

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-5224-26-LPA-2016 in/and

LPA No.2508 of 2016 (O&M)

Date of Decision: 01.02.2017

PL Mahajan

... Appellant

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

Present: Mr. Karan Bhardwaj, Advocate for the appellant

SURYA KANT, J. (Oral)

(1) Notice of motion. On our asking, Mr. Deepak Balyan, Addl. AG Haryana accepts notice on behalf of respondents. In view of the nature of order which we propose to pass there is necessity to call upon the respondents to file reply, at this stage.

(2) The appellant has chosen to file this Letters Patent Appeal against the order dated 03.07.2013 after a delay of 870 days for which he has separately applied for condonation of delay.

(3) So far as the delay in filing the appeal is concerned, we are inclined to entertain this appeal on merits for the reason that the appellant was not party to **CWP No.8172 of 1990** titled **HR Dhanjal etc. vs. State of Haryana etc.** decided on 17.08.2001 wherein this Court held that the selection grade of 4100-5300 after 12 years of regular satisfactory service was limited to “20 per cent of the cadre posts” and that wherever such selection grade was granted beyond 20 per cent cadre posts, recoveries could be effected even from the retirees but “*in easy instalments to be fixed by the Government*”.

(4) The appellants' own writ petition was dismissed by learned Single Judge on 03.07.2013 and as per his affidavit he came to know about the said

decision only when the recoveries were started. In this view of the matter and keeping in view the age of the retiree-appellant, we have heard learned counsel for the parties on merits.

(5) There appears to be some substance in the grievance of the appellant that firstly the competent authority is obligated to determine whether the appellant, as per his seniority fell within 20 per cent of the holders of cadre posts and thus was whether or not entitled to selection grade of 4100-5300? Suffice it to observe that in case the appellant fell within the said 20 per cent limit, no recovery can be effected from him. However, if he was beyond the said limit then direction No.(5) issued in **HR Dhanjal's** case (supra) as reproduced by learned Single Judge would remain operative.

(6) In this view of the matter, the appeal is disposed of with a direction to the State Government firstly to determine the appellant's status by way of a reasoned order within two months and thereafter only take further necessary action *re:* recovery from him. Till such determination, the recovery from the appellant may be deferred.

(7) The applications as well as the appeal stand disposed of in above terms.

(Surya Kant)
Judge

01.02.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No