

**LPA no.697 of 2017 (O&M)
and connected cases**

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

1. LPA no.697 of 2017 (O&M)

State of Haryana through Financial Commissioner-cum-Secretary to Govt.
Haryana Education Department and another

....Appellant(s)

Versus

Krishan Ram and others

...Respondent(s)

2. LPA no.758 of 2017 (O&M)

State of Haryana through Financial Commissioner-cum-Secretary to Govt.
Haryana Education Department and another

....Appellant(s)

Versus

Joginder Singh Rathee and others

...Respondent(s)

3. LPA no.948 of 2017 (O&M)

State of Haryana through Financial Commissioner-cum-Secretary to Govt.
Haryana Education Department and another

....Appellant(s)

Versus

Joginder Singh and others

...Respondent(s)

4. LPA no.1106 of 2017 (O&M)

State of Haryana through Financial Commissioner-cum-Secretary to Govt.
Haryana Education Department and another

....Appellant(s)

Versus

Raj Kumar and another

...Respondent(s)

Date of Decision : 01.08.2017

**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)

This order will dispose of four Letters Patent Appeals bearing LPA nos. 697, 758, 948 and 1106 of 2017.

The aforesaid appeals are directed against the judgment of the learned Single Judge dated 13.2.2015 but filed after an inordinate delay of 765 days. For the purpose of convenience, facts are taken from LPA no. 697 of 2017 wherein the reasons for delay have been given in paras 2 to 12 of the application under Section 5 of the Limitation Act which we consider appropriate to extract herebelow :-

“2. That the Hon'ble Single Bench vide its order dated 13.2.2015 has allowed the CWP no. 22075 of 2011 titled as Krishan Ram and others vs. State of Haryana and others alongwith three other writ petitions. Certified copy of the judgment was applied by the office of A.G. Haryana on 26.2.2015, copy prepared on 11.3.2015 and delivered on 12.3.2015. Thereafter, file was put up for opinion and Ld. Law Officer tendered its opinion on 23.3.2015 opining as a fit case for filing LPA to which ld. A.G. Haryana agreed on 23.3.2015.

3. That the office of A.G. Haryana vide letter dated 1.4.2015 has intimated the applicant department that this case is fit for filing LPA in Hon'ble High Court

against the order dated 13.2.2015 passed by the Hon'ble High Court.

4. That the above CWP no. 22075 of 2011- Krishan Ram & others vs. State of Haryana and others was received in this office dated 3.2.2012 and the reply was prepared by the Department on dated 6.2.2012. Sh. Rajeev Jolly, was the then Assistant, HRME Branch o/o Director Secondary Education, Haryana Panchkula who without explaining the true facts and relevant rules of Class III and IV of Haryana Education Ministerial Staff (Field Offices) got prepared the draft reply and the same was filed in the Hon'ble High Court on 30.9.2013 after approval of Higher Authorities. Simultaneously, the Directorate directed the concerned District Education Officers for sending the promotion cases of the petitioners. As per the wrong facts given in the reply of the CWP, Hon'ble High Court decided the case against the Department on 13.2.2015. Without going through the facts of the case, and further without putting the file to the higher authorities for filing the LPA as advised by the office of Advocate General, Haryana against the Hon'ble High Court orders dated 13.2.2015 despite the advice of Advocate General, Haryana vide letter No. 19918 dated 1.4.2015 that the case is fit for filing LPA Sh. Rajeev Jolly, the then Assistant got directed the concerned

District Education Officers to send the promotion cases of the petitioners. For not implementing the Hon'ble Court order, the promotion order of the petitioners were issued on 26.6.2015.

In view of the above facts, it is found that Sh. Rajeev Jolly, the then Assistant wanted to grant the benefits of promotion to the petitioners and was fully responsible for not filing further appeal in this case. For this negligence, the Department has issued charge sheet under Rule 7 dated 16.11.2016 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 to the delinquent official on 31.8.2016. It is pertinent to mention here that the delinquent official remained in HRME Branch for more than four years.

5. That the office of Advocate General, Haryana vide letter dated 14.10.2015 requested the Directorate to attend their office alongwith instructions issued by the LR office in this case. The above said letter was received by the same dealing hand on 26.10.2015 but was not put up to the higher authorities.

6. That thereafter, in March, 2016 the matter was discussed in the office of Advocate General, Haryana and their office advised to get the copy of LR instructions.

7. That LR Haryana vide letter dated

25.4.2016 requested the office of Advocate General, Haryana to contact the concerned department in this regard as relevant files of said cases have been weeded out and letters/reminders are not endorsed to the concerned department by their office, whereupon the office of Advocate General, Haryana vide their letter dated 7.5.2016 asked the office of the applicant/appellants to apprise their office regarding action on the order/judgment dated 13.2.2015 passed by the Hon'ble High Court.

8. That on 13.5.2016, the competent authority ordered to file LPA against the decision of Hon'ble High Court dated 13.2.2015 in a case of similar nature by Sh. Raj Kumar in CWP no. 23732/2011 Sh. Krishan Ram & Others in CWP no. 22075/2011, Sh. Joginder Singh & others in CWP no. 13486/2011 and Sh. Joginder Singh Rathee and others vs. State of Haryana and other's case were also decided by the one judgment in Hon'ble High Court vide order dated 13.2.2015 alongwith three others CWPs stated above. To comply with these orders, certain requisite material facts including the status of Review Application against the orders/judgment dated 25.11.2008 of the Hon'ble Supreme Court in Asgar Khan's case (however not filed) were collected, whereas as per written statements of the department in such cases

mentioned that the Review Application was pending before the Hon'ble Supreme Court and such was also mentioned in the orders of the Hon'ble High Court passed on 13.2.2015 in these cases.

9. That the department submitted the draft LPA in CWP no. 15797/2011 titled as Joginder Singh Rathee & others vs. State of Haryana and others alongwith delay application and their affidavits to the office of A.G. Haryana for vetting on 30.8.2016 thereupon the AG office sought some information and raised certain queries and returned the file on 31.8.2016.

10. That consequently the department vide orders dated 31.8.2016 has issued chargesheet under Rule -8 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 to Sh. Rajeev Jolly, the then Assistant for dereliction of his duties.

11. That thereafter, submitted the draft LPA in CWP no. 15797/2011 titled as Joginder Singh Rathee and others vs. State of Haryana and others with some amendments to the office of A.G. Haryana on 15.9.2016 thereupon the office of A.G. Haryana sought some more information from the department and returned the draft on 16.9.2016.

12. That thereafter, the Department discussed the case (Joginder Singh Rathee & others) with

the office of A.G. Haryana on 23.11.2016 and submitted the draft of C.M application for condonation of delay etc. on 6.12.2016 and the same was vetted on 30.12.2016. Thereafter, fair typed copy of paper book has been submitted in the office of Advocate General, Haryana for filing LPA in this case. Accordingly, the required paper book for filing LPA was prepared and the same is being filed today in this Hon'ble Court i.e on 17.4.2017.”

The aforesaid would reveal that after the judgment was rendered on 13.2.2015, its certified copy was applied on 26.2.2015 and the same was issued on 12.3.2015. Thereafter, Law Officer opined it to be a fit case on 23.3.2015 for filing LPA in this Court to which learned A.G. Haryana agreed on 23.3.2015 and department was also informed in this regard on 1.4.2015. Thereafter, matter was deliberately kept pending by one Rajeev Jolly, the then Assistant who has been charge-sheeted on this account. Then it is mentioned that since 14.10.2015 matter was discussed with LR office in the light of some instructions and it was on 13.5.2016 that competent authority ordered filing of LPA. Thereafter, a draft LPA in CWP no. 15797 of 2011 was got prepared and sent to AG office for vetting on 30.8.2016 whereupon AG office sought certain information and raised certain queries. Then again draft LPA was sent to AG office on 15.9.2016 with some amendments. Then again matter was discussed with AG office and finally LPA was filed on 17.4.2017.

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. Two times AG

office sought information from the Department but the application is silent as to what information was sought from the Department. This is an attempt just to cover the period.

We cannot shut our eyes to such callousness and treat the State 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 manifesting itself from the contents of the application for delaying the filing of the LPA till 17.4.2017, particularly, when AG office has opined the case to be fit for filing LPA on 23.3.2015.

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 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 appeals are dismissed on the ground of delay.

(Mahesh Grover)
Judge

(Raj Shekhar Attri)
Judge

01.08.2017
rekha
Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No