

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

C.R.No.6326 of 2017 (O&M)

State of Haryana and Anr.

...Petitioners

Versus

Sohit Kumar

....Respondent

Date of Order: 08.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajbir Singh, AAG, Haryana.

Mr. Sandeep Singal, Advocate for the respondent-caveator.

AMIT RAWAL, J (ORAL)

CM No.19790-CII of 2017

For the reasons stated in the application duly supported by an affidavit, the same is allowed. Delay of 107 days in filing the appeal is condoned.

CR No.6326 of 2017

Petitioners-State of Haryana is in revision aggrieved of the judgment dated 21.2.2017 passed by learned Addl. District Judge, Rohtak whereby their appeal filed against the judgment and decree dated 28.4.2015 passed by learned Addl. Civil Judge (Sr. Division), Rohtak, decreeing the suit of the plaintiff-respondent, has been dismissed on the ground of delay.

Respondent-plaintiff filed the suit for declaration and mandatory injunction stating that Shakuntla Devi-mother of the plaintiff was posted as ANM in Health Department, Rohtak. She was appointed on 31.7.1987. Her work and conduct during the course of her employment was satisfactory. She passed away on 29.6.1998 during the course of

employment of defendants. At that time, the plaintiff was minor. The father of the plaintiff moved an application to the defendants regarding appointment of the plaintiff on compassionate grounds on his attaining the age of majority stating that he is only son of her deceased mother and was entitled to employment on compassionate ground under ex-gratia scheme. A legal notice dated 28.09.2012 was served upon the defendants but is of no avail.

Upon notice the defendants filed written statement and took the pleas of locus-standi, maintainability, suit being time barred and suppression of material facts etc. They denied that any application regarding alleged appointment of the plaintiff on compassionate ground was ever moved by the father of the plaintiff. The plaintiff was not entitled to employment on compassionate ground under ex-gratia scheme because at the time of death of his mother the father of the plaintiff was in service and was getting monthly salary of Rs. 25,000/-.

Learned counsel for the petitioner submitted that the appellate Court has committed grave irregularity while dismissing the appeal on the ground of limitation alone instead of deciding the claim on merits. He submitted that the trial court has also failed to take into account the fact that the father of the plaintiff was employed in the army and was earning a handsome salary, thus no employment could be given to the plaintiff under ex-gratia scheme on compassionate basis. The mother of the plaintiff had died on 29.06.1998 whereas the suit was filed in the year 2012, therefore, the same was hopelessly time barred.

On the other hand, learned counsel for the respondent submitted that the trial court after examining all the relevant record

produced before it has rightly decreed the suit and no error can be found with the judgment passed by the lower Appellate Court.

I have heard learned counsel for the parties and appraised the case file.

From the perusal of judgment dated 21.2.2017 of the lower Appellate Court, it is apparent that no proper explanation was offered by the petitioner/defendants for the delay except mentioning of various dates as well as the procedural delay at different stages of departmental hierarchy.

It is not in dispute that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. The doctrine in respect of delay must be applied in a rational common sense/pragmatic manner. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

In my view, it must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontrollable due to want of acceptable explanation, whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.

In the instant case, where the lower Appellate Court has refused to condone the delay, this Court would be free to consider the cause shown

for the delay afresh and it is open to this Court to come to its own finding even untrammelled by the conclusion of the lower appellate Court.

In view of the aforesaid reasons, the impugned judgment passed by the lower Appellate Court is not sustainable and is liable to be set aside.

Accordingly, the present petition is allowed subject to payment of Rs.30,000/- as costs to be recovered from the delinquent Officer, who was instrumental in not filing the appeal within time frame. The impugned judgment passed by the lower Appellate Court is set aside and the matter is remanded to the lower Appellate Court for decision afresh. Liberty is granted to the petitioners-State to move appropriate application for staying operation of the judgment and decree of the court below.

The parties through their counsel are directed to appear before the lower Appellate Court on 30.5.2018.

May 08, 2018
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No