

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

CDLSW No. 81/2010

c/w

LPASW No. 123/2010 & CMP No. 165/2010

Date of Decision: 24.11.2010

Satpaul Shamotra & Ors.

Vs

State & Ors.

Coram:

Hon'ble Mr. Justice J.P.Singh, Judge.

Hon'ble Mr. Justice Hasnain Massodi, Judge.

Appearing Counsel:

For the Appellant(s) : Mr. I.H.Bhat, Advocate.

For the Respondent(s) :

- | | | | |
|-----|--|---|--------|
| i) | Whether approved for reporting
in Press/Journal/Media | : | Yes/No |
| ii) | Whether to be reported in
Digest/journal | : | Yes/No |

The Contractors engaged by the Government Medical College, Jammu had employed the appellants for doing *annual service, maintenance/running of Steam Boiler, Hot Water Generator, Water Softening Plant, Electric Sub-Station Cum Diesel Generator Sets, CSSD, Laundry and Kitchen* etc.

Their claim to regularization in Government Service was rejected by the Principal, Government Medical College, Jammu vide Office Order No. 175/AHJ of 2000 dated 12.09.2000 while considering it, in compliance to the directions issued in their earlier Writ Petition SWP No. 1820/99, on the ground that being not on the establishment of the Executive Engineer, Mechanical Hospital and Central Heating Division, Jammu, they were not entitled to entry or regularization in the Government Service.

They filed another Writ Petition questioning the rejection of their case, besides seeking issuance of directions to the State-respondents to take them in Government Service, regularizing their past service.

Finding the plea untenable, their Writ Petition was dismissed by a learned Single Judge of this Court vide Order dated 20.03.2009, however, with a direction to the State-respondents to undertake the Selection process for filling up available posts created for the jobs, which the appellants had been doing on behalf of the Contractors engaged by the State Government, considering the appellants too therefor, if found otherwise eligible.

Aggrieved by the judgment, they have filed this Letters Patent Appeal along with CDLSW No. 81/2010 seeking condonation of 502 days' delay in filing the Appeal.

According to the appellants, after getting information regarding disposal of their Writ Petition, they delivered a Certified copy of the judgment along with the relevant records to their Counsel, Suresh Kumar, Advocate, without any loss of time, instructing him to file Appeal against the judgment. They were under a bonafide impression that the Appeal stood so filed, which they, however, later come to know had not been so filed by their Advocate because of his domestic problems. Getting the brief back, the Appeal was filed through the appellants' new Counsel.

We have heard appellants' learned counsel on the merits of the Appeal also to examine as to whether a case for Condonation of delay was made out.

The view taken by the learned Single Judge declining appellants' entry into Government Service on the basis of their past Service with the Contractor engaged by the Government, is unexceptionable, in that, being the employees of the Contractor who had been allotted work by the Government, the appellants do not become entitled to, either as of right or on preference, to entry into Government Service, which in terms of the rules in force, is permissible only by competition in selection.

That apart, the appellants have neither produced the Affidavit of their Advocate-Suresh Kumar nor any other material to substantiate the plea of negligence of their counsel in not filing the Appeal.

Even otherwise, after having handed over the brief to their Counsel, within the time prescribed for filing Appeal, no sufficient and plausible reason has been assigned by the appellants justifying huge delay of more than 500 days in not finding out as to whether or not the Appeal had been filed by their Advocate. The Certified copy of the judgment of the learned Single Judge, which has been annexed, with the Memo of Appeal, indicates it to be a fresh copy of the judgment obtained on 27.09.2010, which fact too demonstrates that the plea projected by the appellants in the application that they had obtained the Certified copy of the judgment immediately after it was announced and handed over to their Advocate to file the Appeal, which was later given back to them, for engaging a new Counsel, is a plea without substance, which appears to have been coined only with a view to facilitate the filing of the Appeal, seeking Condonation of delay on flimsy grounds.

After having known about the judgment delivered by the Writ Court, the appellants were required to demonstrate due diligence in taking resort to the remedies available to them under law. Their inaction in ensuring filing of the Appeal within the prescribed period of limitation and approaching the Court after a period of about 1½ years, cannot thus be justified on the cause projected.

Accordingly, finding that the view taken by the learned Single Judge, does not suffer from any error of law warranting hearing of the Appeal on merits, we find that no

sufficient cause has been made out by the appellants for
Condonation of delay in filing the Appeal.

CDLSW No. 81/2010 is, therefore, dismissed along
with LPA(SW) No. 123/2010.

(Hasnain Massodi)
Judge

(J.P.Singh)
Judge

Jammu:
24.11.2010
Pawan Chopra