IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA no.2353 of 2016 (O&M)
Date of Decision : 01.08.2017

The Chief Conservator Officer, Forest Department Haryana and another

....Appellant(s)

Versus

Shiv Kumar and another

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. G.S.Wasu, Addl. AG, Haryana for the appellants

MAHESH GROVER, J.(ORAL)

The instant appeal is directed against the judgment of the learned Single Judge dated 15.5.2015 but filed after an inordinate delay of 578 days (written as 515 days in the subsequent application). The reasons for delay have been given in paras 2 to 7 of the application (filed subsequent to the filing of the initial application alongwith LPA) under Section 5 of the Limitation Act which we consider appropriate to extract herebelow :-

> "2. That the CWP no. 21181 of 2012 titled as State of Haryana and others vs. Sh. ShivKumar & Others was decided by this Hon'ble Court vide order dated 15.5.2015.
>
> 3. That the appellant applied for the certified copy of order passed by this Hon'ble Court on 20.5.2015 and the same was received by the office of Advocate General Haryana at Chandigarh on dated 9.6.2015. Thereafter,

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2017.08.09 10:28
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the Advocate General, Haryana on 21.10.2015 opined that it is not fit case for filing LPA against the order passed by this Hon'ble Judge and sent the case to Legal Remembrance & Secy. to Government of Haryana for further necessary action. Thereafter, the Legal Remembrance & Secretary to Government of Haryana did not agree with opinion of Ld. Advocate General, Haryana and issued instruction vide letter dated 10.11.2015 to the Advocate General, Haryana for filing of LPA on behalf of the State of Haryana in the above mentioned case. Thereafter, the appeal was prepared on 14.12.2015 after collecting all the relevant record of the case. The Courts, thereafter, closed for winter holidays and the appeal was got vetted on 7.1.2016. In the meantime, the dealing hand had been changed and a new dealing hand Sh.Sunil Kumar was not fully aware of the facts of the case and was not having the requisite knowledge about the formalities & procedural know how involved. Due to the serious health problems, he remained on leave from 9.4.2016 to 2.5.2016, 7.5.2016 to

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2017.08.09 10:28
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3.6.2016, 13.6.2016 to 20.6.2016, 22.6.2016 to 30.6.2016, 4.7.2016 to 8.7.2016, 3.8.2016 to 15.8.2016 and as soon as he recovered to some extent he got the appeal prepared and complied with the requisite formalities, so the appeal was submitted in the office of Ld. Advocate General, Haryana on 22.8.2016 and the LPA was filed on 2.12.2016.

4. That it is pertinent to mention here that during the illness of the dealing hand as there was shortage of staff, as a result of which the additional charge was also looked after by Sh. Mahinder Singh, Deputy Superintendent but on account of a heavy workload, the present case did not came to the knowledge of the aforementioned. Thereafter, a new dealing hand appointed & he made all the efforts to clear the pending work of the seat, then this case came to the knowledge of the new dealing hand and immediately the file was completed in all respects and the same was submitted to the office of Ld. Advocate General, Haryana in the month of August, 2016.

5. That after submission of the file for further necessary action in the office of Ld.

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2017.08.09 10:28
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Advocate General, Haryana, a further delay of 102 days has occurred in filing the present LPA. For the said delay of 102 days, an explanation was sought from the concerned dealing hand of the office by the concerned Law Officer who had argued the case on the previous dates. The said delay has been, thus, explained by Smt. Rajni Bala, Assistant, office of Advocate General, Haryana the relevant extract of which is being reproduced as under:-

> "In this connection, it is submitted that the case for filing LPA in CWP no. 21181 of 2012 was received from the Forest Department Ambala on 22.8.2016. Due to rush of work and lack of knowledge of filing, I could not file the case upto 11.9.2016 being new seat since I posted on the LPA filing seat on 23.5.2016. Thereafter, I had on child care leave w.e.f 12.9.2016 to 3.10.2016. After joining the duty there is lot of rush of work of my seat for filing LPA/CWP and opinion/grounds of appeal and other misc. work since nobody was deputed

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2017.08.09 10:28
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on filing branch during my leave. The case was filed on 2.12.2016 in which LPA no. 2353 of 2016 was allotted which is at Flag 'B'.

In view of the position as explained above, due to rush of work and lack of knowledge of filing, the delay of 102 days in filing of LPA has occurred on my part, I shall be careful in future.

Submitted please.

Sd/- Rajni Bala, Asstt.

When the said matter was brought to the notice of the Ld. Advocate General, Haryana, upon reading the explanation rendered by Smt. Rajni Bala, it has been ordered to initiate proceedings under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules against Smt. Rajni Bala.

6. That the present LPA is being filed after a delay of 515 days. The delay in filing the LPA was caused on account of the official procedure involved, as well as on account of the illness of the concerned dealing hand as well as on account of lack of knowledge on the part of the concerned officials of the Forest Department and the lapse, if any, on the part of the said official for which the necessary action is being taken against him, thus, the delay is not intentional or deliberate. In so far as the

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2017.08.09 10:28
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delay caused on account of the office of the Advocate General, Haryana is concerned appropriate action has already been ordered to be initiated as detailed in paragraph 5 above.

7. That in this way, the delay of 515 days has been caused in filing the present appeal which is partly inadvertent and a bona fide human mistake on the part of the appellant and where the officials were at fault appropriate proceedings are being initiated."

The aforesaid would reveal that after the judgment was rendered on 15.5.2015, its certified copy was applied on 20.5.2015 and the same was issued on 9.6.2015. Thereafter, the Advocate General, Haryana on 21.10.2015 opined that it is not a fit case for filing LPA but Legal Remembrance & Secretary to Govt of Haryana issued instruction on 10.11.2015 for filing LPA on behalf of the State and appeal was got prepared on 14.12.2015 which was vetted on 7.1.2016. Further it is stated that dealing hand was changed during this period and new dealing hand Sh. Sunil Kumar remained on leave on account of his ill health and therefore, submitted the LPA in the office of Advocate General on 22.8.2016. In para 5 of the application it is submitted that after 22.8.2016, another delay of 102 days occurred in filing the LPA in the office of Advocate General for which concerned dealing Smt. Rajni Bala is facing proceedings under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules.

All this goes to show complete apathy to the legal process as the file has shuffled from one place to another at a snails pace.

We cannot shut our eyes to such callousness and treat the State

Rekha Sihag
2017.08.09 10:28
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or its functionaries differently than a common litigant while dealing with matters of limitation to grant indulgence by overlooking such procedural delays and we would not be unjustified to expect some alertness at the hands of a litigant who wishes to approach this Court in no matter what proceedings.

We are also constrained to observe that there is absolutely no justification manifested itself from the contents of the application for delaying the filing of the LPA on account of official procedures and illness of concerned dealing.

The Hon'ble Supreme Court in Office of the Chief Post Master General & ors. v. Living Media India Ltd. & Anr. 2012(2)S.C.T.269 has observed as under :

> "13. In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. The law shelters everyone under the same light and

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2017.08.09 10:28
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should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

Keeping in view the aforesaid, we are of the view that the explanation for delay offered by the appellants is not worth acceptance.

Hence, instant appeal is dismissed on the ground of delay.

(Mahesh Grover)
Judge

01.08.2017 **(Raj Shekhar Attri)**
rekha **Judge**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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