

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE**

**HON'BLE SHRI JUSTICE ANAND PATHAK**

**&**

**HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI**

**ON THE 2<sup>nd</sup> OF DECEMBER, 2024**

**WRIT APPEAL No. 2164 of 2024**

***RAMSIYA CHAUHAN***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:-**

*Shri G.S. Sharma-Advocate for appellant.*

*Shri Ankur Mody-AAG for respondents/State.*

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**ORDER**

***Per: Justice Anand Pathak***

1. Heard on **I.A. No.10477/2024**, an application under Section 5 of Limitation Act for condonation of delay in filing the instant appeal.

2. As per office report, there is delay of 2788 days in filing the instant appeal.

3. This intra-Court appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 has been preferred being crestfallen *vide* order dated 2/11/2016 passed by learned Single Judge in WP No.3402/2015;

whereby the Writ Petition preferred by appellant/petitioner has been dismissed.

4. By filing the instant appeal, learned counsel for appellant seeks following reliefs:-

*(i). Allow the appeal by setting aside the order dated 02.11.2016 passed by Learned Single Judge in Writ Petition No. 3402/2015.*

*(ii) That, the impugned order dated 13.06.2016 (Ann. P/1) issued by the respondents authority may kindly be set-aside.*

*(iii) That, the respondents authority be directed to pay the full salary and allowances to the petitioner during the period from 30.06.2015 to 30.06.2018 alongwith the interest @ 12% per annum till realization to the petitioner.*

*(iv) That, the respondents be further directed to take consequential action for the fixation of his pension and grant of arrears with interest @ 12% p.a.*

*(v) That, the other relief doing justice including cost be awarded.*

*(vi) Issue any other order as this Hon'ble Court deems fit.*

5. It is submitted by learned counsel for appellant that by the impugned order dated 2/11/2016 passed in WP No.3402/2015 (Annexure A/1), appellant's petition was dismissed by learned Single Judge by relying upon the decision of this Court in **Dr. Dinesh Chandra Mishra vs. State of M.P. and others [W.P. No.5168 of 2012 decided on 13.08.2015.]**. By the same order, four other connected writ petitions of other teachers were also dismissed. Those four teachers challenged the impugned order before the Division Bench by filing writ appeals which were also dismissed by order dated 09.05.2017. A batch

of SLPs preferred by similarly situated teachers, the Supreme Court allowed their claim and held that they entitled to get benefit of enhanced age of superannuation of 65 years with service benefits by passing a common order in the case of **Dr. R.S. Sohane vs. State of M.P. and Others** reported in **(2019) 16 SCC 796**. The judgment of the Full Bench of this Court which was relied upon by the Division Bench for dismissing the Writ Appeals of aforesaid teachers was set aside.

6. It is further submitted that since the fate of the appellant had been sealed by the decision in the above writ appeals and since he was not having sufficient means to approach this Court he did not challenge the impugned order at that time. After the decision of the Supreme Court in **Dr. R.S.Sohane (supra)**, he was expecting a fair treatment from the respondents. Co-ordinate Division Bench of this Court at Principal Seat at Jabalpur in case of similarly situated teacher in **Dr. R.K. Sharma vs. State of M.P. and other [W.A. No.1857/2019 decided on 29.11.2019]** has condoned the delay of 1227 days in filing the writ appeal. Similarly, in **Dr. Sushant Kumar Sinha vs. State of M.P. and others [W.A. No.802/2020 decided on 01.09.2020]** delay of three years has been condoned. Moreover, vide Annexure A/3, Co-ordinate Division Bench of this Court at Indore in the case of **Dr. Saroj Potdar Vs. State of M.P. & Others [W.A. No.387/2022 decided on 26/04/2024]** has condoned the delay of 1227 days in filing the writ appeal. When the appellant came to know about similar orders passed by co-ordinate Division Benches of this Court, he immediately contacted his counsel and thereafter, immediately preferred the instant appeal. Thus, it is submitted that there are sufficient reasons by

which the appellant was prevented from preferring the appeal within time; hence, the delay in filing the appeal deserves to be condoned.

7. Learned counsel for respondents/State opposed the prayer with submission that no sufficient reason has been furnished by the appellant for the delay in preferring the appeal. After passing of the impugned order no steps were taken by him within time in preferring the appeal and was satisfied with the order. Only for the reason that similarly situated employees have been extended the benefits as are being claimed by the appellant, it would not be a ground for the appellant not to challenge the impugned order. The day to day delay has not been explained. It is hence submitted that the application be rejected.

8. Heard the rival submissions.

9. In the application, the appellant has categorically stated that by the impugned order, various connected writ petitions were also dismissed and writ appeals against dismissal orders were also dismissed by the Division Bench. Hence, the appellant did not take any step for challenging the impugned order. He was also not having sufficient means for the same. After the Supreme Court in case of **Dr. R.S. Sohane (supra)** allowed the claim of similarly situated persons, the appellant was accepting a fair treatment from the respondents and was quite hopeful that he shall also be given the same treatment as given to similarly situated teachers without forcing him to file any litigation. **In State of Karnataka Vs. C. Lalitha** reported in (2006) 2 SCC 747 and **K.T. Veerappa Vs. State of Karnataka** reported in (2006) 9 SCC 406, it has been held by the Supreme Court that similar benefits deserve to

be conferred to all similarly situated employees regardless of the fact that only some of them have approached the Court for seeking the relief. Moreover, the judgment rendered in the case of **Dr. R.S. Sohane (supra)** is a judgment in rem hence as held in **State of U.P. and others vs. Arvind Kumar Shrivastava** reported in **2015(1) SCC 347** and **Maharaj Krishna Bhat vs. State of Jammu and Kashmir and other** reported in **(2008) 9 SCC 24**, if the appellant believed that upon passing of the same, he would also be extended similar benefits as extended to the other employees, she was perfectly justified. The appellant has also stated that he was not aware of the orders passed in the other litigation and as soon as, she acquired knowledge of the same, she preferred the appeal. In cases of other similarly situated employees delays such as in the present case has already been condoned by co-ordinate Division Benches. Thus, in our opinion, the appellant has furnished sufficient reasons for the delay in preferring the appeal. In view of which, the delay deserves to be condoned. Accordingly, **I.A. No.10477/2024 stands allowed** and the delay of 2788 days in filing the instant appeal is hereby condoned. Appeal deserves to be heard on merits.

**10.** Heard learned counsel for parties on merits.

**11.** It is not disputed that by the impugned order, a batch of writ petitions were dismissed by learned Single Judge. Some of the writ petitioners of those petitions preferred writ appeals before this Court which were also dismissed by order dated 09.05.2017. However, the Supreme Court in a batch of SLPs filed by similarly situated teachers, by order dated 07.05.2019 has held them entitled

to get benefit of superannuation at 65 years with service benefits in **Dr. R.S. Sohane (supra)**. Relying upon the said judgment, the Division Bench of this Court in **Dr.(Mrs.) Rukmani Tiwari vs. State of M.P. and another [Writ Appeal No.108/2016 decided on 15.07.2019]**, **Dr. R.K. Sude Vs. State of M.P. and another [W.A. No.997/2018 decided 17.02.2020]** as well as the Division Bench of this Court at Bench at Indore in **R.K. Sharma vs. State of M.P. and another [W.A. No.1857/2020 decided on 29.11.2019]** and **Dr. Sushant Kumar Vs. State of M.P. and another [W.A. No.802/2020 decided on 01.09.2020]** has held similarly situated teachers entitled to be superannuated at the age of 65 years. It is not in dispute that the appellant is a similarly situated employee.

12. Moreover, respondent No.1 itself has issued an order on 26.02.2020 in light of the decision of the Supreme Court in **Dr. R.S. Sohane (supra)** resolving to fix the age of superannuation of teachers serving in private colleges receiving 100% grant in aid from the State Government from 62 years to 65 years and has also acknowledged its liability for payment of salary to such teachers. Thus, in our opinion, the appellant in view of the said order itself ought to have been granted the benefits as are being claimed by him. In any case, since similarly situated employees have already been granted the said benefit in the judgments referred to aforesaid, we are of the opinion that the appellant also deserves to be granted similar benefits.

13. As a result, the impugned order dated 02/11/2016 passed by the learned Single Judge in WP No.3402/2015 is hereby set aside and

the appellant is held entitled to the benefit of enhanced age of superannuation i.e. 65 years. He shall be entitled to all the consequential and monetary benefits including arrears of salary, etc. as if, she would have continued in service up to the age of 65 years. The arrears and all other benefits shall be paid to the appellant within a period of eight weeks from today. However, considering the fact that there was a huge delay in preferring this appeal, the appellant shall not be entitled to any interest on the arrears for the period between 2/11/2016 till the date of filing of this appeal i.e. 19/09/2024.

**14.** With the aforesaid directions, the instant Writ Appeal stands **disposed of.**

**(Anand Pathak)**  
**Judge**

**(Rajendra Kumar Vani)**  
**Judge**

(Dubey)