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MCC-4014-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 28th OF NOVEMBER, 2024MISC. CIVIL CASE No. 4014 of 2024*DINESH BATHAM**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri S.N.Seth - Advocate for the applicant.

Shri A.K.Nirankari - Government Advocate for the respondents/State.

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ORDER

Per. Justice Anand Pathak

Heard on I.A.No.8570/2024, an application under Section 5 of the Limitation Act for condonation of delay in filing the instant appeal.

2. As per office note, the appeal is barred by 274 days.

3. For the reasons mentioned in the application, same is allowed and the delay in filing the instant appeal is hereby condoned.

4. Also heard on MCC.

5. The instant MCC has been preferred by the applicant seeking restoration of Writ Appeal No.1703/2023, which got dismissed vide order dated 01.02.2024 by the Principal Registrar for non-compliance of the common conditional order dt.13.12.2023.

6. Learned counsel for the applicant submits that due to the *bona fide* mistake of the clerk of the counsel for the applicant, the defaults could not be cured. He further submits that the said mistake was *bona fide*, therefore, the



aforesaid Writ Appeal, which is duly supported by an affidavit deserves to be allowed.

7. The reasons assigned by learned counsel for the applicant appear to be genuine and *bona fide*. Looking to the nature of cause and *bona fide* intents as well as settled law that for the fault of the counsel, the litigant should not be made to suffer (see: AIR 2001 SC 2497, M.K. Prasad Vs. P. Arumugam, 2007 (5) MPHT 470, Dindyal Bansal Vs. Gwalior Nagar Tatha Gram Vikas Pradhikaran), the present application deserves to be and is hereby allowed.

8. A suggestion has been given to counsel for the applicant to invest one hour of community service while visiting Mercy Home namely Madhav Andha Ashram, (Gwalior) with some food items/snacks of Rs.1,000/- and spend one hour with the children/ inmates/ families, who are of humble background and are being taken care of by the NGO/Society sponsored by State Government. This community service of one hour would not only be satisfying to the soul but would also give a message to the differently abled children that society and its members care for them and that they are not considered as the children of the Lesser God.

9. The said suggestion is not punitive in nature and compliance of it is at the discretion of counsel for the applicants.

10. Graceful enough in their disposition, suggestion is readily accepted by counsel for the applicant and he undertakes that applicant and counsel not only would visit the mercy home but also would carry some food items of Rs.1,000/- with them and spend one hour time with them to understand them and to satisfy themselves while doing such a pious work.

11. Appreciating the gesture shown by counsel for the applicant with the earnest hope and belief that applicants and counsel would visit the aforesaid place within 15 days from today and spend one hour time with the children/ inmates/



families of the mercy home and bring smile on their face satisfy their soul. It is expected that any Government Advocate or other advocate may also accompany the counsel for this purpose.

12. This is a test case to give concept of 'Social Audit' a chance to gain grounds. Responsible and Resourceful persons of the Society who are occupying important positions in the Department of Administration/ Education/Health/Legal and other related fields including Professionals like Chartered Accountants/ Doctors/ Lawyers etc., to take some responsibility to visit the places (like orphanage/old age home/ mercy home/ one stop center etc.) where persons with disability/orphans/old age people/ victims of the crime and other destitutes are institutionalized so that they can come to know about the plight of these inmates and would be able to contribute while raising their standards of living and to create sense of well being amongst them. Inmates who are living in such institutions would also feel that they are not left out by the society and the society is still eager to take them into its fold. This way, they would come in the main stream also.

13. Another important effect of the Social Audit is that Management of those Institutions sometime misbehave or cause mischief to the inmates especially children and females living there and this way, they would always be cautious that the society is keeping eyes over their working. Therefore, evolution of concept of Social Audit and its effective implementation is the need of hour. Policy makers especially Department of Women and Child Welfare Development (DWCD), Deptt. of Social Justice and Police Department must come out with some tangible solution in this regard.

14. Therefore, keeping the said spirit, counsel for the applicant is directed to submit a report regarding their visit to the Mercy Home within fifteen days



elaborating his experience and status of mercy home with suggestions, if any, in the litigation (Writ Appeal No.1703/2023), which is going to be restored by this order.

15. On submission of the report and affidavit as accepted by counsel for the applicants, Writ Appeal No.1703/2023 shall be restored to its original number.

16. Accordingly, instant petition for restoration is allowed subject to compliance of the direction as referred above and Writ Appeal No.1703/2023 is restored to its original number subject to the compliance of common conditional order dt.13.12.2023 within seven days.

17. Copy of this order be kept in the file of Writ Appeal No.1703/2023 for record/compliance purpose.

18. Copy of this order be also sent to the Chief Secretary/ Principal Secretary, Women and Child Development Department, Department of Social Justice and Secretary Juvenile Justice Committee M.P. High Court for information and contemplation.

19. With the aforesaid, the application stands disposed of.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

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