

**2023 STPL(WEB) 8 HP  
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, JUDGE AND HON'BLE MR. JUSTICE SATYEN  
VAIDYA, JJ.)

**UNION OF INDIA & ORS.**

Petitioners

*VERSUS*

**BHAWANI DUTT SHARMA & ORS.**

Respondents

CWP No. 243 of 2023-Decided on 6-7-2023

**Service Law**

**Limitation – Delay of Four years in filing Writ – Writ after filling of contempt - Totally unsatisfactory and unconvincing reasons No Condonation of Delay – Dismissed**

(Para 2, 6)

Advocate(s): For the Petitioner: Mr. Balram Sharma, Dy.S.G.I. For the Respondents: Mr. Onkar Jairath, Advocate, for respondents No. 1 to 8, 10 to 13, 15 to 17 and 19 to 29.

**JUDGMENT**

**Justice Tarlok Singh Chauhan, Judge**-This petition is directed against the order passed by the learned Central Administrative Tribunal on 23.2.2019.

2. Noticeably, the petition was filed only on 6.1.2023 that is after a period of nearly 4 years. When asked why petition has been filed after nearly 4 years, learned Deputy Solicitor General of India invited our attention to para 6 (viii) of the petition, which reads as under:-

“That in compliance to the orders passed by the Hon'ble Central Administrative Tribunal, the petitioner No 2 & 3 i.e. BSNL vide letter dated 14.03.2019 issued a reasoned and speaking order with the approval of petitioner No.1 i.e DoT. As per Speaking order dated 14.03.2019, it is clearly intimated that arrears have not been paid to the serving employees of BSNL, therefore the retired employees are also not eligible for increased pensionary benefits from 01.01.2007 to 10.06.2013 on the benefit of merger of 50% IDA effectively amounting to 78.2%. Though the speaking order issued by BSNL was in line with the judgement of Hon'ble CAT order dated 23.01.2019, but a Contempt Petition vide CP No. 111/2019 was filed by Sh. Bhawani Dutt Sharma. Contempt Petition was heard on F 20.12.2022 before Hon'ble CAT Chandigarh, Circuit Bench at Shimla and the Hon'ble Court has given last opportunity to comply with the Judgment. Thereafter, legal opinion was sought on 22/12/2022 and it was opined to file a Civil Writ petition and accordingly present civil writ petition has been filed before this Hon'ble Court”.

3. In a series of cases, the Hon'ble Supreme Court has deprecated the failure of the Central Government or State Governments in offering a reasonable explanation for an inordinate delay in filing the petition(s) and appeal(s) challenging the orders that are adverse to them. However, the learned Deputy Solicitor General of India would still insist that there is some merit in the instant case, therefore, period of delay should be given complete go-bye.

4. Both these questions of delay as also question where the merit of the petition can be a consideration to give go-bye to such delay have been answered by the Hon'ble Supreme Court in State of Madhya Pradesh vs. Bherulal, 2020 10 SC 654, wherein it was observed as under:

“2. We are constrained to pen down a detailed order as it appears that all our counseling to Government authorities has fallen on deaf ears i.e. the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statutes prescribed.

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 (Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. (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!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only “due to unavailability of the documents and the process of arranging the documents”. In paragraph 4 a reference has been made to “bureaucratic process works, it is inadvertent that delay occurs”.

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.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner- State of Rs.25,000/- (Rupees twenty five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time.

9. The special leave petition is dismissed as time barred in terms aforesaid.”

5. Thereafter, the foresaid decision has been referred to and reiterated in number of orders by the Hon’ble Supreme Court, details of some of which are as under:-

(i) Order dated 13th January 2021 in SLP No.17559 of 2020 (State of Gujarat v. Tushar Jagdish Chandra Vyas & Anr.)

(ii) Order dated 22nd January 2021 in SLP No.11989 of 2020 (The Commissioner of Public Instruction & Ors. v. Shamshuddin)

(iii) Order dated 22nd January 2021 in SLP No.25743 of 2020 (State of Uttar Pradesh & Ors v. Sabha Narain & Ors.)

(iv) Order dated 4th February 2021 in SLP No.19846 of 2020 (Union of India v. Central Tibetan Schools Admin & Ors)

(v) Order dated 11th January 2021 in SLP No.22605 of 2020 (The State of Odisha & Ors v. Sunanda Mahakuda)

6. Adverting to the facts of the case, explanation offered by the petitioners for the inordinate delay of nearly 4 years in filing the instant petition is totally unsatisfactory and unconvincing. The court is mindful of the fact that there is no statutory period of limitation as such for filing writ petition, however, nonetheless doctrine of laches is attracted. An inordinate delay of nearly 4 years in filing the writ petition without offering credible explanation for the same would attract the doctrine of laches.

7. The writ petition is accordingly dismissed so also the pending application(s), if any.

-----