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

LPA No.424 of 2015 (O&M)

Date of Decision: 02.07.2015

Gurdip Singh

..... Applicant-Appellant

Versus

General Manager Punjab Roadways Amritsar-I and Others

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Vishal Munjal, Advocate
for the applicant/appellant.

Mr. Arshwinder Singh, Addl. A.G., Punjab.

S.S. SARON, J.

CM-840-LPA-2015

CM has been filed seeking condonation of 17 days delay in filing the appeal.

It is submitted that the applicant-appellant had engaged a counsel but he did not appear as he had left his practice. The writ petition was, however, decided on merits without any representation on behalf of the applicant-appellant. The applicant-appellant later came to know about the order dated 28.01.2015 passed in the case from his seniors in the Department. He immediately contacted the

present learned counsel for filing an appeal. In this process, a delay of 17 days has occurred in filing the appeal.

The civil miscellaneous application is supported by an affidavit of the applicant-appellant.

Learned counsel for the State has opposed the same and submitted that grounds as stated in the application are not tenable.

After giving our thoughtful consideration to the matter, we find sufficient cause to condone the delay of 17 days in filing the appeal.

Accordingly, civil miscellaneous application is allowed and delay of 17 days in filing the appeal is condoned.

CM No.1969-LPA-2015

Notice of CM to A.G. Punjab.

On asking of the Court, Mr. Arshwinder Singh, Addl. A.G., Punjab accepts notice on behalf of the State.

Copy of the order dated 20.03.2015 (Annexure A-1) passed by the General Manager Punjab Roadways Amritsar (respondent No.1) attached with the CM, in terms of which the applicant-appellant has been relieved from duty, is taken on record, subject to just exceptions.

CM stands disposed of.

LPA-424-2015

This appeal has been filed by the appellant-workman Gurdip Singh against the judgment and order dated

28.01.2015 passed by the learned Single Judge of this Court in CWP No.14489 of 1995, whereby the writ petition filed by the General Manager, Punjab Roadways Amritsar and Director State Transport, Punjab, Chandigarh (respondents No.1 & 2) has been allowed and the award dated 08.11.1994 passed by the learned Presiding Officer, Labour Court, Amritsar (respondent No.3) has been set aside.

The appellant-workman Gurdip Singh was appointed as Washing Boy with the Punjab Roadways, Amritsar Depot I on daily wages basis on 13.08.1982. He worked with intermittent breaks in service till 07.07.1983. His services were dispensed with on 08.07.1983 without any notice/charge sheet and enquiry etc. He was drawing salary of ₹ 14/- per day. According to the appellant, no retrenchment compensation was paid to him. In consequence of the retrenchment, a demand notice was served by the appellant on 18.06.1991 against his termination, which was after a lapse of 8 years.

The stand of the respondents No.1 and 2 was that the appellant-workman had worked for a specific period which was less than 240 days in the year 1982-83; besides, his services were not terminated on 07.07.1983 and he was engaged for the period from 01.09.1983 to 12.09.1983. Moreover, after the expiry of contractual period of service, the services of the appellant-workman were automatically

dispensed with.

The learned Presiding Officer, Labour Court, Amritsar (respondent No.3) vide his award dated 08.11.1994 held that the appellant-workman was entitled to reinstatement with continuity of service. It was held to be clear that he had worked for various periods and that showed that he remained gainfully employed. Therefore, he was allowed back wages.

The General Manager, Punjab Roadways, Amritsar and the Director State Transport, Punjab, Chandigarh (respondents No.1 and 2) filed CWP No.14489 of 1995 in this Court, inter alia stating that the appellant-workman had in fact worked with the Punjab Roadways, even subsequent to his termination from service. The learned Single Judge vide its impugned order dated 28.01.2015 held that the services of the appellant-workman continued to be engaged by respondents No.1 and 2 for as long as almost five years after the alleged date of his termination from service and this itself should have been a sufficient reason to hold that there was no retrenchment of service. It was held that the demand notice would indicate the date of retrenchment/termination as 07.07.1983 whereas the stand of the respondents No.1 and 2 clearly demonstrated engagement of the services of the appellant from 01.08.1983 to 25.08.1983 and thereafter, for various periods as indicated in the order. It was further held that the claim of the appellant-workman was totally unfounded

and the learned Labour Court had gone wrong in granting the prayer by accepting the reference. The impugned award of the learned Labour Court was set aside.

As already noticed no one had appeared on behalf of the appellant-workman before the learned Single Judge of this Court.

According to the learned counsel appearing for the appellant-workman, the counsel engaged by the appellant-workman had left practice, therefore, no one could appear for the appellant-workman.

In the writ petition that was filed by respondents No.1 and 2 herein, a Division Bench of this Court on 09.10.1995 admitted the petition and in the meantime, the operation of the impugned award dated 08.11.1994 was stayed.

The appellant-workman then filed CM No.12599 of 1996 in terms of Section 17-B of the Industrial Disputes Act, 1947 for directing the General Manager, Punjab Roadways, Amritsar Depot I to pay the appellant-workman full wages last drawn by him during the pendency of the writ petition. Notice of CM was issued by this Court on 08.10.1996 for 19.11.1996. Thereafter, in terms of order dated 04.12.1996, directions were given to the respondents-Management to comply with the award within 15 days. CM No.12599 of 1996 stood disposed of.

Thereafter, RA No.73 of 1997 was filed by the respondents No.1 and 2 for review of the said order dated 04.12.1996 by which the award was ordered to be complied with within 15 days.

In the review application, it was stated that at the time of admission of the writ petition on 09.10.1995, the operation of the award dated 08.11.1994 had been stayed. This Court on 02.09.1997 in RA No.73 of 1997 passed the following order:

" *Mr. JS Brar, DAG, Punjab
for the applicant.*

*Mr.DR Mahajan, Advocate,
for the respondent.*

Learned counsel for the respondent undertakes before this Court that he would withdraw the contempt application filed by his client.

Let the applicant may comply with the provisions of Section 17-B of the Industrial Disputes Act. The State shall, however, not remove the respondent from the job during the pendency of the main writ petition. The application shall go on making the payments of wages to the respondent. Review application stands disposed of.

02.09.1997 *R.L.Anand
Judge"*

During pendency of the writ petition, CM No.12846

of 1997 had also been filed by the respondents No.1 and 2 for placing on record reply to the application in CWP No.14489 of 1995. The same was taken on record vide order dated 18.07.1997. In the reply that was filed, copy of order dated 11.06.1998 was filed. In terms of the said order dated 11.06.1998 (Annexure A-1), it is mentioned that the appellant-workman had been appointed as Washing Boy on regular basis with immediate effect in the pay scale of ₹ 2720-100-3220-120-3660-120-4260 plus usual allowances sanctioned by the Government from time to time subject to the terms and conditions as mentioned therein. One of the terms and conditions was that he should withdraw the cases of the Labour Court/any Court. He should produce affidavit to the effect that he has not filed any appeal/case in the Labour Court/any other court.

Learned counsel for the appellant-workman has submitted that due to passage of time and learned counsel for the appellant not appearing, the said fact that the appellant had been appointed as a Washing Boy on regular basis, could not be brought to the notice of learned Single Judge of this Court and now vide order dated 20.03.2015 that has been taken on record today in CM No.1969-LPA of 2015, the appellant-workman has been relieved from his services. He has been released from duty with immediate effect. It is also submitted that in fact the appellant was not to withdraw any

case and it was for respondents 1 and 2 to withdraw their writ petition that had been filed in this Court against the award dated 08.11.1994 passed by the learned Labour Court.

After giving our thoughtful consideration to the entire matter, we are of the opinion that in view of the order dated 11.06.1998 (Annexure A-1) that had been filed by the State itself with CM No.12846 of 1997, the respondents No.1 and 2 in fact were liable to withdraw the writ petition, as the same has been rendered infructuous. However, with the passage of time and the learned counsel for the appellant having left the practice and being unavailable, the said fact that the services of the appellant-workman had since been regularized could not be brought to the notice of the learned Single Judge. The appellant-workman has, therefore, admittedly been working as a Washing Boy and his services have also been regularized. Therefore, we are of the view that he is not liable to be non-suited or relieved from his services for such technicalities.

In fact the writ petition was filed by the respondents No.1 and 2 and it was for them to withdraw the writ petition or in any case apprise the learned Single Judge about the correct factual position.

Therefore, in the facts and circumstances, it would be just and expedient that the order dated 20.03.2015 (Annexure A-1) which has been taken on record by way of CM

No.1969-LPA of 2015 is set aside and the order dated 11.06.1998 by which the services of the appellant-workman had been regularized is restored.

Learned counsel for the appellant-workman submits that he has no other claim.

Accordingly, the appeal is allowed and the order dated 28.01.2015 passed by the learned Single Judge is set aside and the appellant shall continue to work as Washing Boy on regular basis in terms of the order dated 11.06.1998. The appellant-workman shall be deemed to be in service in pursuance of said order dated 11.06.1998. However, the period from 20.03.2015 i.e. when he was relieved till date shall be treated as leave of the kind due. There shall be no order as to costs.

(S.S. SARON)
JUDGE

02.07.2015
'yogesh'

(RAMENDRA JAIN)
JUDGE