

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

LPA No. 1716 of 2018 (O&M)

Date of Decision: 31.10.2018

State of Punjab and others

.....Appellants

versus

Nishant Kumar and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Avinit Avasthi, Assistant Advocate General, Punjab,
for the appellants.

KRISHNA MURARI, CHIEF JUSTICE (oral)

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 30.01.2018 passed by the learned Single Judge allowing the writ petition filed by the respondents herein.

2. The appeal is reported to be delayed by 233 days and is accompanied by an application under Section 5 of the Limitation Act. The only explanation submitted for this inordinate delay in filing the appeal is contained in paragraph-3 of the application which is reproduced hereunder:-

“3. That CWP No. 1973 of 2016 was decided on 30th January, 2018. The certified copy of the judgment and order was received in the office of appellant No.3 on 13.03.2018. Thereafter legal opinion was sought from the Advocate General, Punjab and the legal opinion tendered by learned Diya Sodhi, Assistant Advocate General and Rameeza Hakeem, Additional Advocate General from

Advocate General, Punjab was received in the office of this Directorate on 11.04.2018 wherein it was opined that the matter is not fit for filing Letters Patent Appeal. Thereafter, sanction was sought from the Government to file the LPA in the present matter on 01.06.2018 which was received in this office on 27.07.2018. The file was sent to the Legal Cell of the Department to prepare draft for filing LPA in the present matter and the same was prepared on 07.08.2018 and subsequently it was advised by the office of Advocate General, Punjab to make certain correction and after incorporating those corrections, the draft was submitted for vetting and during this entire process delay of 233 days occurred in filing the present accompanying Letters Patent Appeal.”

3. A perusal of the aforesaid averments would go to show that there is no reason disclosed for receiving a certified copy of the judgment on 13.03.2018 after about 1½ months. A perusal of the averments further would go to show that despite legal opinion tendered by Assistant Advocate General and Additional Advocate General, Punjab that matter is not fit for filing the Letters Patent Appeal, on 11.04.2018 a sanction was sought from the Government to file the Letters Patent Appeal on 01.06.2018 that is after about two months of receiving the opinion. The Sanctioning authority granted the sanction on 27.07.2018 after about more than 1½ months for which there is no explanation.

4. Apart from there being no satisfactory explanation for delay and the appeal having been filed against the opinion of the Assistant Advocate General and Additional Advocate General, the judgment of the learned Single Judge in allowing the claim for payment of arrears of revised pay scale w.e.f. 01.01.2006 to 31.07.2009 is based on the judgment of the Hon’ble Apex Court rendered on 07.11.2003 in an earlier round of litigation

between the parties in CA No. 8745 of 2003. The Hon'ble Apex Court in respect of the rights of the respondents herein had observed as under:-

“We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one adhoc arrangement by another adhoc arrangement which is not at all appropriate for these persons and have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on adhoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly.

5. It may be relevant to mention at this stage that the claim of the respondents-petitioners despite the aforesaid judgment of the Hon'ble Apex Court was rejected vide order dated 31.10.2013 passed by appellant No.3 which was subject matter of challenge in the writ petition before the learned Single Judge.

6. In view of the fact that the claim made by the respondents herein stood finally adjudicated by the Hon'ble Apex Court, there existed no reasons or occasion for rejecting their claim and thus the learned Single Judge rightly set aside the order which was directly in teeth of the judgment of the Hon'ble Apex Court and allowed the claim. The appellants had audacity of challenging the said order by filing the present appeal which is

totally meritless and against the opinion of their own Assistant Advocate General and Additional Advocate General and that too after the inordinate delay of 233 days without there being any plausible explanation to condone the same and is nothing but a gross abuse of process of law.

7. In view of the above facts and discussion, we are left with no option but to dismiss the appeal with exemplary costs of Rs.50,000/- for wasting the precious time of this Court and to deter the officials of the State Government in filing such frivolous litigation in future. The costs shall be deposited by the State Government in the account of the Punjab and Haryana High Court Employees Welfare Association within two months from today. It shall, however, be open to the State Government to realize the amount of costs from the erring officials after conducting an enquiry and fixing the responsibility.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.10.2018
ravinder

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