

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS.919-920 OF 2023
(ARISING OUT OF SLP(C) NOS.3054-55 OF 2023)
(@ DIARY NO. 11568 OF 2019)**

MANMOHAN KHAJURIA & ORS.

APPELLANTS

VERSUS

STATE OF JAMMU AND KASHMIR & ORS.

RESPONDENTS

WITH

**CIVIL APPEAL NOS.921-928 OF 2023
(ARISING OUT OF SLP(C) NOS.19951-19958 OF 2019)**

**CIVIL APPEAL NO.929 OF 2023
(ARISING OUT OF SLP(C) NO.3057 OF 2023)
(@ DIARY NO.29076 OF 2019)**

O R D E R

Delay condoned in Diary Nos. 11568 of 2019 and 29076 of 2019.

2. Leave granted

3. In its essence, grievance of the appellants in the present set of appeals is against the orders passed by the Division Bench of Jammu and Kashmir High Court at Srinagar, rejecting the prayer for condonation of delay in filing intra-court appeals and also rejecting the review petition. The orders under challenge are those dated 19.08.2017 in COD No. 51 of 2017 in LPASW No. 144 of 2017; dated 06.05.2017 in COD Nos. 19-26 of 2017; and dated 28.01.2019 in RPLPA No. 17 of 2017.

4. The sum and substance of the matter emanating from the orders impugned is that the attempt on the part of appellants, to assail an order dated 09.05.2014 passed in a batch of petitions bearing SWP No. 1352 of 2010 and others, by way of belatedly filed intra-court appeals, failed at its threshold with the Division Bench of the High Court finding no sufficient cause for condonation of an excessive delay inasmuch as the order passed on 09.05.2014 was sought to be challenged by way of appeals in the year 2017.

5. The relevant elements of the background aspects could be noticed as follows:

5.1. On 09.03.2007, the Director General of Police issued a notice of advertisement inviting applications for the post of constable (operator) in the telecommunication wing of the Jammu and Kashmir Police. Pursuant to the selection process, a select list was prepared on 01.08.2009, which came to be challenged by certain candidates on the grounds that selection had been made at District level rather than at State level. In this regard, different writ petitions were filed in the Srinagar wing of the High Court as also in its Jammu wing.

5.2. It appears that the petitions filed at Jammu were decided by an order dated 10.06.2014. On the other hand, in the petitions at Srinagar, initially an interim order was passed by the High Court but, the same was modified on 29.05.2010 and the official respondents were allowed to issue the orders of appointment in accordance with District-wise selection list. Accordingly, the appellants came to be appointed by operation of different select lists as also by operation of the waiting list since many of the candidates selected earlier did not join. Further to that, the appellants, after successful completion of training,

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were detailed for duty with various officers in the police department and civil administration.

5.3. On the other hand, fresh writ petitions led by SWP No. 1352 of 2010 were filed questioning the selection process. On 09.05.2014, the said petitions were allowed by the High Court; the select lists (both earlier and subsequent) were quashed; and a writ of mandamus was issued to the official respondents to reframe the select list at State level on the basis of merit with due regard to the Jammu and Kashmir Reservation Act, 2004 and the Jammu and Kashmir Reservation Rules, 2005. In compliance of these directions, a fresh merit list was prepared by the official respondents at State level on 19.01.2017 in which, the appellants and some other candidates came to be excluded on the basis of merit. It is noticed that in view of the exercise so carried out pursuant to the directions of the Writ Court, by the order dated 19.01.2017, in all 229 constable (operator), who had previously been selected and appointed, were directed to be ousted from service. Later on, by an order dated 08.06.2017, five of those candidates who had earlier been ousted on 19.01.2017 were taken back in service. In this manner, in all 224 candidates remained ousted from service. As per the appellants, out of these, 184 candidates had completed as long as 7 years of regular service.

5.4. The appellants, being aggrieved of the aforesaid order dated 09.05.2014 and its consequences, filed intra-court appeals along with applications seeking condonation of delay. It appears that in LPASW No. 144 of 2017, there had been as many as 22 such appellants who were not even parties to the writ petition but then, such a fact did not specifically surface before the Court at the

time of consideration of applications for condonation of delay, which came to be decided on 19.08.2017. Prior to that, on 06.05.2017, the High Court had also dismissed other applications for condonation of delay bearing Nos. 19-26 of 2017 and thereafter, the aforesaid order dated 19.08.2017 came to be passed, which is almost identical to the order dated 06.05.2017.

5.5. The sum and substance of matter in the aforesaid order dated 06.05.2017 and 19.08.2017 is that the appellants sought condonation of delay with the submissions that cause to challenge the order dated 09.05.2014 accrued to them only upon passing of the said order dated 19.01.2017 revising the merit list; and before that, they could not have anticipated their ouster on account of merit and there was no reason or occasion for them to challenge the said order dated 09.05.2014.

5.6. The High Court did not feel satisfied with the cause as stated, and expressed disinclination to allow the appellants to challenge the order in question at the belated stage, which might cause prejudice to other candidates. The High Court, therefore, proceeded to reject the applications seeking condonation of delay while observing as under:-

“12. Admittedly, the judgment and order in question was passed as long back as on 9.5.2014. The directions issued by the writ court were clear, specific and unambiguous. The select list prepared by the official respondents at the district level had been quashed. The direction was to prepare the select list by considering the merit of the candidates at the State level. The appointment of only such of the candidates, who were respondents in the writ petition, would remain intact and undisturbed if they made up the grade in the re-framed select list.

13. The fact that the select list, pursuant to which, the applicants herein had been selected and appointed had been quashed, was very much within the knowledge of the applicants. The applicants were permitted to continue till the entire process of reframing of the select list

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was completed. It was, therefore, a foregone conclusion that some of the respondents, who had earlier been selected, would be ousted upon preparation of the select list at the State level. In case, any of the candidates, who were respondents in the earlier batch of petitions, felt that the judgment was required to be challenged in appeal, they ought not to have waited to take a chance upon re-drawal of the merit list at the state level. The applicants were clearly fence sitters, who were hoping that their names would figure in the fresh list prepared at the State level and only upon failing to achieve that merit position, they have now decided to challenge the said judgment and order in appeal before this court.

14. The argument that the cause of action accrued to the applicants to file the present Letters Patent Appeal only upon issuing of the consequential order is self-defeating. The applicants ought not to have waited for the issuance of the order, which was only consequential to the judgment and order dated 9.5.2014.

15. Permitting the applicants to challenge the judgment and order in question at this belated stage, after more than three years, would consequently cause prejudice to other candidates, who were petitioners in the batch of petitions and were waiting all along for the government to frame the fresh list in accordance with the directions issued by the writ court.

16. On a comparative assessment of the prejudice that might be caused by condoning the delay, we feel that the scales weigh heavily against the applicants in the present appeal.

17. Having considered the entire matter, we feel that the applicants have failed to justify the delay in preferring the present Letters Patent Appeal.”

6. Some of the candidates in the aforesaid application for condonation of delay, who were not even parties to the writ petition, filed a review petition in the High Court that came to be rejected by the impugned order dated 28.01.2019 with the High Court observing that these candidates did not take such a specific ground, of want of knowledge of the writ proceedings, when the Court earlier considered the application for condonation of delay; and even in the review petition, no such specific averments were taken that they had no knowledge

about passing of the order dated 09.05.2014.

6.1. The High Court formed an opinion that the grounds in the review petition had been urged only with a view to some how get over the issue of delay and that the order dated 19.08.2017 dismissing the application for condonation of delay was not suffering from any error apparent on the face of the record. The review petition was, therefore, dismissed with the Court observing, *inter alia*, as under:-

“9. Admittedly, neither in the earlier condonation of delay application nor in the present review petition have the petitioners specifically averred that they had no knowledge about the passing of the judgment and order dated 09.05.2014 passed in a batch of petitions bearing SWP No. 1352/2010 and ors. In case, the petitioners did not have knowledge, then nothing could have prevented them from urging so at the time when the issue was considered in COD No. 51/2017. Even in the present review petition, it is not the case of the petitioners that they had no knowledge about the passing of the judgment and order dated 09.05.2014. What is stated in paragraph 9 of the review petition by the petitioners is as under:

“9. That the Hon'ble Writ Court vide judgment dated 09.05.2014, quashed the entire select list issued vide PHQ No. 2844 of 2009 dated 01.08.2009, the orders of appointment of the petitioners as well, despite the fact that the petitioners were never impleaded as party respondents in the aforesaid writ petitions and at no point of time any notice was ever issued to the petitioners in all the aforesaid writ petitions.”

10. The grounds urged in the review petition have been asserted only with a view to carve out a ground to somehow get over the issue of delay which, otherwise, the petitioners had failed to justify in the earlier round before this Court.

11. Having considered the entire matter, we felt that the judgment and order dated 19.08.2017 dismissing the condonation of delay application earlier filed by the petitioners does not suffer from any error apparent on the face of the record and, therefore, does not justify any review of judgment and order dated 19.08.2017.

12. In view of the above, the review petition fails and is, accordingly, dismissed.”

7. In reference to the totality of facts and circumstances and the considerations that weighed with the High Court in declining the prayers for condonation of delay and for review, it is but apparent that the High Court felt dissatisfied for the appellants having waited for long until the select lists were recast in terms of the impugned order dated 09.05.2014; and observed that they ought not to have waited for issuance of the order by the Government consequent to the order dated 09.05.2014. Moreover, when a few candidates filed a review petition on the ground that they were not even parties to the earlier writ petitions leading to the order dated 09.05.2014, the High Court rejected the review petition with the observation that these applicants-appellants had not asserted a specific case about their want of knowledge of the order dated 09.05.2014. In the given set of facts and circumstances, the reasoning and approach of the High Court is difficult to be approved and in our view, the intra-court appeals preferred by the appellants in the High Court deserve consideration on merits while condoning the delay in filing.

8. It could at once be noticed that so far as the review petitions are concerned, the High Court has rejected the same with too strict a view of the matter and while assuming that the review petitioners were only trying to carve out a ground to somehow get over the issue of delay. However, when the fact remains undeniable that the review petitioners were not even parties to the writ petitions leading to the order dated 09.05.2014, in our view, any knowledge about the order dated 09.05.2014 and requirement to challenge the same

cannot be imputed on them. Even if, by some stretch of arguments, it be taken that they were having knowledge about the order dated 09.05.2014, it could never be assumed that they would have foreseen its adverse impact on them. Such an adverse impact came into existence only with issuance of the revised merit list dated 19.01.2017. Even if these appellants had, under any mistaken advice, joined with the other appellants in filing intra-court appeal, the technicalities could not have operated in foreclosure of all their rights, including the right to challenge the order dated 09.05.2014, if operating against their interest.

8.1. Viewed from any angle, we are clearly of the view that the order dated 28.01.2019 passed by the High Court in rejecting the review petition by those appellants who are not parties to the writ petitions cannot be approved and by granting review petition, the application for condonation of delay in regard to these candidates deserves to be allowed.

9. As regards other appellants, in the peculiar circumstance of the case and the very nature of the order dated 09.05.2014, it cannot be held that each and every candidate was bound to challenge the same by assuming that his candidature was to be rejected or that he was to be displaced from the select list. Even if they were the parties to the writ petitions, we are clearly of the view that their cases also deserve merit consideration and could not have been rejected merely for they having taking up the challenge after issuance of the revised merit list. Moreover, the other features of the case, including the fact that large number of them had already put in substantial years of service could not have been ignored altogether.

10. Viewed from a slightly different perspective, as noticed above, the appeals on behalf of the review petitioners are, in any case, required to be considered on their merits. That being the position, in our view, it would serve the cause of justice if all the impugned orders are set aside and while allowing the applications for condonation of delay, the related appeals are restored for consideration on their merits.

11. We would hasten to observe that we are not making any comment on sustainability of the contentions of appellants on merits. All the observations foregoing are essentially to indicate that the present case had not been such as to be denied merit consideration.

12. In the present case, it has been submitted by the learned counsel appearing for the private respondents that so far these respondents are concerned, since the appellants do not have any direct *lis* with them, they need not be continued as party to the litigation. Taking note of the submissions so made, we leave it open for them to make appropriate submissions in that regard before the High Court. We hope and trust that their submissions shall also be given due consideration and if their presence is not required, they may be deleted from the array of parties.

13. Accordingly and in view of the above, these appeals succeed and are allowed; the impugned orders 19.08.2017 in COD No. 51 of 2017 in LPASW No. 144 of 2017; dated 06.05.2017 in COD Nos. 19-26 of 2017; and dated 28.01.2019 in RPLPA No. 17 of 2017 are set aside; the applications for condonation of delay in filing the intra-court appeals, as filed by the respective appellants are allowed. Their appeals before the High Court are restored for

consideration on merits.

14. The parties through their respective counsel shall stand at notice to appear before the High Court in the restored appeals on 28.02.2023.

....., J.
[DINESH MAHESHWARI]

....., J.
[SUDHANSHU DHULIA]

**NEW DELHI;
JANUARY 24, 2023.**

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL)..... Diary No(s).11568/2019

(Arising out of impugned final judgment and order dated 19-08-2017 in COD No.51/2017 28-01-2019 in RPLPA No.17/2017 passed by the High Court Of Jammu & Kashmir And Ladakh At Jammu)

MANMOHAN KHAJURIA & ORS.

Petitioner(s)

VERSUS

STATE OF JAMMU AND KASHMIR & ORS.

Respondent(s)

(IA No.105569/2019 - CONDONATION OF DELAY IN FILING, IA No.105570/2019 - CONDONATION OF DELAY IN REFILING/CURING THE DEFECTS, IA No.105571/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No.133338/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(C) No.19951-19958/2019 (XVI-A)

(IA No.116179/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No.116180/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Diary No(s).29076/2019 (XVI-A)

(IA No.132670/2019 - CONDONATION OF DELAY IN FILING, IA No.132671/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 24-01-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI

HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s)

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Mr. Towseef Ahmad Dar, Adv.
Mr. Mohd. Younis Hafiz, Adv.
Mr. Vivek Goyal, Adv.
Mr. Mushtaq Ahmad, Adv.
Mr. Ansar Ahmad Chaudhary, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned in Diary Nos.11568 of 2019 and 29076 of 2019.

Leave granted.

The appeals are allowed in terms of the signed non-reportable
order.

All pending applications stand disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(RANJANA SHAILEY)
COURT MASTER (NSH)

(signed non-reportable order is placed on the file)