

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

133

Regular Second Appeal No.1649 of 2015 (O&M)
Date of Decision: August 25, 2015

Lekh Raj

...Appellant

Versus

The Punjab State through Secretary Transport, Punjab at Chandigarh
and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. H.K. Brinda, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.4586-C of 2015

Prayer in this application is for condonation of delay of 548 days in re-filing the appeal.

The reason assigned for the inordinate delay is that after the Registry has raised some objections and the paper book of the case has been returned to the counsel, the same was misplaced in the office, which was traced after great difficulty and on removal of the objections, the same was re-filed, which resulted in delay of 548 in re-filing the appeal. The application is supported by the affidavit of the counsel.

In view of the fact that the delay has occurred because of misplacement of the file in the office of the Advocate, the present application is allowed.

Delay of 548 days in re-filing the appeal stands condoned.

CM No.4587-C of 2015

Prayer in this application is for condonation of delay of 43 days

in filing the appeal.

The reason for non-filing of the appeal within time is that the counsel for the applicant-appellant in the Lower Appellate Court did not inform the applicant-appellant about the decision of the case. He went to enquire from the counsel, who thereafter informed him about the decision in the appeal. Immediately an application for obtaining the certified copy of the judgment was filed, which was prepared and delivered and thereafter the appeal has been filed, which has resulted in delay of 43 days in filing the present appeal. The application is supported by the affidavit of the applicant-appellant.

It appears that there is no intentional delay in filing the appeal and the explanation, as has been recorded above, appears to be just and reasonable.

For the reasons mentioned therein, the present application is allowed.

Delay of 43 days in filing the appeal stands condoned.

RSA No.1649 of 2015

Challenge in this appeal is to the judgments and decree passed by the Courts below, by which the suit for declaration preferred by the appellant-plaintiff holding him entitled to pay fixation as per length of service and his entitlement to increments despite the entry in the service book dated 05.04.1989 and for declaration that the order dated 01.11.2010 are illegal, *null and void*, unlawful, arbitrary, vague and biased with a mandatory injunction directing the respondents-defendants to release the entire benefits of service including ten increments after 05.04.1999, stands dismissed.

2. It is the contention of the counsel for the appellant-plaintiff that the findings recorded by the Courts below that the appellant-plaintiff had not disclosed the true and correct facts and, therefore, he is not entitled to be heard on merits on his claim and accordingly the dismissal of the suit, cannot be sustained. He contends that the appellant-plaintiff had challenged a specific entry in the service record on the basis of the orders passed by the respondents-defendants, which was required to be dealt with by the Courts but instead they had proceeded on a different issue, which was not even a matter in question and have relied upon only the subsequent orders, which were passed after the initial order of punishment was imposed upon him, which was challenged in the suit. On merits also, he contends that the findings recorded by the Courts below cannot be sustained. He thus contends that the present appeal be allowed and the judgments and decree passed by the Courts below be set aside.

3. The contention, as submitted by the the counsel for the appellant-plaintiff, cannot be be accepted as the Courts below has dealt with the conduct of the appellant-plaintiff and has also gone through the merits of the case, according to which the punishment, which has been imposed upon the appellant-plaintiff, is on the basis of he having confessed the charges. It is not in dispute that the charges against the appellant-plaintiff were that he being Conductor, working on a bus with the respondents-defendants, had not issued the tickets to the passengers but had pocketed the fare amount charged from them. On the basis of which, charge sheet was issued to him. On receipt of the charge sheet, the appellant-plaintiff confessed the charges, which resulted in passing of the orders impugned in the civil suit. The said orders cannot be said to be in violation of the

statutory rules governing the service. No fault could be found in the findings recorded by the Courts below irrespective of the fact that the Courts below have proceeded to return a finding that the appellant-plaintiff has not approached the Court with clean hands. The judgments and decree passed by the Courts below on merits thus is upheld.

4. Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

5. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

August 25, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**