPLOYEE, OFFICE OF CHIEF POSTMASTER GENERAL KERALA CIRCLE, THIRUVANANTHAPURAM 695033, RESIDING AT LAKSHMI NAGAR, SIVA SADAN, THIRUMALA POST, THIRUVANANTHAPURAM. BY ADV SRI.S.VISHNU THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 03.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 3rd day of February, 2023 S.V.Bhatti, J We have heard the learned Counsel Sri. T.V. Vinu and Sri. S. Vishnu for the parties.

2. The Chief Post Master General and another are the

petitioners before this Court. The petitioners herein are the respondents in OA.No 631/2012. The Tribunal, by the order dated 22-11-2013, disposed of the said Original Application. The petitioners herein have filed an application to condone the delay of 185 days in filing a review petition against the main order in the Original Application. The Tribunal, through the order impugned in the Original Petition, has taken the view that the Tribunal does not have the power or jurisdiction to condone the delay in filing an application for reviewing the order. Hence the Original Petition.

3. The learned Central Government Counsel Sri.

T.V. Vinu argues that the competence of the Tribunal to entertain a petition to condone delay is no more res integra and in support therefore he invites our attention to the Full Bench judgment of this Court reported in Haris K.M & Others Vs. Jahfar.K [2020 5 KHC 123]. In paragraph 19 of the Full Bench judgment, holds as follows:

19. In exercise of the power conferred under Section 35 (2)(d), (e) and (f) and Section 36(c), the Central Government has promulgated the Kerala Administrative Tribunal (Procedure) Rules, 2010. Rule 21 of the Rules says that no application for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is sought. As already observed, the rule making power

does not take in power to make rules for fixing a period of limitation for filing a review application. Such a prescription of 30 days, which is the same as the one prescribed under the Limitation Act, for filing a review petition under the Code of Civil Procedure, was totally unnecessary and uncalled for. Even without Rule 21, the review application ought to be filed within 30 days. Since the period of limitation prescribed in Rule 21 is the same as that applicable for a review petition under the Code of Civil Procedure, we do not think it is necessary to strike down Rule 21. All the same, Rule 21 has to be necessarily subject to the provisions of Section 29 of the Limitation Act which specifically says that provisions contained in Sections 4 to 24 of the Limitation Act will apply to a prescription of limitation under any special or local law. That is to say, an application under Section 5 of the Limitation Act, for condoning the delay in preferring a Review Petition is maintainable.

4. By taking note of the principle laid down by the

Full Bench and following the same to the case on hand, we set aside the order under challenge and restore the M.A. filed for condoning the delay to the file of the Tribunal for consideration and disposal on merits. The Original Petition is allowed. M.A. is restored to file, and the matter is remitted to Tribunal for reconsideration as indicated above on merits. Sd/- S.V.Bhatti, Judge Sd/- Viju Abraham, Judge mtk
APPENDIX OF OP (CAT) 190/2015 PETITIONER ANNEXURES ANNEXURE A1
TRUE COPY OF THE RECEIPT IN RESPECT OF THE 1ST APPLICANT FOR
THE WORK DONE FOR THE MONTH OF APRIL 2012 ANNEXURE A2 TRUE
COPY OF THE TENDER NO. GEN/20- 1ST RESPONDENT ANNEXURE A3

TRUE COPY OF THE REPRESENTATION DATED 21-07-2012 SUBMITTED BY THE 1ST APPLICANT TO THE RESPONDENTS ANNEXURE A4 TRUE COPY OF THE REPRESENTATION DATED 21-07-2012 SUBMITTED BY THE 2ND APPLICANT TO THE RESPONDENTS ANNEXURE R1 TRUE COPY OF MINISTRY OF FINANCE DEPARTMENT OF EXPENDITURE OM NO. F. 7(1)/E.COOR.1/2006 DATED 24-02-2006 ANNEXURE R2 TRUE COPY OF MINISTRY OF COMMUNICATION, DEPARTMENT OF POSTS LETTER NO. 1.10/2009-PCC DATED 11-09- ANNEXURE R3 TRUE COPY OF MINISTRY OF COMMUNICATION, DEPARTMENT OF POSTS LETTER NO. 4-4/2009-PCC DATED 19-11- ANNEXURE R4 TRUE COPY OF TENDER NO.

GEN/KER/18/2012 DATED 01-05-2012 ISSUED BY THE OFFICE OF THE CHIEF POSTMASTER GENERAL, KERALA CIRCLE EXHIBIT P1 TRUE COPY OF THE OA NO.631/2012 DATD 22.7.2012, FILED BY THE RESPONDENT EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT DATED 22.8.2012 FILED BY THE PETITIONER EXHIBIT P3 TRUE COPY OF HTE COMMON ORDER IN OA NO.7/2011 AND CONECTED CASES, DATED 22.11.2013, PASSED BY THE CENTRAL ADMINISTRATIE TRIBUNAL, ERNAKULAM BENCH

EXHIBIT P4 TRUE COPY OF RA NO.11/2014 IN OA NO.631/2012 DATED 30.6.2014 EXHIBIT P5 TRUE COPY OF MA NO.180/00665/14 FOR CONDONING THE DELAY, FILED BY THE PETITIONERS EXHIBIT P6 TRUE COPY OF THE ORDER IN RA NO.180/00011/2014 DATED THE 19.6.2012 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH RESPONDENT EXHIBITS EXHIBIT R1(1) TRUE PHOTOCOPY OF THE CERTIFIED COPY OF REJOINDER FILED IN O.A.NO.631/2012 BY THE RESPONDENTS. EXHIBIT R1(2) TRUE COPY OF COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS IN RA.NO.11/2014 IN O.A.NO.631/2012. EXHIBIT R1(3) TRUE COPY OF REPLY STATEMENT FILED BY THE RESPONDENT IN MISCELLANEOUS APPLICATION NO.665/2014.

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