

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

AT JAMMU

(Through Virtual Mode)

RP No. 99/2023 CM No. 4967/2023 CM No. 4968/2023

Reserved on: 18.12.2023

Pronounced on: 26 .12.2023

1. Union of India ...Petitioner(s)
Through Ministry of Defense,
Govt. of India, New Delhi
2. Headquarters,
Dte General Border Roads,
Seema Sadak Bhawan,
Ring Road, Delhi Cantt. Delhi
3. The Commandant,
GREF Centre. Dighi Camp, Pune 411015

Through: Mr Rohan Nanda, Sr. Panel Counsel.

Jagjeet Kour, Age 38 years ...Respondent(s)
W/o Late S. Ravinder Singh
R/o Village Khour Slarian,
Post Office Nandpur
District Samba (J&K)

Through: Mr Ravinder Sharma, Advocate.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

JUDGEMENT

CM No. 4967/2023

1. Through the medium of instant application accompanied to Review Petition being RP No. 99/2023, for seeking review of order dated 09.05.2023 passed by this Court in case titled as "*Jagjeet Kour Vs. Union of India and Ors.*" being WP(C) No. 1454/2021, condonation of delay of 65 days thereof is being sought.
2. Before proceeding to deal with the application in hand, it would be appropriate to extract in extenso the contents thereof including the explanation offered by the applicants for seeking condonation of delay: -

- 1 That the above titled review petition has been filed before this Hon'ble Court.
- 2 That the petitioners/applicants herein being aggrieved of the impugned order dated 09/05/2023 passed by the Hon'ble Court in writ petition bearing no. WP(C)-1454/2021 titled "Jagjeet Kour Vs UOI and Ors" have challenged the same through the medium of the review petition. The said review petition is being filed beyond the prescribed period of limitation for the following reasons:
 - a) That the impugned order was passed by the Hon'ble High Court on 09/05/2023 and after receiving the order dated 09/05/2023 passed by the Hon'ble High Court in the above titled writ petition, matter was considered at the various levels in the applicant's department. Subsequently, the question of filing of Review petition ",as examined by the applicant's after looking into the records. In the process, the applicant was required to collect the records and to obtain legal advice. The examination of the matter and consideration of the question of filing a review petition at various levels led to consumption of time.
 - b) That thereafter the record was sent to the Counsel for the applicant at Jammu and Counsel drafted the review petition and send the same to applicant at Pune, Maharashtra for vetting and signatures and after signing the same, the review petition with application for condonation of delay is being filed today.
 - c) That the delay in filing the review petition was caused only due to the above-mentioned facts and circumstances and was neither deliberate nor intentional.
 - d) That it is a principle of law where the cause of substantial justice is pitted against a technicality, it is cause of substantial justice that shall prevail. Therefore, application for condonation of delay on this ground deserves to be allowed, for doing so would advance the cause of justice.
- 3 That there is a delay of approximately 65 days in filing the review petition and if the same is condoned no prejudice will be caused to other side.
- 4 That the review petition is of vital importance insofar as the interests of the applicant's is concerned and in case the delay in filing the review petition is not condoned, it would be highly prejudicial to the interests of the applicant's .
- 5 That it is settled position of law that since the Government is impersonal machinery and decisions are taken after discussions at various levels and certain amount of latitude is permissible and above all Government and private parties cannot be put on same footing in the matters of condonation of delay and peculiar characteristics of functioning of the Governmental conditions require adaptation of pragmatic approach for the application for condonation of delay.
6. That during all the above process, delay has occurred in filing the present review petition which is neither deliberate nor intentional. The time taken in filing the review, has been consumed in administrative exigencies and circumstances beyond the control of the applicant's as such the applicants crave the kind indulgence of the Hon'ble Court in condoning the delay in filing the review petition in the interest of substantial justice.

Affidavit in support of the application is enclosed.

It is therefore, most humbly prayed that for the submissions made above and those to be made at the time of arguments, the delay of 65 days in filing the above titled review petition be condoned in the interest of justice and fair play.

3. Before proceeding further in the matter, it would be advantageous and appropriate to refer to law on the subject of limitation which is no more res-integra and stands settled that the law of limitation has to be applied with all its rigour prescribed by a statute and although Section 5 of the Limitation Act provides for an extension of the prescribed period of limitation in certain cases, however, an applicant seeking such an extension is required to satisfy the Court that there has been sufficient and plausible cause for not preferring the application/appeal/petition within the prescribed period. A reference to the following judgments being relevant herein passed by the Apex Court would also be advantageous.

P. K. Ramachadran v. State of Kerala reported in **AIR 1998 SC 2276**”,

6. *“Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.”*

“Office of the Chief Post Master General and ors. Vs. Living Mewdia India Ltd and Anr., reported in **2012 (3) SCC 563**”

..... *“29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.*

“Perumon Bhagvathy Devaswam Vs. Bhargavi Amma reported in **2008(8) SCC 321**”,

Para 13 “(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.”

**“State of Madhya Pradesh and Ors Vs. Bherulal reported
in 2020 (10) SCC 654”,**

“3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government [LAOv.Katiji]. This position is more than elucidated by the judgment of this Court in Post Master General v. Living Media India Ltd. (2012) 3 SCC 563 where the Court observed as under:-

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 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 bonafide, 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 bonafide 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30 Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay." Eight years hence the judgment is still unheeded.

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay."

"Sheo Raj Singh (Deceased) through Lrs. and Others Vs. Union of India and Another reported in **2023 SCC Online SC 1278.**

"29. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and layout the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to

safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.”

4. Keeping in mind the above position of law and principles laid down by the Apex Court in the judgments supra and coming back to the application in hand, it is being stated in para (a) of the application that after receiving the order dated 09.05.2023, matter was considered at various levels at the applicants department, without indicating therein as to when the order was received and at what level/s in the department the matter was considered, as also when question of filing of Review Petition was examined when and by whom and which record was required and from whom collected as also as to when the legal advise was sought, and was granted and also precisely how much time was consumed in the whole process.

Further perusal of the clause (b) of the application also do not spell out as to when and what record was sent to the counsel for the applicants and from whom and wherefrom and when was the Revision petition drafted as also when was same sent back at Pune for vetting/having signatures and also when the same was received back thereafter.

5. The application in hand, with aforesaid contentions stated and explanation offered seemingly has been filed with an impression that the expression “**sufficient cause**” would receive a liberal construction in favour of the applicants herein being a Department of Government, however, it is manifest from a plain reading of the application that the explanation offered therein is neither plausible nor by any stretch of imagination sufficient warranting acceptance. The explanation offered in the application per-se is casual and cryptic and even the affidavit accompanying the application in support thereof is having filled in blanks and manifestly a stereotype one.
6. It is significant to note here that Review petition accompanying the instant application arise out of the petition WP(C) No. 1454/2021 filed by respondents herein for seeking appointment on compassionate grounds on account of the death of her husband who had died during the course of employment with the applicants herein on 21.10.2016

and had been sole bread earner for the family of the respondent comprising the respondent widow and two minor sons and this Court had disposed of the said petition on 09.05.2023 while directing the respondents to offer compassionate appointment to the petitioner forthwith expeditiously within a period of four weeks from the date of order after having taken cognizance of the fact that said appointment had been delayed by the respondents and that respondents had accorded relaxation in the upper age limit of the petitioner as also while taking on record the statement made by counsel for the respondents namely Mr. Rohan Nanda CGSC that the respondents have decided to offer appointment to the petitioner on compassionate grounds and respondents are likely to issue necessary orders in this behalf.

7. In view of the aforesaid backdrop the instant application is found to be without any merit and is accordingly **dismissed**, as a consequence whereof the accompanying Review Petition bearing no. 99/2023 shall also stand **dismissed**.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

26.12.2023

Ishaq

Whether the order is speaking ? Yes/No
Whether approved for reporting ? Yes/No