

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 276 of 2024

Appellant :- State of U.P. through its Additional Chief Secretary, Department of Basic Education, Government of U.P., Lucknow and others

Respondent :- Jai Singh and others

Counsel for Appellant :- Anand Kumar Singh (S.C.)

Counsel for Respondent :- Girish Chandra Verma, Vinay Kumar Verma, Raman Kumar

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

(Per : Arun Bhansali, CJ)

1. This special appeal is directed against order dated 21.04.2023 passed by learned Single Judge in Writ-A No. 2317 of 2019, whereby the writ petition filed by the respondents has been allowed, the orders impugned in the writ petition dated 23.07.2018 and 30.06.2011 were quashed with the direction to the appellants to permit the respondents to continue to serve in the institution and pay their salary in terms of approval of appointment passed in their favour on 28.04.2010. Directions were also given for payment of arrears of salary within a period of three months.
2. Office has reported the appeal as barred by 345 days. An application seeking condonation of delay has been filed along with a sworn affidavit.
3. It is *inter alia* indicated in the affidavit that order impugned was passed on 21.04.2023 and on receiving the copy of judgment along with the representation made by the respondents, the matter was referred to the State Government. On direction of the State Government, the matter was referred to the Chief Standing Counsel for legal opinion, which was given on 16.05.2023. The State Government on 11.10.2023 directed the appellants to make available the proposal of special appeal along with legal opinion. The Director, Basic Education, Uttar Pradesh, in turn, vide letter dated 16.10.2023, directed the District Basic Education Officer to make available the proposal. The matter was referred to the Chief Standing Counsel who

again recorded his opinion on 18.11.2023. On 23.01.2024, the Director, Basic Education referred the matter to the Administrative Department of the State Government, the State Government referred the matter to the Law Department who granted permission on 13.03.2024. On receipt of the permission, the matter was again referred to the Chief Standing Counsel. On 29.03.2024, Standing Counsel sought documents along with explanation for the delay, which was supplied on 05.04.2024. Whereafter, the appeal and the application seeking condonation of delay were drafted and appeal has been filed on 01.05.2024.

4. It is claimed that the delay in filing the appeal is genuine, *bona fide* and unintentional, delay occurred on account of administrative formalities by following certain norms and procedure of disciplined and systematic performance of official functions which takes some time as it depends upon so many factors/circumstances including certain unavoidable and unspoken circumstances. Based on the said submissions, prayer has been made for condonation of delay.

5. Objection/affidavit in reply to the application seeking condonation of delay has been filed, vehemently opposing the submissions made therein. It is indicated that a concocted story has been made without any supporting evidence. It is also indicated that from averments made, it is evident that after six months of passing of the order impugned, the State Government took cognizance of the same. Further, the periods between 11.10.2023 to 18.11.2023, 18.11.2023 to 23.01.2024 and from 23.01.2024 to 11.03.2024 have not been explained. It is emphasised that the special appeal was filed when the respondents filed the contempt petition and notices were issued.

6. It was prayed that as no satisfactory reason has been indicated seeking condonation of delay, the application seeking condonation of delay deserves dismissal.

7. A rejoinder affidavit has been filed *inter alia* claiming that the averments contained in the application seeking condonation of delay are true and the averments made in the application/affidavit have been reiterated.

8. We have considered the submissions made by learned counsel for the parties which are in consonance with the contents of the affidavit seeking condonation of delay and the objection/affidavit opposing the same.

9. From the averments contained in the affidavit filed in support of the application seeking condonation of delay, it is apparent that despite passing of the order dated 21.04.2023 by learned Single Judge in presence of the counsel for the appellants and after hearing them, no cognizance and/or care of the direction issued by the Court was taken. The affidavit indicates that on receipt of the judgment from the respondents along with the representation, the opinion was sought from the Standing Counsel who gave the opinion on 16.05.2023. Neither contents of the opinion nor the substance thereof has been indicated.

10. On receipt of the opinion, claim has been made that on 11.10.2023, the State Government directed to make available the proposal of special appeal along with the legal opinion of the Chief Standing Counsel. As to why despite the opinion dated 16.05.2023 further opinion was required, that too after passage of over five months, has not been indicated and even that opinion of the Chief Standing Counsel was given after a passage of over one month, on 18.11.2023. Even when once the opinion dated 18.11.2023 was received, again after passage of two months on 23.01.2024, the matter was referred to the Director, Basic Education and, with leisure, the permission was granted on 13.03.2024. Even after grant of permission on 13.03.2024, the appeal has been filed on 01.05.2024.

11. The entire sequence of events clearly reflects a totally lacklustre attitude for compliance of the directions issued by the Court. It would be seen that despite the fact that the appellants were represented by counsel and the order impugned dated 21.04.2023 was passed by learned Single Judge, there is no whisper of any receipt of judgment and/or the opinion pertaining to the impugned order from the Government Counsel.

12. When a specific query was put to the learned counsel for the appellants regarding the procedure, it was indicated that whenever any order is passed against the State, the order of the Court along with the opinion is sent to the Government/Department/the officer in charge. The indications made that on receipt of the judgment from the respondents, the ball was set rolling for seeking opinion, clearly reflects a total collapse of the system which, it is claimed, is in place.

13. Further, once the judgment was received and the opinion was given by the Chief Standing Counsel on 16.05.2023, still, nothing proceeded/none cared for the order passed by the Court and the State Government, after passage of over five months, required to make available proposal and sought further opinion from the Chief Standing Counsel. As to what happened to the opinion given on 16.05.2023, is only open to speculation and what the State Government was doing since the opinion was given on 16.05.2023 till 11.10.2023 i.e. period of five months, nothing has been indicated/no care has been taken to explain the said period. Even when the fresh opinion was made available on 18.11.2023, the things still did not move and thereafter also it has taken five months in filing the appeal.

14. In the entire affidavit, there is no intention to indicate the sufficient cause for seeking condonation of delay, only formality of indicating dates has been fulfilled and thereafter, sermons on the working of the Government have been indicated that it took time in completing the administrative formalities by following certain norms and procedure of 'disciplined and systematic performance of official functions' and that among the several factors on which depend the time consumed in process, there are 'certain unavoidable and unspoken circumstances'.

15. The indications made and the tenor of language used in the affidavit clearly suggest that the appellants have taken it for granted that irrespective of the quantum of delay and the conduct of the officers in taking orders passed by the Court casually, filing of application under Section 5 of the

Limitation Act is a mere formality and seeking condonation is a matter of right. Such conduct of the officers cannot be countenanced.

16. It is apparent that the things have started moving only after the respondents filed contempt petition and the appellants were served with a notice in the contempt petition.

17. The attitude of the officers, in ignoring the orders passed by the Court till such time that notices in the contempt petition are issued, cannot be approved. On many occasions, despite issuance of notices in contempt petition, no action is taken and it is only when the directions are issued for personal presence that for the first time, the officers care for the orders passed by the Court. There are hardly any appeals which are filed without application seeking condonation of delay, which conduct on part of the appellants cannot be appreciated/encouraged.

18. The Hon'ble Supreme Court in **Postmaster General & Ors. Vs. Living Media India Ltd. & Anr. : (2012) 3 SCC 563**, while dealing with the appeals filed on behalf of the State, by its agencies and government bodies, *inter alia* observed as under:-

“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 the 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. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

19. The above view has been recently followed in **State of Kerala Vs. Akshaya Jewellers** : Civil Appeal No. 4486 of 2022, decided on 03.08.2023, whereby the Supreme Court declined to condone the delay of 390 days in filing the special leave petition.

20. In view of the above fact situation, the appellants have failed to make out any case for condonation of delay, let alone a sufficient cause in this regard. We do not find any good reason to condone the delay of 345 days in filing the appeal.

21. Consequently, the application for condonation of delay is dismissed and as a consequence, the appeal is also dismissed as barred by limitation.

Order Date:- 21.07.2025

AHA

(Jaspreet Singh, J) (Arun Bhansali, CJ)