

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.295 of 2011(O&M)

Date of Decision:-11.02.2015

Ajit Singh

.....Appellant.

Versus

Punjabi University, Patiala through its Registrar & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. S.K. Sharma, Advocate for the appellant.

Mr. Vipul Jindal, Advocate for
contesting respondent no.1-Punjabi University, Patiala.

JASWANT SINGH, J.(ORAL)

Plaintiff is in second appeal against the concurrent findings returned by both the courts below whereby the suit for declaration filed by the plaintiff challenging the order dated 14.02.1990 whereby the University appointed private defendants no.2 & 3 as Junior Machine Man in Printing Press, Punjabi University, Patiala was dismissed vide judgment and decree dated 17.10.1998 passed by the learned Additional Civil Judge(Sr. Divn.), Patiala duly upheld in the appeal vide judgment and decree dated 2.8.2006 passed by the learned Additional District Judge(Adhoc), Patiala while dismissing the appeal of the plaintiff.

Along with the main appeal **CM No.820-C of 2011** seeking
condonation of 4 days delay in filing and **CM No.819-C of 2011** seeking

condonation of 1261 days delay in refilling have also been filed apart from other application for additional evidence.

It is apparent that the plaintiff/appellant joined the Punjabi University as Inker w.e.f. 21.10.1969. It is further apparent that both the courts below have held that the defendant no.2 Mohinder Singh and defendant no.3 Gauri Shanker have never worked as Inker in the University instead were directly appointed after due advertisement and selection as Junior Machine Man in the University. It has also been established that when the two defendants were selected and appointed the plaintiff has never competed with them for appointment against the said posts. As regards any possible claim of the plaintiff for promotion to the post of Junior Machine Man, it has come on record that the Syndicate of the University vide its decision dated 28.6.1991 had provided for consideration for promotion. The said decision did not lay down any condition of education qualification, however, provided that keeping in view the long standing service and practical experience, the employee was to undergo a practical test to be conducted every six months. An employee if did not qualify the prescribed test in two chances then the next senior most employee was to be given a chance to appear in the practical test. If still any candidate was not found suitable for promotion, the post of Junior Machine Man was to be filled up through direct recruitment. It has also come on record, the plaintiff instead of two was given three chances but he did not qualify the practical test and, therefore, employees next in line were considered for promotion to the said posts. No person junior to the plaintiff was promoted without given due opportunity to the plaintiff. The learned Courts below have further held that no relief could be granted to the plaintiff as he has failed to prove on record

the order dated 14.02.1990, therefore, the legality and validity of these orders could not be determined. He has also failed to prove on record that he possessed the Diploma from ITI in the field of Printing.

Upon notice respondent-University has sought to place on record the reply of the Registrar to the application seeking condonation of delay in refilling as also in filing by way of **CM No.5470-C of 2012**. Copy of the reply is conceded has been duly received by the counsel for the appellant/plaintiff. CM No.5470-C of 2012 is allowed and the said reply dated 3.5.2012 is taken on record.

Learned Counsel for the appellant states that the reason for such a huge delay of 1261 days in refilling had occurred due to the death of his son Sh. R.K. Sharma, Advocate and, therefore, in the light of settled principle of law that question of condonation of delay should be liberally construed and delay in refilling the present appeal should also be condoned.

On the other hand learned Counsel for the respondent-University points out by referring to the reply of the Registrar dated 3.5.2012 that the appeal was filed on 20.11.2006 and returned with objections on 05.12.2006. The date of death of the son of the counsel concededly is of 4.5.2007, however, second appeal was refilled on 1.7.2008 after a delay of 533 days. Still further even if the said fact is ignored, the file was returned on 13.08.2008 for removing of objections, thereafter till the final date of refilling on 2.11.2010, there is a total unexplained delay of 728 days in refilling. He states that this Court in a case reported as **Darshan Singh Vs. Surjit Singh 2009(5) RCR (Civil) 567** has very categorically held that the total period permitted for correction of the objections and filing of the complete appeal is 40 days i.e. 10 days after

every four times the appeal returned for removing of objections and thereafter for any further condonation there has to be sufficient cause and explained reasons for delay, which totally lack in the present case.

After hearing Counsel for the parties, it is apparent that in the present case there is absolutely no explanation coming forth regarding condonation of such a huge delay in refilling, apart from there being absolutely no case on the merits in main appeal. No doubt that issue of condonation of delay has to be liberally construed, however, some plausible explanation has to be forthcoming for exercising such discretion. The present case does not fall within such parameters.

Accordingly, no case for condonation of delay of 1261 days in refiling the appeal is made out and hence the same is dismissed on grounds of delay.

**(JASWANT SINGH)
JUDGE**

February 11, 2015
Vinay