HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: **23.10.2024**
Pronounced on: **08.11.2024**

CONSW No. 7/2019 in
SWP No. 724/2011
c/w
RESSW No. 10/2019
CM No. 211/2019

1. **Mohd. Bashir** …..Appellant(s)/Petitioner(s)
(Age 40 years)
S/O Mohd. Hussain,
R/O Badhoon, Tehsil and
District Rajouri.

Through: Mr. Mohd. Arif, Advocate.

vs

1. **State of J&K** ….. Respondent(s)
Th. its Chief Secretary, J&K Govt.
Civil Secretariat Srinagar/Jammu.
2. **District Development Commissioner**
(Chairman Recruitment Committee
for Class-IV, District Rajouri)
3. **District Employment Officer, Rajouri**
(Now Deputy Director Employment),
Member Secretary Class-IV,
Recruitment Committee, District
Rajouri.
4. **Chief Education Officer, Rajouri.**
5. **Chief Medical Officer (CMO), Rajouri.**

Through: Mr. Rajesh Kumar Thapa, AAG.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

CONSW No. 7/2019

1. The applicant had filed a writ petition bearing SWP No. 724/2011 in respect of appointment for Class-IV post and the same was dismissed for non-prosecution vide order dated 06.06.2011. After dismissal of the writ petition for non-prosecution, the applicant has filed this application seeking condonation of delay of 2727 days in filing the application for restoration of the writ petition bearing SWP No. 724/2011 to its original number on the ground that the applicant fell ill and remained bed ridden, and because of his ill health, he could not contact his counsel and due to ailment there was communication gap between him and his counsel, but the applicant is still interested in prosecuting his case.

2. It is worthwhile to mention here that the writ petition was filed in the year 2011 and the applicant was 40 years of age at the time of filing of the writ petition.

3. Despite repeated opportunities, the respondents have not filed the response.

4. Mr. Mohd. Arif, learned counsel for the applicant has argued that the applicant had fallen ill, as such, he could not contact his counsel, due to which the petition was dismissed for non-prosecution.

5. *Per contra,* Mr. Rajesh Thapa, learned AAG appearing on behalf of the respondents has argued that there is nothing on record to substantiate that the applicant had fallen ill and remained bedridden

and there is no whisper as to when the applicant got knowledge of the dismissal of the writ petition.

6. Heard learned counsel for the parties and perused the record.

7. As per own admission of the applicant, there is huge delay of 2727 days in filing an application for restoration of writ petition that was dismissed for non-prosecution on 06.06.2011. The applicant has simply mentioned that he had fallen ill and even the ailment suffered by the applicant has not been mentioned in the application. More so, there is no documentary evidence on record to establish that the applicant had fallen ill and for how long he remained under treatment and when did he recover from the ailment. The application is vague, bereft of necessary details and unsupported by any documentary evidence. The applicant has not even mentioned in the application as to when he got knowledge of the dismissal of the writ petition. This is true that liberal approach is required while considering an issue for condoning the delay in availing a remedy provided under law, but equally true is that the liberal approach cannot be stretched to an extent to render the provisions of Law of Limitation redundant and if such approach is allowed, then no litigation would ever come to an end. This court is of the considered view that the applicant has not demonstrated the sufficient cause for condoning the inordinate delay of 2727 days in filing the application for restoration of writ petition.

8. In **"Union of India & Anr. v. Jahangir Byramji Jeejeebhoy (D) Through His LR'** reported in **2024 INSC 262**, the Hon'ble Supreme Court of India has held as under:

> *"25.* ***It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned.*** *This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.*
>
> *26.* ***The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first***

> ***ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.***
>
> *27.* ***We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants."***
>
> *(emphasis added)*

9. In view of what has been said and discussed above, there is no merit in the instant application. **Accordingly, the instant application is dismissed**.

RESSW No. 10/2019

10. In view of dismissal of the application seeking condonation of delay in filing the restoration application, **the application seeking restoration of writ petition bearing SWP No. 724/2011 too is dismissed**.

(RAJNESH OSWAL)
JUDGE

Jammu
08.11.2024
Sahil Padha

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.