

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA No. 717 of 2016 (O&M)

Date of Decision: 16.9.2016

Iqbal Singh and another

....Appellants

Versus

State of Punjab and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARI PAL VERMA.**

PRESENT: Mr. Sukhdev Kamboj, Advocate for the appellants.

AJAY KUMAR MITTAL, J.

1. Challenge in this Letters Patent Appeal is to the judgment dated 3.2.2014 passed by the learned Single Judge whereby CWP No. 18050 of 2013 filed by the appellants was dismissed.

2. The facts necessary for adjudication of the present appeal as narrated therein may be noticed. Respondent No.4 issued a notification dated 23.8.2010 prescribing the minimum qualification for a person to be eligible for the appointment to the post of teacher for Class I to 8. One of the essential requirements was to pass the 'Teachers Eligibility Test' (in short 'TET') to be conducted by the appropriate Government. In pursuance thereto, Government of Punjab, in the year 2011, initiated to conduct the TET and the task for conducting the said test was entrusted to respondent No.2. Accordingly, respondent No.2 issued the public notice dated 7.5.2011 for conducting the TET in the State of Punjab. As per the said

notice, there were two sets of TET papers, i.e. TET-1 meant for the person

to be eligible to become a teacher for Classes I to V and TET-II was meant for the persons to be eligible to become teachers for Classes VI to VIII. The appellants filed online applications for appearing in the TET-II examination. The appellants along with other candidates appeared in the TET-II on 3.7.2011. Booklets A to D were given to the candidates. The questions in the said booklets were the same, but their sequence was changed so as to conduct the examination in a fair manner. The result of the said test was declared on 13.7.2011 in which the appellants got 89 marks out of 150 marks whereas the qualifying marks were 90 out of 150, as such both the appellants were declared failed. According to the appellants, in some of the questions which were common in all the Booklets were not having the correct answer key, e.g. in some of the questions the correct answer was not available in the given option. In some of the questions, more than one given option were having correct answer so it was difficult for them to choose only one correct option and in some of the questions the answer given as per the answer key was incorrect. The appellants after getting information about the correct answer of the questions from respondent No.4, filed CWP No. 18050 of 2013 for revising the result by granting grace marks to all the candidates including the appellants. This Court vide impugned order dated 3.2.2014 dismissed the said writ petition. Hence, the present Letters Patent Appeal. As the appeal is barred by limitation, CM No. 1486-LPA of 2016 under Section 5 of the Limitation Act, 1963 (in short, the "1963 Act") has been filed for condonation of 779 days' delay in filing the appeal.

3. We have heard learned counsel for the appellants.

4. The preliminary question that arises for consideration in this appeal is whether there is sufficient cause for condonation of delay of 779

days in filing the appeal.

5. Examining the legal position relating to condonation of delay under Section 5 of the 1963 Act, it may be observed that the Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

“14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression “sufficient cause” employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for

condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil.”

6. It was further noticed by the Apex Court in **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** as under:-

“.....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of “sufficient cause” is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of “sufficient cause” delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.”

It was also recorded that:-

“For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly

explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition....”

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression “sufficient cause” occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Apex Court in **Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra)** noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting

with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

9. According to the learned counsel for the appellants, the writ petition was decided on 3.2.2014. After the decision of the said writ petition, CWP No. 2461 of 2012 involving identical issue was under consideration and the appellants were waiting for the outcome of the said writ petition. The said writ petition was allowed on 5.9.2014 and thereafter the State filed LPA No. 1064 of 2015 which was dismissed on 16.10.2015. After the decision of LPA No. 1064 of 2015, the appellants tried to contact other co-petitioners in the writ petition for the purpose of filing LPA together. Subsequently, none of the other co-petitioners were ready to file the appeal and the appellants contacted the counsel in the first week of April, 2016. Thus, the appeal could not be filed in time. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the appeal. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the appellants.

10. Adverting to the factual matrix in this case seeking condonation of inordinate delay of 779 days in filing the appeal, we do not find any merit in the same. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. In the present case after appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. The learned Single Judge decided the matter on 3.2.2014 and the appeal was required to be filed within the stipulated period of limitation of thirty days. But the appellants filed the appeal on 22.4.2016, after a colossal delay of 779 days. The plea of the

appellants praying for condonation of delay in filing the appeal, as noticed hereinabove, would not satisfy the test of sufficient cause. The explanation of the appellants is bereft of sufficient cause for delay caused in filing the appeal.

11. In view of the above, finding no merit in the application for condonation of 779 days' delay in filing the appeal, the same is hereby dismissed and consequently, the appeal is dismissed as time barred.

(AJAY KUMAR MITTAL)
JUDGE

September 16, 2016
gbs

(HARI PAL VERMA)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes