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

CR-8825-2016

Date of decision : 01.02.2018

Chairman Social Welfare Advisory Board, Punjab

... Petitioner(s)

Versus

Taro Devi and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Dadwal, Advocate
for the petitioner.

Mr. Raj Kumar Arya, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition has been preferred against the impugned order dated 18.05.2016, whereby the appeal preferred by the petitioner against the judgment and decree dated 04.01.2014 decreeing the suit of the respondent-plaintiff seeking retiral benefits and revised pay scales w.e.f. 01.01.2006 to 30.04.2009, has been dismissed being barred by law of limitation.

Learned counsel appearing on behalf of the petitioner-defendant submits that delay of four months four days had occurred in filing the appeal, which is neither wilful nor intentional, but owing to the reasons explained in the application as permission was required to be sought. The parameters for condoning the delay viz-a-viz the private respondent(s) are not identical, but different. It is, in this background of the matter, an

application along with the appeal had been filed, but the lower Appellate Court has erroneously dismissed the application without noticing the aforementioned fact, thus, urges this Court for setting aside the impugned order, under challenge.

Per contra, learned counsel appearing on behalf of respondent No.1-plaintiff submits that the petitioner-Department deliberately delayed the adjudication of the decree. It is an intentional and deliberate attempt to tire out respondent No.1-plaintiff and rightly so, the lower Appellate Court dismissed the application, thus, urges this Court for dismissal of the present revision petition with exemplary cost.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the law of limitation has time and again been deliberated in various judgments by the Hon'ble Supreme Court and the Hon'ble Supreme Court in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 Supreme Court Cases 649* laid down the principles for seeking condonation of delay, which are reproduced herein below:-

“i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of

delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system. xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

Though at one point of time, it had been held that for the purpose of condoning the delay in cases of appeal preferred by the Department, a liberal approach has to be adopted, but that cannot be an absolute rule. In this case, no reasonable and cogent explanation has come forth in seeking the condonation of delay of four months four days, particularly when the decree, as indicated above, has been passed in respect of a retired official.

Without commenting further as it may not affect the merit and demerits of the case, in order to advance and to prevent miscarriage of justice, I deem it appropriate to condone the delay of four months and four days in filing the appeal. Accordingly, the order dated 18.05.2016 (Annexure P-5) is hereby set aside subject to the cost of ₹20,000/- to be paid to the respondent-plaintiff within a period of one month from today, failing

which, the impugned order shall automatically come into force. It shall be a condition precedent.

The present revision petition stands allowed.

01.02.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No