

## State of West Bengal and Others Vs Subhadra Chattopadhyay and Others

**Court:** Calcutta High Court

**Date of Decision:** July 1, 2009

**Hon'ble Judges:** Md. Abdul Ghani, J; Kalyan Jyoti Sengupta, J

**Bench:** Division Bench

**Advocate:** Wasef Ali Mondal, for the Appellant; S.M. Ali, for the Respondent

**Final Decision:** Dismissed

### Judgement

1. The application for condonation of delay is taken up for consideration.

2. Delay is admittedly about 1221 days. The impugned judgment and order was passed on 23rd November, 2005. Upon careful perusal of the

statement and averment made in section 5 application it appears to us that there has been some sort of indecision on the part of the Government

officials whether judgment and order of the learned Trial Judge should be complied with or not. Because of indecision and exchange of

correspondences amongst the officials of the Education Department, DI, Director of School Education, then consulting the learned Lawyers and

learned L.R, the decision was taken as late as on 23rd April, 2007 that appeal should be preferred and upto 16th October, 2007 it appears that

there has been some sort of activity with regard to the engagement of various lawyers. From 16th April, 2007 till 24th April, 2009 there has been

simply no explanation.

3. On the other hand, before the learned Single Judge, in the contempt proceeding assurance was given that the order impugned would be carried

out and so, an order was passed by the learned Trial Judge while entertaining the contempt application that the order should be carried out within

10 days.

4. The aforesaid order has not been assailed here. In this background we have to consider whether this sort of application should be entertained by

this Court.

5. Condonation of delay is a matter absolutely of discretion of the Court and for which some times no application is needed even, but obviously

discretion should not be arbitrary and it should be exercised judiciously and it depends on the facts and circumstances whether extraordinarily

delay should be condoned or not.

6. In a Supreme Court decision as cited by the learned Lawyer for the appellants reported in State of Haryana Vs. Chandra Mani and others, , it

has been observed that when the merit of the case deserves consideration by the Court then technical aspect of the limitation has to be considered

very lightly and liberally. In paragraph 10 of the said decision it has been observed by Their Lordships in the following manner:

Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually

affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with

pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day"s delay. The factors which

are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and require adoption of pragmatic

approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate

standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause.

7. While respectfully following the aforesaid ratio of the decision we have examined the judgment and order of the learned Trial Judge and also the

grounds taken in the appeal in the factual context as follows:

The employee concerned was a school teacher and retired from service on 20th February, 1961 and he died in September in the same year. It is

an admitted position that when he was alive he neither asked for pension nor to speak of enjoyment of pension. The question of payment of

pension arises only after his death by the heirs and legal representatives with the claim of family pension. No document has been produced before

the learned Trial Judge to decide with clarity and certainty that an employee who died without availing of any pension, his family would be entitled

to get pension automatically. The memo., noted by the learned Trial Judge in the judgment prima facie appears to be a doubtful one, to grant

pension to the family as a matter of course. However, this is not our final opinion on this subject. But we cannot say that there is no merit in the

appeal to examine the order of the learned Trial Judge. We, therefore, reluctantly condone the delay. However, such condonation would be a

condition precedent of payment of Rs. 5,000/- as cost to be paid by the State for delayed action to the writ petitioner. Such payment must be

made within one month from the date of receipt of the copy of this order.

8. The appeal was preferred, after the contempt application had been filed with the hope of implementation of the order. Therefore, the amount of

cost of Rs. 5,000/- was quite justified on account of litigation cost already incurred by the petitioner in the contempt application. We have

condoned the delay only on the ground that we find that in this case there is a substantial point on merit, even if no explanation is given for the delay

mentioned above. Therefore, by consent of the parties stay application and appeal are taken up for hearing finally and the matter are disposed of

with the following order:

We have already noted that there is no document produced either before the learned Trial Judge or before us that the family pension will be

available as a matter of course even when an employee who died without getting any pension or having any eligibility of pension on the date of his

retirement.

9. However, the observation and finding of this Court is not final, rather tentative. All these points are kept open. We modify the judgment and

order of the learned Trial Judge by directing the DI to consider first whether after death in 1961 the family of the deceased teacher was entitled to

get family pension under any scheme or any authority or regulation, if so, then such pension shall be payable within a period of four weeks from the

date of taking such decision. If it is not payable, the reasons in writing shall be assigned and for this purpose the DI shall give hearing to the

petitioner, school authority and Government. The decision, however, will be taken within eight weeks from date of communication of this order.

10. This order will be effective and operative provided the costs as aforesaid is payable within the time as above, failing which order will stand

recalled and appeal will stand dismissed.

11. Since there has been total non-compliance of the order, without any order of stay until the payment order is passed, we think contempt

proceeding should proceed in its own way and it should be decided by the learned Trial Judge in accordance with law taking note of the facts that

the judgment and order of ours will have prospective operation as far as the contempt proceeding is concerned.

12. The cost shall be paid by the appellants to the learned Lawyer for the writ petitioner/respondent who, in turn, will pay the same to the writ

petitioner/respondent.

13. The appeal and both the applications are, thus, disposed of.