

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-17-LPA-2016 in/and
LPA No.9 of 2016 (O&M)
Date of Decision: 07.11.2016**

State of Haryana & Anr.

... Appellants

VS.

Tara Chand & Anr.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	No
3. Whether Reporters of local papers may be allowed to see the judgment?	Yes / No
4. To be referred to the Reporters or not?	Yes / No
5. Whether the judgment should be reported in the Digest?	Yes / No

Present: Mr. Ravi Dutt Sharma, DAG Haryana

Mr. Divay Sarup, Advocate for respondent No.1

Ms. Amrita Nagpal, Advocate for

Mr. Sagar Deswal, Advocate for respondent No.2

SURYA KANT, J. (Oral)

(1) The first respondent approached this Court seeking a direction that the service rendered by him in a Government-aided Privately-managed School be counted towards 'qualifying service' for the purpose of pension and other retiral benefits. During the pendency of the writ petition, the Director, Secondary Education, Haryana vide letter dated 10.08.2010 (A1) addressed to the Advocate General, Haryana informed that in a similar matter the State Government had taken a decision to count the service of Government Aided School for the purpose of pension and other retiral benefits and that the case of the writ petitioner (respondent) was also covered in terms of the Government decision dated 15.07.2010. The State counsel placed that letter on record on 10.08.2010 whereby the benefit was

decided to be granted to the respondent/writ petitioner. Consequently, the writ petition was disposed of as infructuous on 19.08.2010.

(2) After a delay of 621 days, the review application was filed on the ground that the above-stated communication sent by the Office of Director, Secondary Education to the Advocate General Office was unauthorised and was not approved by the senior authorities. It was further averred that though the respondent had served in the Government Aided Privately-managed School but the post against which he was appointed was not sanctioned under the Grant-in-Aid Scheme.

(3) Learned Single Judge has dismissed the review application primarily on the ground of delay and laches coupled with the fact that the respondent is a retiree of 2007. It has been further observed that the mistake, if any, ought to have been detected by the authorities within reasonable time.

(4) The instant Letters Patent Appeal is directed against the above-stated order, dismissing the review application of the State. There is a delay of 242 days in filing the appeal also and a separate application for its condonation has been moved. We find that the averments made in the application are totally vague, evasive and misconceived.

(5) Learned Single Judge dismissed the review application on 12.03.2015. In the application seeking condonation of delay, it is averred that the Office of Advocate General opined on 16.06.2015 that it was a fit case to file appeal. It is thus manifest that the office of Advocate General itself took more than three months in giving opinion whereas the time-limit to file an Intra-Court Appeal is 30 days only. Interestingly, the office of Director, Elementary Education, Haryana on 30.09.2015 received a letter from the office of Legal Remembrancer, Haryana to contact the Advocate

General office for the purpose of filing the appeal. It simply suggests that the office of Legal Remembrancer, Haryana also took three months in instructing the Department to file the appeal. The Department also follows their footsteps as it took another three months in handing over the documents and to get the appeal filed which appears to have been filed on 06.01.2016 only.

(6) We are not satisfied with the explanation rendered by the appellants for the cause of delay. Consequently, the application is dismissed.

(7) Even on merits also, there is no arguable point. The respondent admittedly served in a Govt. aided privately managed school before joining the Govt. service. Such service was counted towards 'qualifying service' in the case of another employee(s). The case of the respondent was later on tried to be distinguished on the plea that the post against which he was appointed in the Govt. aided school was not sanctioned under the grant-in-aid scheme. No such factual plea was taken in the main case. The scope of review application could not have been enlarged to re-argue the case on merits.

(8) The application as well as the appeal both are thus dismissed.

(Surya Kant)
Judge

07.11.2016
vishal shonkar

(Sudip Ahluwalia)
Judge