

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R.No.2756 of 2015 (O&M)

Date of Decision: November 30, 2015

S.R.Rishi, Field Officer, PUNSUP & another

...Petitioners

Versus

**The Punjab State Supplies Corporation Ltd., Sector 34-A, Chandigarh &
others**

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Rajiv Joshi, Advocate,
for the petitioners.
Mr.Deepak Sabharwal, Advocate,
for respondent Nos.1 & 2.

AMIT RAWAL, J. (Oral)

The petitioner-defendants are in revision petition against the order dated 27.1.2015 (Annexure P-8), allowing the application seeking condonation of delay of 399 days in filing the first appeal before the Lower Appellate Court against the judgment and decree dated 21.10.2010 dismissing the suit of the plaintiff.

Mr.Rajiv Joshi, learned counsel appearing on behalf of the petitioner-defendants submits that the delay, aforementioned, has not been explained, rather in the testimony of the witnesses, it has come that the officer involved for not filing the appeal had not received the show cause notice as has been projected by the PUNSUP qua this case and his transfer was effected on 15.12.2011, whereas the sanction for filing the appeal had been obtained in March, 2012. He further submits that the Lower Appellate Court has not taken into consideration the entire evidence on record and in a

most mechanical manner, condoned the delay. In support of his contention, relied upon **Oriental Aroma Chemical Industries Ltd. Versus Gujarat Industrial Development Corporation and another**, 2010(5) SCC 459 and **State of U.P. thr. Exe.Engineer and another Versus Amar Nath Yadav**, 2014(2) SCC 422 to contend that where there was a delay in filing the appeal by a Government department and it was attributed to moving of file from one department/officer to another, this is not sufficient explanation. He further submits that same yardsticks should be applied for deciding the applications where application of such nature has been filed by the private individuals and the State and, thus, prays for setting-aside of the impugned order.

Mr.Deepak Sabharwal, learned counsel appearing on behalf of respondent Nos.1 and 2 submits that the officer, namely, Varinder Kumar Dugalla had actually been served a show cause notice in this case as he had withheld all the letters written by District Manager with regard to the filing of the appeal and, thus, factum of filing the appeal against the judgment and decree could not be brought to the notice of the higher officers. The evidence relied upon by the petitioner-defendants is in respect of some other case and not about this case. In support of his contention, he has relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others**, (2013) 12 Supreme Court Cases 649. He further submits that even the petitioner-defendants have also been served with the show cause notice for initiating the disciplinary proceedings for embezzlement. He submits that since the public money is involved, no harm would be caused in case the appeal is heard and decided on merits.

I have heard the learned counsel for the parties and appraised the paper book.

The ratio decidendi culled out in **State of U.P.'s case (supra)** was in respect of an explanation given with regard to the moving of the file from one department to another, whereas in the instant case, such explanation has not been even pleaded while seeking condonation of delay and the reason given for filing the application is that the officer concerned did not pass on the contents of the letter written by the District Manager to the higher officer for filing the appeal and in this regard, the officer concerned has not only been departmentally proceeded, but on administrative ground also. It has been submitted that the proceedings are still pending. Even the petitioner-defendants have also been served with the show cause notice.

No doubt, for seeking condonation of delay, same yardsticks should be applied to the private individuals and the Government, but on account of the negligence of the particular officer of the department, the Corporation should not be made to suffer and rightly so, the Lower Appellate Court, while taking into consideration the entire evidence brought on record, found that the delay was attributed to the particular officer.

Keeping in view of the aforementioned facts, circumstances and the reasons, I do not intend to differ with the findings of the Lower Appellate Court condoning the delay of 399 days in filing the appeal.

The revision petitions stands dismissed.

November 30, 2015
ramesh

(AMIT RAWAL)
JUDGE