

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

CM-13616-617-C-2016 in/and
RSA No.5247 of 2016(O&M)
Date of decision: 09.05.2017

The Chief Administrator, HUDA & anr.

... Appellants

Vs.

Ranjeet Singh & ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Atul Aggarwal, Advocate,
for the applicants/appellants.

RAJIV NARAIN RAINA, J. (Oral)

CM-13616-617-C-2016

1. This appeal has been filed belatedly after a delay of 108 days and 10 days in refilling the same.
2. In the application under Section 5 of the Limitation Act delay has been explained to have resulted in HUDA offices when the judgment and decree dated 21.09.2015 passed by the First Appellate Court was misplaced in the office and therefore, the file could not be dealt with by the authorities. It is averred that it was only when the execution was filed by respondents No.1 to 5, the appellant – HUDA thereafter again applied for the copy of judgment and decree dated 21.09.2015, which was obtained again on February 17, 2016. It is further explained that the record of the trial court was not available, which was necessary for the preparation of the second appeal. It is further explained that after the record of the Trial Court

was obtained, the appeal was filed on April 06, 2016 with three office objections. The appeal was then refiled on May 11, 2016. It was again returned and refilled on July 26, 2016 with objections and lastly refiled on August 29, 2016 and there still occurred delay of 10 days in refiling the appeal.

3. HUDA pleads that the resulting delay is not due to any intentional act of the conduct of the appellants in finally presenting the appeal. The averments in the explanation can by no means be taken for granted or sufficient cause for condoning the delay. It has not even been thought fit to mention in the application on which date the judgment and decree dated 21.09.2015 was received in the office of HUDA and who was responsible for misplacing the file and what action was taken against the erring officials. The casual approach of HUDA in presenting the appeal deserves to be deprecated and I would accordingly, dismiss the application for condoning the inordinate delay of 108 days in filing the appeal without sufficient cause shown except intractable delays in office procedures and loss of certified copy without placing detailed facts. In proceeding thus, I apply the principles stated by the Supreme Court in Office of the Chief Post Master General & ors. v. Living Media (India) Ltd. & Anr., AIR 2012 SC 1506. Their Lordships observed that in absence of plausible and acceptable explanation, the delay is not to be condoned mechanically merely because the Government or a wing of the Government is a party before the Supreme Court.

RSA No.5247 of 2016

4. Having dismissed the application, I have still heard the learned counsel for the appellants to satisfy myself that in this appeal, arising out of a service matter, is there any substantial question of law arising, which needs to be considered and decided to satisfy myself whether the appeal should be dismissed only on point of limitation without looking at the merits of the case.

5. The facts briefly put, are that the plaintiffs were Malis working with the defendants. They were illiterate persons. However, they had relevant work experience to their credit. HUDA held a test for promotion as Head Malis which was not prescribed by rules. They appeared in the test in the year 2001. They plead that this was because everyone appeared for it and no one questioned it. They could not qualify the test as they were unlettered.

6. The Court found from the record that there is no rule prescribing test for promotion to the post of Head Mali where candidates they would be tested for their ability to read and write Hindi or English. The Court below read the Gazette notification dated 16.03.2009 relied on by HUDA does not deal with the subject matter of appointments made by promotion. Appointments could either be made by direct recruitment, transfer or deputation basis. The Gazette notification itself proves that draft rules were enforced in the year 2009 but could not have been enforced prior to the Gazette notification dated 16.03.2009. The draft rules did not lay down any specific qualification for promotion to the post of Head Mali.

However there were instances in the past where certain disputed promotions were made in the year 2004 from Malis to Head Malis and it was not disputed that prior thereto promotions were made solely on the basis of seniority. The defendant HUDA contended that the plaintiffs themselves upset their seniority by appearing in the test unsuccessfully and lost opportunity for consideration for promotion to the higher post of Head Mali.

7. Learned Addl. District Judge, Panchkula vide judgment and decree dated 21.09.2015 held that the plaintiffs had a right of consideration for the post of Head Mali with retrospective effect on the basis of their accrued seniority. The Malis, who were defendants in the suit and were promoted on the basis of seniority as well as on the basis of passing the tests held during the past 9 years from the relevant date were promoted only due to wrong implementation of rules and policies of and by HUDA. The lower appellate court rightly did not disturb those promotions as the promotees were not at fault and they could not be made to suffer for short-sightedness of the department. No adverse order was passed against the defendants while at the same time granting relief to the plaintiffs of promotion from the date juniors were promoted. In the circumstances this was the best possible solution to the problem created by HUDA by introducing a concept not prescribed in rules of service.

8. The appeal before the Addl. District Judge, Panchkula was decided on September 21, 2015. The principle of seniority has been upheld and that promotions could only be based on essential academic qualifications and experience. The rule position was that Malis could be

directly recruited for which a written test and physical fitness with 5 years experience was prescribed. But this was not the case of the plaintiffs claiming promotion on the basis of their prevailing inter se seniority in the cadre of Malis.

9. While looking into the reasoning in the judgments and appellate decree of the Courts below I find them in perfect harmony with service law principles and accordingly interference is not warranted with the decree in appeal when it declares the right to promotion in favour of the plaintiffs from the due dates in 2004 when the defendants were promoted upon a test. The principle of promotion on the basis of written test did not exist in the years 2002 and 2004 when juniors stole a march on the plaintiffs. The Gazette Notification dated March 16, 2009 Ex. P-16 is prospective in operation.

10. Accordingly, the appeal is dismissed on both grounds, that is, as time-barred and on the merits. The decree is upheld.

(RAJIV NARAIN RAINA)
JUDGE

09.05.2017
sonia

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	No