

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

LPA No.879 of 2017 (O&M)

Date of Decision : 15.09.2017

State of Haryana and others

....Appellants

Versus

Chander Kumar Jha

....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 13.07.2016.

The respondent - Shri Chander Kumar Jha (hereinafter known as 'the writ petitioner') was appointed as Lecturer in Sanskrit by a duly constituted selection committee in its meeting held on 11.12.1998. After the recommendation the petitioner was appointed with effect from 14.12.1998 upto 31.03.1999 as the appointment was against the leave vacancy. This appointment was subject to his work and conduct being satisfactory for the next session. The arrangement was duly approved by the university on 29.12.1998. The services of the writ petitioner were then extended upto 31.03.2000, which was again approved by the university. On 03.05.2000, a letter was written by the Principal of the College to the Director, Higher Education, Haryana

requesting that since the original incumbent Dr.Ashima Joshi against whose post the leave vacancy was created and the writ petitioner appointed, had abandoned her services with the college and since the work of the writ petitioner was good, he be permitted to continue on regular basis from the forthcoming session. The writ petitioner was then duly recommended by the Committee to continue on the post till it was filled up on permanent basis. This arrangement was cemented by another letter of appointment dated 01.07.2000. His appointment was once again approved by the University. The Governing Body in its meeting held on 16.11.2002 under the Chairmanship of the President of the Governing Body along with the nominee of the Vice-Chancellor and Higher Education Commissioner confirmed the services of the writ petitioner as a Lecturer in Sanskrit. A letter to this effect was issued confirming the writ petitioner with effect from 01.07.2002 vide letter of the Governing Body dated 18.01.2008.

Despite this the writ petitioner was never admitted to the regular service benefits, whereupon he made several representations to the University as also to the College. His claim was negated that he is not a regular employee and can be treated as such only when the post is advertised and he faces the selection process along with other desirous candidates.

Aggrieved with this, the writ petitioner approached this Court resulting in an order in his favour entitling him to all the regular benefits of service, which is now the subject matter of appeal before us.

It has been contended by the learned counsel for the appellants that unless or until the employer advertised the post in accordance with the acknowledged mode of public appointment, the writ petitioner employed with the College cannot be treated as regular particularly in view of the instructions dated 08.04.1991. It is contended that there is a deep fallacy in the impugned judgment which has failed to take into consideration the settled law in the case of *Mrs.Veena Kumari v. Director Higher Education and others* (CWP No.1760 of 1994), decided on 14.11.1994, appended to the writ petition as Annexure R-III and several other judgments in this regard.

We have heard the learned counsel for the appellants and are of the opinion that the instant appeal deserves to be dismissed on the following counts. Firstly, the appeal is barred by an inordinate delay of 247 days. The application under Section 5 of the Limitation Act reveals that the judgment was delivered on 13.07.2016 whereafter the file was placed before the learned Addl. Advocate General on 30.08.2016 suggesting a delay in the first instance itself. The opinion of the Advocate General was

rendered on 26.10.2016, after a delay of almost two months. Thereafter, the file was put up before the Special Secretary to Govt. Haryana, Education Department on 04.11.2016, after a month of the opinion. The file then remained with the office of the Director, Higher Education from 23.11.2016 to 07.01.2017. There is absolutely no explanation for all this delay from July 2016, the date when the judgment was rendered. The dismal state of affairs is reflected further when on 07.01.2017 the file was sent to the District Attorney for preparing the Letters Patent Appeal and was received back from his office on 24.01.2017. Thereafter it was put up before the Director for approval and received back on 03.02.2017. On 08.02.2017, the draft appeal was sent to the Deputy Secretary to Govt. Haryana, Education Department for signatures and on 17.02.2017 the case was sent to the Advocate General, Haryana for final vetting of the draft. Some objections were raised therein and on 02.03.2017 after making rectification the draft was again vetted by the Advocate General and received on 03.03.2017. Finally the appeal was filed on 15.03.2017.

A perusal of the above only reflects the decay that prevails not only in the offices of the State but also in the office of Advocate General. There is absolutely no necessity for the file to move through this unending labyrinth and even if it is

essential then also the State and its functionaries who are equipped with enough manpower with legal acumen should show atleast some semblance of knowledge of the law of limitation.

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.”

Considering that some indulgence can indeed be shown to the State for procedural lapses but under no circumstances this can be stretched to a level rendering the statutory laws irrelevant or redundant. Therefore, the appeal deserves to be dismissed on the ground of limitation itself.

Since we have heard the learned counsel for the appellants on merits as well, we are appalled that such a stand can even be offered as a justification by the State that since an advertisement was not issued and the proper process of public mode of appointment not followed in violation of the instructions dated 08.04.1991, there would be justification to keep an employee away from the benefits of regular service after a prolonged arrangement of 16 years. The facts as narrated above show that at every step of his re-engagement there was a proper meeting of the Committee and approval of the University. If at any stage the college was of the opinion that this arrangement is irregular, nothing stopped them from throwing open the post to the general public by inviting applications. The State in itself, especially the Education Department, faulted deeply in not

ensuring this. It was the function of the Director, Higher Education or any other functionary in this regard to have taken note of this irregular arrangement which they now project, at the relevant point of time.

We are of the opinion that the State itself has acted as an exploitative master by persisting with this arrangement or shutting an eye to it. Therefore, it would be extremely unjust to an employee who is working with the College for 16 years without getting the regular benefits that are admissible to the similar employees working on regular basis. By no stretch of imagination can it be said that the employee is at fault which lies at the door step of the College and the State.

The appeal is, therefore, dismissed with costs of Rs.50,000/- which shall be compensatory to the respondent and shall be paid within a period of two months.

(MAHESH GROVER)
JUDGE

15.09.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

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