

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

LPA No.1836 of 2016 (O&M)
Decided on : 02.04.2019

Gaurav Malik

..... Appellant

Versus

State of Haryana and ors.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Ravinder Singh Dhull, Advocate
for the appellant.

Mr. Randhir Singh, Addl. AG, Haryana.

Mr. H.N.Mehtani, Advocate and
Mr. Parvesh Kumar Bansal, Advocate
for respondent No.2.

Mr. G.C.Shahpuri, Advocate
for respondent No.3.

Mr. Sunil K. Nehra, Advocate
for respondents No.6 and 11.

Mr. Arvind Kashyap, Advocate
for respondent No.12.

Manjari Nehru Kaul, J.

CM-3784-LPA-2016

This is an application for condonation of delay of 20 days in
filing the appeal.

After hearing learned counsel for the parties and perusing the
application, which is duly supported by an affidavit of the appellant, delay

of 20 days in filing the appeal is condoned.

CM stands disposed of.

Main case

This intra court appeal has been filed under Clause X of the Letters Patent assailing the order dated 25.07.2016 passed by learned Single Judge.

2. The case in brief is that respondent No.2 – Haryana Public Service Commission advertised nine posts of Deputy Superintendent of Jail (Male) out of which one post in each category i.e. SC, Backward Class and Ex Serviceman was kept reserved. The appellant applied for the said post and cleared the physical fitness test as well as the interview held for the same. However, as the appellant scored low marks in the interview, he failed to get selected. The appellant, thereafter, approached this Court by way of filing CWP No.8047 of 2016, challenging the selection and appointment of private respondents No.3 to 11 as Deputy Superintendent of Jail under the Department of Home on the ground of favouritism and nepotism. Learned Single Judge vide order dated 25.07.2016 dismissed the said writ petition on the ground of delay and non-impleadment of necessary parties qua whom malafides had been alleged in the selection process. Feeling aggrieved, the present appeal has been filed.

3. Learned counsel for the appellant has submitted that the learned Single Judge was in error in not appreciating that the appellant was intentionally given less marks in order to favour the selected candidates, who were politically well connected. It was vehemently argued that the

appellant was more meritorious than the selected candidates. According to the learned counsel for the appellant, the delay in approaching this Court was due to not getting the complete information, in time, which had been sought by him under the Right to Information Act, 2005(for short 'RTI').

4. Learned counsel for the respondents, on the other hand, submitted that there was no infirmity in the impugned judgment passed by learned Single Judge as the writ petition had admittedly been filed after an inordinate delay of almost three years and without impleading the officials as also certain private persons against whom malafides and favouritism had been alleged.

5. We have heard learned counsel for the parties and perused the material available on record.

6. Coming to the first contention of the learned counsel for the appellant qua allegations of favouritism and nepotism in the selection process, the same deserves to be rejected. The allegations on the face of it are totally vague and not even supported by any qualitative material. Moreover, the private persons against whom the malafides have been alleged, were not even impleaded as party. Once the appellant had alleged malafides, a greater degree of burden was cast upon him to establish the same as the seriousness of such allegations demand a proof of higher degree of credibility. In this background, it was all the more incumbent for the appellant to implead all those persons against whom malafides had been alleged. The serious allegation of malafides would not stand established only on the basis of the appellant submitting that the selected candidates belonged to a particular place or were associated with a particular

organisation or were politically well connected. Thus, it would not only be unfair but also difficult in the absence of any corroborative material to draw an adverse inference qua the malafides alleged.

7. As far as the second contention explaining the delay is concerned, the same too is devoid of any merit. The inordinate delay of almost three years in approaching this Court by pleading that he had been awaiting to get the relevant information, which he had sought under RTI, is unacceptable.

8. The Supreme Court in *M/s Royal Orchid Hotels Ltd. and another vs. G.Jayarama Reddy and others., 2011(10) SCC 608* considering the question whether the High Court should entertain the petition filed under Article 226 of the Constitution of India after a long delay reiterated the view expressed in *Shankara Cooperative Housing Society Ltd. vs. M. Prabhakar and others, (2011) 5 SCC 607* wherein the following principles had been laid down:

“29. In Shankara Cooperative Housing Society Limited v. M. Prabhakar and others (2011) 5 SCC 607, this Court considered the question whether the High Court should entertain petition filed under Article 226 of the Constitution after long delay and laid down the following principles:

"(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to

others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under [Article 226](#) is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay."

9. The Apex Court has time and again reiterated that if a litigant decides to be lax and without any justifiable reason approaches the Court after an inordinate delay from the date of accrual of cause of action or alleged violation of constitutional, legal or other right, he would not be entitled to claim relief under Article 226 of the Constitution of India. It would be relevant to reproduce the observations of the Apex Court in ***M/s Royal Orchid Hotels Ltd. 's case(supra)*** as under:

"25. Although, framers of the Constitution have not prescribed any period of limitation for filing a petition under [Article 226](#) of the Constitution of India

and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari is not hedged with any condition or constraint, in last 61 years the superior Courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of constitutional, legal or other right is not entitled to relief under [Article 226](#) of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard and fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.”

10. The appellant by his own admission is an educated man and a lawyer by profession. Hence, all the more reason, he should have been more vigilant in approaching this Court. He cannot blame the delay in approaching this Court on account of the pendency of his RTI applications.

11. In view of the discussion made above, we do not find any

perversity or illegality in the impugned order passed by learned Single Judge.

12. Accordingly, the present appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

02.04.2019
sonia

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No