

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

RSA-5321-2015

Date of decision: February 01, 2016

HUKUM CHAND

.....Appellant

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.S. Longia, Advocate
for the appellant

SABINA, J

Appellant had filed suit for declaration challenging the order dated 23.11.2009 whereby he was compulsorily retired on attaining the age of 55 years.

Case of the appellant-plaintiff, in brief, was that he had joined as a Conductor with Haryana Roadways on 15.9.1979. The date of birth of the appellant was 7.7.1953 and he had been compulsorily retired vide order dated 23.11.2009. The impugned order had been illegally passed on the basis of the three adverse confidential remarks recorded against the appellant for the year 1997-98, 2003-04 and 2005-06.

Defendants, in their written statement, admitted the passing of the impugned order on the basis of ACRs of the appellant for the year 1997-98, 2003-04 and 2005-06. The case of the

defendants was that the cases of fraud had been detected against the appellant and he had been charge-sheeted. After completion of departmental inquiry, the order of compulsory retirement had been passed after issuing show cause notice to the appellant and considering his reply. The representation moved by the appellant for expunging the entries in his ACR for the year 2003-04 was rejected by the competent authority vide order dated 16.11.2006.

On the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether the plaintiff is entitled for a decree for declaration as prayed for?OPP

2. Whether the plaintiff is entitled for a decree for mandatory injunction as prayed for?OPP

3. Whether suit of the plaintiff is not maintainable in the present form ?OPD

4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD

5. Whether the plaintiff has no cause of action to file the present suit?OPD

6. Relief.”

Parties led evidence in support of their respective pleas.

Trial Court vide judgment and decree dated 30.4.2014 dismissed the suit of the plaintiff. Aggrieved against the said judgment and decree, appellant preferred an appeal. Along with the appeal, an application under Section 5 of the Limitation Act, 1969 (for short 'the Act') was filed seeking condonation of delay of 247 days in

filing the appeal. The application seeking condonation of delay in filing the appeal was dismissed by the First Appellate Court vide order dated 4.4.2015. Consequently, the appeal filed by the appellant was ordered to be dismissed being time barred. Hence, the present appeal by the appellant-plaintiff.

I have heard the learned counsel for the appellant and have gone through the record available on the file carefully.

In the present case, appellant had filed appeal against the judgment and decree passed by the trial Court along with an application under Section 5 of the Act. There was delay of 247 days in filing the appeal. The case of the appellant was that he could not file the appeal within the period of limitation due to his sickness and due to illness of his wife. The suit was dismissed on 30.4.2014, whereas, the application was moved for supply of certified copies of judgment/decreed on 2.12.2014. Thus, the appellant had moved the application for supply of certified copies of the judgment and decree passed by the trial Court after considerable delay. Appellant had, although, taken up the plea that he could not file the appeal within the period of limitation on account of his sickness and illness of his wife but no such medical record was placed on the file. In these circumstances, learned First Appellate Court rightly came to the conclusion that the delay in filing the appeal could not be condoned as the same could not be said to be bona-fide or unintentional. I am conscious of the fact that the liberal approach is liable to be adopted while dealing with the application for condonation of delay in filing the appeal but in the present case, appellant has failed to explain the

delay of 247 days in filing the appeal. The plea taken by the appellant that he could not file the appeal within the period of limitation on account of his sickness and illness of his wife was also not substantiated on record as no such medical record was produced by the appellant.

In the facts and circumstances of the present case, learned First Appellate Court has, thus, rightly dismissed the application moved by the appellant seeking condonation of delay in filing the appeal and, consequently, dismissed the appeal being time barred.

Dismissed.

**(Sabina)
Judge**

February 01,2016

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