

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

LPA No. 843 of 2018 (O&M)

Date of Decision: 13.08.2018

State of Haryana and others

.....Appellants

versus

Smt. Chameli Devi and another

.....Respondents

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

**Present : Mr. Sharad Aggarwal, Assistant Advocate General,
 Haryana, for the appellants.**

KRISHNA MURARI, C.J.(oral)

This appeal under Clause X of the Letters Patent has been filed by the State of Haryana challenging the judgment and order of the learned Single Judge dated 28.03.2017 denying compassionate appointment to the petitioners (respondents herein) but awarding benefit of financial assistance to the extent of ₹ 5 lacs along with interest at the rate of 9% per annum w.e.f. 19.04.2010, the date on which the application was made by the petitioners.

2. The husband of the petitioner No.1, who was working on the post of Water Pump Operator-II in the Public Works Department, was involved in a criminal case where he was convicted vide judgment dated 07.06.1988. On account of his conviction in the criminal case, his services were terminated on 07.11.1988. Against this order, an appeal was filed and during the pendency of the appeal, he died on 21.02.1992. The Appellate Court acquitted the husband of the petitioner vide judgment dated 23.10.2002. Since the termination was based on the conviction and once the same was set aside, the husband of the petitioner was automatically entitled

to reinstatement which was illegally denied by the State leading his heirs to file a Civil Writ Petition No. 1656 of 2008 before this Court which was allowed vide judgment and order dated 14.05.2008 directing the respondents to make available notional benefits for the period he was out of service and also to pay family pension and other retiral benefits.

3. Thereafter an application dated 19.04.2010 is stated to have been made by the petitioner seeking compassionate appointment which was rejected by the appellant on 04.03.2013. The same was put to challenge by filing the instant writ petition out of which the present Letters Patent Appeal arises. The learned Single Judge in accordance with the policy relating to Financial Assistance Rules, 2006, held that the heirs were not entitled for the compassionate appointment at this belated stage but were entitled for enhanced financial assistance under the Rules of 2006. While allowing the claim of enhanced financial assistance, the learned Single Judge also directed for payment of interest at the rate of 9% per annum w.e.f. 19.04.2010, the date on which the application was made by the petitioners. Aggrieved by the said order, the State has come in appeal impugning this judgment.

4. The office report indicates that there is a delay of 137 days in filing and 212 days in re-filing the appeal. The appeal is accompanied by an application under Section 5 of the Limitation Act, 1963, seeking condonation of delay.

5. In so far as delay in filing the appeal is concerned, the ground set out in the application and the affidavit is that the said time was consumed in obtaining necessary legal advice and sanction for filing the appeal. From a perusal of the averments it is clear that this time was spent in movement of the file from one desk to another and from one office to another. It is thus clear that the officials of the appellant were not vigilant and were acting on

their leisure. The delay is liable to be condoned only when the litigant is acting bonafidely and the delay occurs inspite of due diligence on account of the circumstances beyond his control. This is not so in the case in hand. If the officials of the appellant acted leisurely, the benefit of Section 5 of the Limitation Act is not liable to be extended.

6. In so far as the delay of 212 days in refiling the appeal is concerned, we do not find any ground whatsoever to condone the same. What has been mentioned in the application and the affidavit is that the appeal was filed on 11.09.2017 and on 12.09.2017 certain objections were raised by the Registry of this Court and for removal of which the assistance of the department was necessary and accordingly the office of the Advocate General informed the concerned department but because of lengthy procedure delay of 212 days in re-filing the appeal has occurred. It is thus clear that absolutely there is no plausible explanation. On account of inaction on the part of the appellant in re-filing the appeal beyond the prescribed period of 40 days, a vested right has accrued in favour of the respondents which is not liable to be taken away on vague and irrelevant grounds. We are not at all satisfied that there is any good ground to condone inordinate delay in filing the appeal and accordingly the application under section 5 of the Act stands dismissed. As a result, the appeal stands dismissed as barred by limitation.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

13.08.2018
ravinder

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