

LPA no. 785 of 2017 (O&M)
and connected cases **1**

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

1.LPA no. 785 of 2017 (O&M)

State of Haryana through its Secretary Health Department and another

....Appellants

Versus

Dr. G.S.Narula and others

...Respondent(s)

2. RSA no. 4161 of 2017 (O&M)

State of Haryana through its Secretary Health Department

....Appellant

Versus

Dr. Inderjit Kaur Narula and others

...Respondent(s)

3.LPA no. 1732 of 2017 (O&M)

State of Haryana and others

....Appellants

Versus

Dr. Ramesh Kumar Patnaik and others

...Respondent(s)

Date of Decision : 16.10.2018

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE AMIT RAWAL**

Present : Mr.Samarth Sagar, Addl. AG, Haryana

MAHESH GROVER, J.(ORAL)

By this order we will dispose of three cases bearing LPA Nos. 785 of 2017, 1732 of 2017 and RSA No. 4161 of 2017.

Before we proceed to answer the main controversy which we have been reluctant to enter upon in view of the facts that the appeals are hopelessly barred by delay of hundreds of days. In LPA No. 785 of 2017 it is 322 days delay, in RSA no.4161 of 2017 it is 379 days and in LPA No.1732 of 2017 it is 217 days delay.

Facts are taken from LPA No.785 of 2017. This appeal is directed against the judgment of the learned Single Judge dated 16.4.2016.

Initially when the application under Section 5 of the limitation Act was filed, the affidavit filed in support thereof was completely silent with reasons offered merely an apology of an explanation for condonation of delay. Upon insistence of the Court, an affidavit of Sh. Yogesh Mehta, Additional Secretary to Government Haryana, Health Department, Chandigarh has been filed giving more details to justify the delay.

A perusal of the aforesaid affidavit in fact only reveals the movement of the file through various channels as a sole reason for delay which in our opinion cannot be a sufficient ground to condone it. The judgment of the learned Single Judge dated 6.4.2016 was received by the Department on 31.5.2016. Today when the judgments of the Court are uploaded instantaneously there is no occasion to accept the delayed receipt of a judgment as a justification for delay. The affidavit then goes on to state that office of the Director General, Health Services on 1.6.2016 referred it

whereafter it was sent to “*concerned dealing Assistant*”. On 30.6.2016 the “*concerned dealing Assistant*” processed the same and sent it to the Superintendent with a proposal to seek an opinion of the office of Advocate General. This proposal was then sent to the competent authority through "Accounts Officer". On 8.7.2016 the dealing Assistant was asked to sent a letter to the Advocate General, Haryana after getting the matter cleared from the competent authority. The office of Advocate General was requested vide letter dated 14.7.2016 to give its expert opinion. The Finance Department, Haryana vide its letter dated 18.7.2016 intimated the office of the appellant regarding the opinion of the Advocate General who had advised that it was a fit case for filing further appeal. This letter was issued on 21.7.2016 and sent to the office of the Director General, Health Services on 22.7.2016 which was then marked to the Superintendent on 25.7.2016. “*The concerned Record keeper/Assistant*” processed the letter on 29.7.2016/1.8.2016 with proposal to sent to the Legal Cell for drafting the appeal. The Legal Cell then drafted the Letters Patent Appeal on 9.8.2016. The "Accounts Officer" of the Director General, Health Services sent the draft to the Addl. Director General, Health Services on 10.8.2016 for his approval whereafter it was sent to the Government for approval on 11.8.2016.

In the meantime when the matter was processed, letter dated 5.9.2016 which was sent to the Finance Department by the Office of Legal Remembrancer, Haryana was received stating that it was not a fit case for filing an appeal. The appeal was received in the office of the appellant on 7.9.2016. The matter was processed further by the “*concerned*

Clerk/dealing Assistant” on 15.9.2016, 19.9.2016 and 21.9.2016 with a proposal to seek opinion of the Legal Cell of the office of Director General, Health Services. The file was then sent to the "*Accounts Officer*" of Director General, Health Haryana on 26.9.2016 and before sending it to Legal Cell certain queries were raised by the "*Superintendent*". Thereafter the file was sent back to the "*Accounts Officer*" on 28.9.2016 by the Addl. Director General, Health Services to discuss the matter with the Legal Cell of the office of Director General, Health Services. After that discussions regarding filing or non-filing of LPA were held in the Legal Cell as opinion of both authorities i.e Advocate General, Haryana and Legal Remembrancer's office was different, the matter was referred to the office of the appellant on 30.9.2016. After detailed discussions in the matter the Finance Department's guidance was sought whether the LPA is to be filed or not being a financial matter. The Director General, Health Services was directed to process the matter to file Letters Patent Appeal in view of the letter dated 19.12.2016 issued by the Finance Department.

It is pertinent to mention here that from 6.4.2016 when the order of the learned Single Judge was passed till 19.12.2016 the explanation that has been given is of a file lazily meandering through various processes and often the decision to file the appeal at the mercy of dealing Assistants. It is pathetic to note that despite the opinion of the Advocate General and Legal Remembrancer, the opinions of the "*Assistants*" and "*Superintendents*" seem to prevail largely in the process of decision making. The explanation then proceeds to say that the dealing Assistant after taking approval of the authorities personally visited the office of Advocate General

on 3.1.2017 for getting the draft LPA vetted. On 4.1.2017 the office of Advocate General vetted the draft appeal and make certain corrections which was then sent to the Legal Cell of the Department for making corrections. On 9.1.2017 the corrected draft was sent to the office of the appellant by the office of the Director General, Health Services for signatures on 10.1.2017. It was then sent to the office of the appellant vide letter dated 19.1.2017 and received on 24.1.2017. The draft was sent to the office of the Advocate General on 31.1.2017 through the concerned dealing hand whereafter more corrections were carried out in the draft and sent back on 2.2.2017. The appellant's office was requested by the authorities of the Director General, Health Services to issue instructions to the office of the Advocate General for filing LPA. Later on as per the advice tendered by the Legal Cell of the Department Health Services, the office of the appellant was again requested by the office of the Director General, Health Services to issue instructions. Vide letter dated 22.2.2017 the office of Legal Remembrancer was of the opinion that it was not a fit case to file further appeal which was in conflict with the opinion of the Advocate General. After according necessary approval, the matter was referred to the Director General, Health Services for further necessary action and thereafter after *“completing formalities for filing the LPA”* it was submitted with all relevant documents to Advocate General on 3.3.2017. The Advocate General's office verbally directed the dealing Assistant to come with the case alongwith applications for condonation of delay, stay etc. in support of LPA which after drafting was again submitted to the office of the Advocate General. Eventually and we may say finally the appeal saw the light of the

day on 27.4.2017.

We have detailed the aforesaid explanation only to record our anguish that the State and its functionaries being fully equipped with legal human resource and acumen choose to deal with matters of extreme sensitivity so casually. We are appalled at the fact that if there was a conflict between opinion of the Advocate General and the Legal Remembrancer it ought to have been resolved in a more responsive way rather than leaving it to the opinion of the Accountants and dealing Assistants who played a pivotal role in deciding the fate of the file. The Court cannot treat State differently than any ordinary litigant in the matters of condonation of delay and in grant of equitable relief. In fact if there is a choice the Court would lean substantially to an ordinary litigant who is deprived of man power, resources and ready availability of legal advice. The State as noticed above with all its resources is much better equipped to deal with their own affairs.

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

We have in numerous pronouncements taken a similar view to decline interference in appeals which are barred with substantial delay and are pained to note that in almost every case the explanation is no different, except, for the nomenclature of the concerned office which may change, the story remains unchanged. It is, therefore, a case where the State refuses to learn from its mistake and continues with its casual approach when it talks loftily of framing litigation policies to curb procedural delays and evolve a more responsible system.

We are, therefore, of the opinion that the instant appeals deserve to be dismissed on the ground of limitation alone, more particularly when

we notice that the controversy raised in the writ petition has been answered, to our minds in a satisfactory manner. In question before the writ Court was a notification dated 7.12.2001 and the issue substantially revolves around the grant of non-practicing allowance to the doctors. In 2006 during the pendency of the petition, the State rectified that notification of 2001 to introduce another notification dated 26.4.2006 whereby the primary challenge to the notification of 2001 was blunted. The non-practicing allowance was considered to be a part of the pay but with a qualification that benefits shall flow notionally and not in real terms.

Learned Single Judge did not accept this and observe that once it is a part of the pay, it necessarily has to be extended to the doctors for purpose of calculating pensionary benefits.

Learned counsel for the appellants contends that there has been no challenge to the notification of 2006 limiting the benefits notionally without any pecuniary attendance.

We are of the opinion that the judgment of the learned Single Judge was absolutely correct as once the special benefit such as non-practicing allowance has been included in the pay structure, it would necessarily form the basis of calculating the pensionary benefits as well.

In view of above, instant appeals are hereby dismissed.

**(Mahesh Grover)
Judge**

16.10.2018

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Whether speaking/reasoned

Whether reportable

**(Amit Rawal)
Judge**

Yes/No

Yes/No