

LPA no.1654 of 2017 (O&M) 1

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

LPA no.1654 of 2017 (O&M)

Date of Decision : 14.08.2018

State of Punjab and others

....Appellant(s)

Versus

Mahipal Singh Mann

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. Suveer Sheokand, Addl. AG, Punjab

MAHESH GROVER, J.(ORAL)

The present appeal has been filed against the judgment of the learned Single Judge dated 3.11.2016 after a delay of 252 days. Initially a very vague affidavit was filed in support of the application under Section 5 of the Limitation Act but later on a fresh affidavit has been filed which states that learned Single Judge passed the order on 3.11.2016 which was received by the Advocate General's office on 22.11.2016. The Advocate General Punjab was requested for providing a legal opinion which he did on 14.2.2017 opining that the case is not fit for filing an appeal, whereafter the decision was taken to implement the order of this Court vide communication dated 23.2.2017 and the matter was sent to the State Government on 7.3.2017 with a request to pass necessary orders regarding regularizing the period of dismissal of the petitioner from 28.9.2017 to 25.2.1993 but the

State Government vide its communication dated 8.5.2017 informed that the Finance Department vide its communication dated 28.4.2017 has advised to file a LPA in this regard; whereafter sanction was obtained on 18.5.2017 for filing the appeal and requested the Secret Section II Branch to prepare grounds of appeal. Thereafter reminders were issued on 7.6.2017 and 12.6.2017 to the concerned department for filing of the appeal. On 9.6.2017 the grounds of LPA were sent to the Advocate General, Punjab for vetting and filing. The appeal was filed on 18.8.2017/5.9.2017. The entire sequence as reproduced above does not even remotely offer any justification for inordinate delay caused for filing the appeal.

In *Office of the Chief Post Master General & ors. v. Living Media India Ltd. & Anr.* **2012(2)S.C.T.269** the Hon'ble Supreme Court 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.”

It is expected of the State Government and its functionaries to be alive to the law of limitation and it cannot be left to the vagaries of procedures of having legal opinions from various departments which may though not directly involved in the controversy but affected in the implementation of the orders.

In this case we notice that although Advocate General office had opined against the filing of an appeal yet at a later stage an objection was raised by the Finance Department with an advice that an appeal be filed even though concerned department directly involved in the dispute had taken a decision to implement the same. This reflects extremely poorly on the functioning of the State where left does not know what right does and rather a department prevails over an advice of the Advocate General who is the head of the legal department in the State, without even any sustainable reason as a justification.

That apart we also do not notice any irregularity in the judgment of the learned Single Judge. The services of the respondent were dispensed with on 28.12.1987 whereafter he filed a CWP no.4720 of 1998

which was dismissed but an appeal LPA 23 of 1992 ensued and during its

pendency the petitioner was reinstated vide orders dated 9.2.1993. This is an act which did not have the intervention of the Court but was the department's own doing when it accepted the mercy petition. Whatever its legal status may be, once the petitioner was reinstated and the period during which he remained out of service treated as the duty period, the benefits of the entire service could not be denied to him. This is precisely what the learned Single Judge has held. Hence, instant appeal is hereby dismissed.

(Mahesh Grover)
Judge

14.08.2018
rekha

(Mahabir Singh Sindhu)
Judge

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