

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 20.02.2023

Pronounced on: 01.03.2023

OWP No.542/2019

c/w

OWP No.543/2019

OWP No.544/2019

OWP No.545/2019

OWP No.547/2019

UNION OF INDIA

... PETITIONER(S)

Through: - Mr. Nazir Ahmad Bhat, Advocate.

Vs.

ASSITANT LABOUR COMMISSIONER

AND OTHERS

...RESPONDENT(S)

Through: - Mr. Ilyas Nazir Laway, GA.

Mr. T. M. Shamsi, DSGI

CORAM:HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1) If a party sleeps over his right, the right not exercised for a long time is non-existent. The law of limitation revolves around the maxim "*interest reipublicae ut sit finis litium*" - the interest of the state requires that there should be an end to litigation. This rule of vigilance is founded on principle of public policy and its object is to induce a party to be prompt to exercise his right.

2) The controversy being intertwined in nature, instant batch of writ petitions is being disposed of by virtue of this common judgment.

3) Petitioner has invoked writ jurisdiction of this Court for the issuance of a Writ of Certiorari for quashment of order dated 31stDecember, 2018, passed by respondent No.1. i.e. Assistant Labour Commissioner (Commissioner Employees Compensation Act, 1923), Kupwara (hereinafter referred to as 'the authority below'), vide which applications filed by the private respondents for condonation of delay to file an application under Employees Compensation Act, 1923 ('the Act' for short), have been allowed without any lawful justification.

4) In order to appreciate the contours of controversy, it shall be appropriate to have an overview of the facts giving rise to the present petitions.

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5) Respondent No.2 laid an application under the Act accompanied by an application for condonation of delay before the authority below for grant of compensation (award) with interest for the alleged death of his brother Mohammad Yaseen Tantray on 10.08.2002, stated to be a Porter during the course of his employment.

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6) Respondent No.2 filed an application under the Act accompanied by an application for condonation of delay before the authority below for grant of compensation (award) with interest claiming to be the legal heir of deceased Workman, who died way back on 26.02.2000 in an avalanche.

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7) Respondents No.2 and 3 laid a motion under the Act along with an application for condonation of delay before the authority below for compensation (award) with interest claiming to be the legal heirs of the deceased Workman who died way back on 26.02.2000 in an avalanche.

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8) Respondent No.2 filed an application under the Act along with an application for condonation of delay before the authority below for compensation (award) with interest claiming to be the legal heir of the deceased Workman who died way back on 26.02.2000 in an avalanche.

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9) Respondent No.2 laid a motion under the Act along with an application for condonation of delay on 07.04.2017 before the authority below for grant of compensation (award) with interest claiming to be the

legal heir of the deceased Workman who, as per the application, died way back on 26.02.2000 in an avalanche.

10) The petitioner, non-applicant before the authority below, countervailing the stand taken by the respondents (applicants before the authority below) questioned the maintainability of the application(s), primarily on two counts; (1) that application is palpably time barred as no explanation or sufficient cause has been shown or tendered in the application for condonation of delay, and (2) that no claim is maintainable because petitioner never hired the services of the deceased persons and their role in Forward Defended Localities (FDL's) at Kupwara is just to assist the Army, who engage and depute Porters at their own level.

11) The petitioner has assailed the impugned order on the predominant premise that the impugned order is not informed of reasons and application for condonation of delay has been allowed by a cryptic order.

12) According to the petitioner, there was no employer-employee relationship between it and the deceased person(s) and applications were otherwise bad for non-joinder of necessary party qua 53 Infantry Brigade of Army

as the petitioner never hired any Porter throughout their stay or deployment at Kupwara and during deployment at various FDLs, the troops of the petitioner were under Army operational control who used to provide Porters and in case of any accident occurring while on employment, the employing authority (Army) would conduct an enquiry and the release compensation out of S and S Fund.

13) According to the petitioner in all the afore-titled cases, the factum of death of Porter allegedly occurred more than 15 years back never came to the notice of the petitioner and applications laid by the legal heirs of the deceased persons were manifestly barred by limitation and presented in a most lackadaisical manner without tendering any plausible explanation or sufficient cause

14) It is further contention of the petitioner that Id. authority below has failed to appreciate that sub-section (1) of Section 10 of the Act contemplates that no claim for compensation shall be entertained by a Commissioner under the Act unless the claim is preferred within two years of the occurrence of the accident and no dates, details, nature or cause of employment or dependency have been given and details of the officials with whom deceased persons corresponded or the officials who assured the applicant(s), appears to be hypothetical.

15) Despite service, none has appeared on behalf of private respondents and, accordingly, they are set exparte.

16) Respondent No.3 i.e. 53 Infantry Brigade of Army has contended that instant petitions are not maintainable against it as it involves disputed and complicated questions of fact which is beyond the adjudication of this Court. It is contended that petitioner was placed as a Unit at HQ 53 Infantry Brigade. However, its administration is done by itself and HQ 53 Infantry Brigade has no role to play in the present case. It is further contention of respondent No.3 that Porters are hired at the Unit level as the Porters are employed by 69 Bn BSF in consultant with District Labour Officer and the attendance register, muster roll etc. are prepared and maintained by the petitioner battalion. It is categoric stand of respondent No.3 that it was not directly involved with hiring employment and making payment of wages including compensation of any sort to any Porter and pony handlers.

17) It is significant to mention, however, that respondent No.3 has conceded the grounds of challenge urged in the petition by stating that impugned order has been passed by the authority below in a cursory manner unmindful of the inordinate delay which is liable to be quashed.

18) Having heard rival contentions and perused the record, I am of the opinion that orders impugned in the present petitions passed by respondent No.1, besides being perfunctory, are preposterous in nature and are liable to be set aside for the following reasons:

19) No doubt, the courts have adopted liberal approach to condone the delay, however, the liberal construction of Section 5 of the Limitation Act cannot be stretched to a level of defeating the provision and to render the provision of Limitation Act non-existent. It is trite that a court cannot grant indulgence to condone the delay out of sheer benevolence, irrespective of the merits of plea to condonation. The appellant or the applicant, as the case may be, is obliged to satisfactorily explain the delay and to make out the sufficiency of cause. I am fortified in my opinion by **Union of India and Ors. vs. Jaswant Raj Kotwal**, reported as **2004 (1) JKJ [HC]**, relevant extract whereof is reproduced below for facility of reference:

“It is imperative for Court to record satisfaction that explanation tendered by the applicants for the delay in filing the appeal is reasonable and satisfactory, which is essential prerequisite to the condonation of delay. No cause much less sufficient shown for condonation of delay.”

20) This Court in **Satvir Gupta vs. Union of India and others** reported as **2003(3) JKJ [HC] 597**, observed that:

“Liberal construction of Section 5 cannot be so liberal so as to render provisions of Limitation Act non-existent – Section 5 enacted for benefit of diligent litigants who cannot avail remedy for justifiable cause within period of limitation prescribed for such remedy.”

21) The law on the issue, as such, is trite that where a petition has been presented in the court beyond limitation, the applicant has to explain the court as to what was the sufficient cause which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent or for want of bonafide on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. The application is to be decided only within the parameters laid down. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature.

22) Reverting to the present case, the learned authority below has allowed the applications filed by the private respondents on the solitary premise that it is a creation of special legislation. It must be borne in mind that it is the

appellant or the applicant, as the case may be, who is obliged to explain the delay and to establish as to what prevented him from approaching the Court well within the prescribed period of limitation. It is evident from the perusal of the record that neither the applicants have explained as to what was the sufficient cause or an adequate reason which prevented them from approaching the authority below within the prescribed period of limitation nor they have tendered any evidence in order to establish the factum of sufficiency of cause.

23) Creation of an Authority under special legislation cannot be a reason, much less sufficient, to condone the delay and as already explained, it is the applicant who is obliged to explain the delay and not the Authority or the Court, as the case may be, to make out a case for condonation of delay.

24) It needs a specific mention that all the persons stated to be the employees of the petitioner died about 15 to 17 years back and learned authority below has failed to appreciate that no claim for compensation can be entertained by it under the Act unless the claim is preferred within two years of the occurrence of the accident within the meaning of sub-section (1) of Section 10 of the Act. There appears to be total lack of concern

and diligence on the part of the applicants, therefore, condonation of delay by the authority below by way of a cryptic order is liable to be set aside.

25) It has consistently been held by various courts of the country that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. In **Narmada Prasad vs. The State of Madhya Pradesh** (Cr. R. No.1993/2014 dated 12th November, 2014), it has been observed by the Madhya Pradesh High Court as:

“It is true that the law of limitation is procedural and must be interpreted liberally but where a total lack of concern is evident, the inordinate delay should not be condoned.”

26) Having regard to what has been observed and discussed above, the “sufficient cause” put forth by the petitioner which is an issue of fact, has remained unexplained. The legal maxim “*dura lex sed lex*” which means “the law is hard but it is the law”, stands attracted in such a condition.

27) For the foregoing reasons, all the petitions are allowed and the impugned orders are set aside. The case is remanded back to the authority below to decide the applications filed by the private respondents afresh after affording a reasonable opportunity of being heard to the

