

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

LPA No.712 of 2017 (O&M)

Date of Decision : 02.08.2017

State of Haryana and others

....Appellants

Versus

Rajpal Chauhan

....Respondent

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

....

Present: Mr. Gagandeep S.Wasu, Addl.AG, Haryana.

....

MAHESH GROVER, J. (Oral)

This appeal is directed against the judgment of the learned Single Judge dated 11.09.2015 but filed after an inordinate delay of 549 days. The reasons for delay have been given in paras 2 to 12 of the application filed under Section 5 of the Limitation Act, which are extracted herebelow :-

“2. That the certified copy of the order dated 11.09.2015 was received in the office of the appellants on 29.09.2015. The office of Advocate General, Haryana had submitted legal opinion vide their memo no.50669 dated 09.10.2015 to the effect that this case is not fit for filing appeal i.e. LPA against the judgment dated 11.09.2015 and the same was received in

this office on 15.10.2015. After this Law Secretary cum Legal Remembrancer to Government of Haryana vide their memo no.57987 dated 05.11.2015 by agreeing with the view of the Advocate General, Haryana opined that it is not fit case for filing LPA.

3. That thereafter, office of the applicant vide their memo no.71237 dated 08.12.2015 requested the Additional Deputy Commissioner, Kurukshetra to send enquiry report regarding disciplinary proceeding pending against the petitioner, so that further action could be taken for making the compliance of the order dated 11.09.2015 passed by the Hon'ble Single Judge. Reminder vide memo no.AA1-2016/569 dated 06.01.2016 was also issued to Additional Deputy Commissioner, Kurukshetra for sending the report of disciplinary proceeding so that, compliance could be made of order dated 11.09.2015 passed by the Hon'ble Single Judge in CWP No.15334 of 2015.
4. That thereafter, the Additional Deputy Commissioner, Kurukshetra vide its letter dated

19.01.2016 received in the office of the applicant on 25.01.2016 intimated that the petitioner/respondent is not cooperating in the enquiry proceeding pending before him with regard to disciplinary proceedings and forward his incomplete report to the office of the appellant. In pursuance thereto, the applicant/appellant vide his demi official letter no.13460 dated 16.03.2016 advised the Additional Deputy Commissioner to conduct ex-parte proceedings and record the statements/evidence of the departmental witnesses, in case the delinquent doesn't respond, even after publishing/public notice in the newspaper regarding requiring presence of the delinquent employees and thereafter submit its inquiry report immediately, so that the directions of the Hon'ble court passed in CWP No.15334 of 2014 could be complied with by taking a decision regarding suspension period of the petitioner.

5. That meanwhile, petitioner/respondent served a contempt notice to the office of the applicant on

22.03.2016, the same was received in the office on 29.03.2016 for making compliance of order dated 11.09.2015 passed by the Hon'ble Single Judge within a period of fortnight. On the other hand, the post of the Additional Deputy Commissioner, Kurukhetra had become vacant. Therefore, vide office Memo.No.AA1-2016/29610 dated 29.04.2016 District Development and Panchayat Officer, Kurukshetra was appointed as Inquiry Officer to conduct the pending regular departmental inquiry against the petitioner/respondent in connection with charge-sheet under rule 7 of the Haryana Civil Service Rules, 1987 served upon him vide memo no.A1-2007/102717 dated 29.11.2007. The District Development & Panchayat Officer, Kurukshetra submitted his inquiry report to the office of the applicant/appellant on 13.05.2016. After the receipt of inquiry report of District Development and Panchayat Officer, Kurukshetra, the second show notice was issued to the petitioner vide memo no.AA1-

2016/36552 dated 24.05.2016. Reply to the show cause notice of the petitioner/respondent was received in the office of the applicant on dated 10.06.2016.

6. That thereafter, vide memo no.AA1/2016/59743 dated 08.08.2016 an opportunity of personal hearing for 16.08.2016 was afforded to the petitioner/respondent before taking any final decision upon the inquiry report of District Development and Panchayat Officer, Kurukshetra regarding disciplinary proceeding pending against the petitioner/respondent but petitioner did not personally appear on 16.08.2016.

7. That in the interest of justice, vide memo no.AA1-2016/70728 dated 07.09.2016 an opportunity of personal hearing was also afforded to the petitioner respondent for 14.09.2016. He was personally heard on 14.09.2016 and order was reserved. Thereafter, vide order dated 25.11.2016 issued vide Endst.No.AA1-2016/112878-82 disciplinary proceedings were finalized against the

petitioner, wherein, suspension period of the petitioner was restricted to subsistence allowance already paid to him and the said suspension period treated as duty period for all other purpose as he was held guilty for miss appropriation of Government funds by withdrawing amount through cheques filling excess amount, as well as loss of 1381 quintal Wheat, accordingly, recovery of Rs.18,59097/- was ordered to be made out against the petitioner/respondent.

8. That during the course of pendency of above said disciplinary proceeding, Sh.Rajpal Chauhan petitioner/respondent filed contempt petition against the applicant/appellant. Wherein, upon hearing the Hon'ble High Court in pursuance to earlier order dated 29.09.2016 directed the applicant no.2 to appear on 05.12.2016 before this court to render the assistance. However, the office of the applicant/appellant took no notice of the pendency of above said contempt petition. Therefore, the said contempt petition adjourned

for 20.01.2017 for personal appearance of applicant no.2 i.e. Director, Panchayats, Haryana.

9. That thereafter, the office of Advocate General Haryana vide their demi official letter dated 13.12.2016, received in the office of applicant on 15.12.2016 apprised about the order passed by this Hon'ble Court on 05.12.2016. The said order is as follows :-

“On the last date of hearing, following order was passed in this case :-

“Learned State counsel prays for more time to seek instructions. In the interest of justice, one last opportunity is granted. In case proper instructions are not supplied to learned State counsel by the next date of hearing, respondent shall remain present in court alongwith record to render assistance.

Adjourned to 05.12.2016.”

Learned State counsel submits that neither he has received any instructions nor respondent is present in court despite

information having been sent to the concerned office.

Under the circumstances, respondent No.1 is directed to remain present in court on 20.01.2017 alongwith record to render assistance. This court shall consider imposition of appropriate costs which shall be deducted from the salary of the respondent.”

10. That as the concerned official of the applicant committed delay and lapses in the matter, thus the enquiry was entrusted to Additional Director, Panchayat on 29.12.2016 to fix the responsibility of the delinquent officer/official, who submitted his report on 06.01.2017, whereupon, a show cause notices were issued to the delinquent officer/official.
11. That on 20.01.2017 the Hon'ble Court while hearing the COCP No.1124 of 2016 filed by the petitioner/respondent had passed the following order :

“Pursuant to order dated December 05,2016 respondent no.1-Ashok Kumar

Meena, Director General, Development and Panchayat Department, Haryana is present in court today. He tenders unconditional apology for not supplying proper instructions to the State Counsel well in time. Same is accepted.

Learned State Counsel has referred to affidavit dated 17.01.2017 and submits that some amount is to be recovered from the petitioner.

Learned counsel for the petitioner submits that a counter-affidavit is required to be filed.

Needful be done within two weeks.

To come up on 15.03.2017.

Personal appearance of the officer is exempted till further orders.”

12. That during the course of discussion on the date of hearing i.e. on 20.01.2017, Sh.Sushil Gautam, Appearing State Counsel was of the view that in the matter the department should have had filed LPA. Thereafter, after seeking the approval from Additional Chief Secretary

Development and Panchayat on 20.02.2017 the draft of LPA alongwith application of stay, condonation of delay has been got prepared and submitted in the office of Learned Advocate General, Haryana for vetting on 06.03.2017. Objection was raised by the Law Officer to whom matter was entrusted to explain the delay properly. Accordingly, again draft Civil Misc. of delay modified and put for vetting on 14.03.2017, which was vetted and then the paper book of LPA submitted for filing in the registry of the Hon'ble High Court.”

We notice from the above that certified copy of the impugned order dated 11.09.2015 was received by the appellants on 29.09.2015 and thereafter the office of Advocate General, Haryana had submitted legal opinion on 09.10.2015 that the case is not fit for filing LPA. The Legal Remembrancer, Haryana also concurred with the opinion of the Advocate General, Haryana. Thereafter, the Administrative Department neither complied with the impugned order nor did they think of filing LPA for about one and a half year and while facing the contempt proceedings they suddenly woke up and thought of filing LPA after seeking approval from the Additional Chief Secretary, Development and

Panchayat on 20.02.2017 and filed the present appeal in March 2017. Evidently, the file has meandered through various channels without there being any hint of urgency or even offering an insight of the minds of the Law Officers regarding the awareness of the Limitation Act. The State cannot be treated differently than any other litigant and its lethargy in approaching the court cannot be condoned unless the courts want to face the accusation of treating the State differently than a common litigant and giving a burial to the law of limitation.

It has been stated that the matter is of great importance and the State would suffer acute losses. We are not enamoured of this argument. If the State suffers on account of its laxity it has itself to blame and none others and the courts cannot rescue it.

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.

Appeal dismissed on the ground of delay.

(MAHESH GROVER)
JUDGE

02.08.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No