

C.M. No. 15115 of 2016 and
R.A. No. 379 of 2016 in
C.W.P. No. 28323 of 2013

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.M. No. 15115 of 2016 and
R.A. No. 379 of 2016 in
C.W.P. No. 28323 of 2013

DATE OF DECISION:12.07.2017

Head Constable (PR) Sikander Pal SinghPetitioner

Versus

State of Punjab and othersRespondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.S. Randhawa, Advocate
for the non-applicant-petitioner.

Ms. Lavanya Paul, AAG, Punjab
for the applicant-respondents.

DAYA CHAUDHARY, J.

Applicant-respondents have filed the present application for review of order dated 25.7.2016 passed by this Court in CWP No. 28323 of 2013 after a delay of 126 days. An application under Section 5 of the Limitation Act has also been moved for condoning the delay duly supported by an affidavit.

Petitioner-Sikander Pal Singh filed C.W.P. No. 28323 of 2013 for issuance of a writ in the nature of certiorari for setting aside order dated 19.8.2012 whereby he was debarred from appearing in basic proficiency

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course undergoing Lower School Course for District Police Armed Battalions and also for setting aside order dated 11.11.2013 passed by the Director General of Police, Punjab whereby the appeal filed by the petitioner against order dated 19.8.2012 was also dismissed.

Petitioner-Sikander Pal Singh joined the second battalion IRB as Constable on 16.12.1992 and thereafter he completed his preliminary training and also passed the Commando Course. He was deputed at Second, Fourth and Fifth Commando Battalion from time to time. A departmental inquiry was initiated by Senior Superintendent of Police, Patiala vide order dated 18.7.2012 and accordingly he was chargesheeted on 28.8.2012 and was debarred from appearance in the proficiency test vide order dated 19.8.2012, whereas, other candidates were given opportunity. The petitioner submitted reply to the charge-sheet and ultimately, he was exonerated and inquiry was closed vide order dated 8.1.2013. He was restrained from appearing in the basic proficiency test held on 20.8.2012.

Order dated 19.8.2012 was challenged by the petitioner before this Court by way of filing C.W.P. No. 28323 of 2013, which was allowed vide judgment dated 25.7.2016 and the respondents were directed to consider the case of the petitioner in view of the judgments of this Court in the cases of **Constable Karam Chand Vs. State of Punjab and others, C.W.P. No. 582 of 1993 decided on 15.7.2013** and **Balraj Singh Constable Vs. State of Punjab, 1992 (1) RSJ 188**. The respondents were also directed to send the petitioner forthwith to attend the Course.

Judgment dated 25.7.2016 passed in C.W.P. No. 28323 of 2013 was never challenged by the applicant-respondents in the appeal and the

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same had attained finality. Now the present application for review of order dated 25.7.2016 has been filed after a delay 126 days only on the ground that after receiving copy of aforesaid order, the Director General of Punjab sought the legal opinion from the office of Advocate General, Punjab as to whether it was a fit case for filing appeal or not. As per legal opinion, it was not found a good case for filing the appeal. Thereafter, the case was sent for obtaining necessary sanction from the higher authorities for filing review and accordingly the present review application has been filed but nowhere it has been mentioned as to when the case was sent for having legal opinion and when the opinion was received. The delay has not properly been explained. The reasons for condonation of 126 days delay have not been mentioned.

It has been held in various judgments of this Court as well as of Hon'ble the Apex Court that the doctrine of delay and laches cannot be lightly brushed aside. The Court is required to weigh the explanation offered and the acceptability of the same. The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a Constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without any adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in certain circumstances inordinate delay may invite disaster for the litigant who knocks at the doors of the Court. Delay

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reflects inactivity and inaction on the part of a litigation, who has forgotten the basic norms. Moreover, law does not permit one to sleep and rise like a phoenix. This observation has been made by Hon'ble the Apex Court in the case of **State of M.P. and others etc. etc. Vs. Nandlal Jaiswal and others etc. etc.** AIR 1987 SC 251.

Now coming to merits of the case, no ground is also made to review order dated 25.7.2016 passed by this Court. A review is not an appeal in disguise, whereby, an erroneous decision is reheard and corrected. It lies only when there is a patent error. The principles for interference in exercise of review jurisdiction are well settled. Undisputedly the Court is entitled to review order in case there is mistake or an error apparent on face of record. The error has to be self-evident and is not to be found out by a process of reasoning. Review of the earlier order cannot be made unless the Court is satisfied that there is material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice as has been observed by Hon'ble the Apex Court in case of **Col. Avtar Singh Sekhon Vs. Union of India and others** 1980 (Supp) SCC 562. In review petition, it is not open to the Court to re-appreciate the arguments/evidence and to reach at a different conclusion, even if that is possible. Review can be maintainable only under the circumstances when discovery of new and important facts come in the knowledge of the litigant and the same were not in the knowledge at the time of argument of the case or there is a mistake or error apparent on the face of record or any other sufficient reason is there. The words "any other sufficient reason" has been interpreted in **Chhajju Ram Vs. Neki** AIR 1922 PC 112 and approved by Hon'ble the Apex Court

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in the case of **Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulouse Athanasius and others.**, (1955) 1 SCR 520, to mean “a reason sufficient on grounds at least analogous to those specified in the rule”.

The same principles have been reiterated in **Union of India Vs. Sandur Manganese & Iron Ores Ltd. and others** 2013 (3) Recent Apex Judgments (R.A.J.) 436.

In the present case also, no such ground is made out to review order dated 25.7.2016. The review application has also been filed after a delay of 126 days and the same has not been explained properly.

Accordingly, the review application is dismissed not only on the ground of delay but on merits also.

July 12, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes