

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

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**RSA-4932-2017 (O&M)
Date of decision:15.01.2018**

State of Punjab and others

....Appellants

Versus

Harsukhjinderjit Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Pawan Sharda, Senior DAG, Punjab.

P.B. BAJANTHRI, J. (ORAL)

In the instant appeal, appellants have questioned the validity of appellate court's order dated 17.05.2016. In the month of October, 2017 appellant filed present appeal, however, appellant should have filed within 90 days from the receipt of the order copy dated 17.05.2016. Thus there is delay in filing this appeal. On 14.11.2017 following order was passed:-

“On the last date the matter had been adjourned to enable the learned AAG to file a better affidavit regarding the delay in filing this appeal. Affidavit of Daljit Kaur Sidhu, Additional Director (I.T.Wing) has been filed on behalf of the appellants, as per this affidavit after receiving the certified copy of the order on 17.11.2016 the appellant No.3 approached the appellant No.2. The matter was sent to the office of Advocate General on 19.01.2017 but was returned with the observation that original record and sanction be annexed therewith. Ultimately, the sanction was received and the matter was referred to the legal department of the appellant No.2 on 03.02.2017. Up till this date there is some explanation but the next line of the affidavit mentions

that the grounds of appeal were prepared on 19.07.2017 and thereafter the appeal was filed on 12.10.2017. There is no explanation for these periods. In the circumstances, the appellants are directed to file fresh affidavit explaining the delay of these periods.

Adjourned to 28.11.2017.”

Perusal of the affidavit dated 21.12.2017 of the Additional Director (I.T.Wing) Department of Technical Education and Industrial Training Punjab, there is no explanation for the period from 09.02.2017 to October, 2017. What has been stated is one Mr. Amandeep Singh, Senior Assistant the then Legal Assistant of I.T.Wing was transferred from the post held by him. Even affidavit do not disclose date of transfer and handing over the records to the incumbent. In view of these facts and circumstances question of condoning the delay may not arise. Supreme Court in the case of ***State of Jammu and Kashmir versus R.K.Zalpuri and others*** reported in (2015) 15 Supreme Court Cases 602 in paras 20 and 28 held as under:-

*“20. Having stated thus, it is useful to refer to a passage from **City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and Others**, wherein this Court while dwelling upon jurisdiction under **Article 226** of the Constitution, has expressed thus: (SCC p. 175, para 30)*

*“30. The Court while exercising its jurisdiction under **Article 226** is duty- bound to consider whether:*

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

*(b) the petition reveals all material facts;
(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
(d) person invoking the jurisdiction is guilty of unexplained delay and laches;
(e) ex facie barred by any laws of limitation;
(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”*

28. *Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, needless to emphasise, did not justify adjudication. It deserved to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present.”*

Supreme Court in the case of ***State of Uttar Pradesh and others versus Arvind Kumar Srivastava and others*** reported in (2015) 1 Supreme Court Cases 347 in para 18 held as under:-

“18. Both these judgments, along with some other judgments, were take note of in [U.P. Jal Nigam v. Jaswant Singh](#). That was a case where the issue pertained to entitlement of the employees of U.P. Jal Nigam to continue in service up to the age of 60 years. In [Harwindra Kumar v. Chief Engineer, Karmik](#) this Court had earlier held that these employees were in fact entitled to continue in service up to the age of 60 years. After the aforesaid decision, a spate of writ petitions came to be filed in the High Court by those who had retired long back. The question that arose for

*consideration was as to whether the employees who did not wake up to challenge their retirement orders, and accepted the same, and had collected their post-retirement benefits as well, could be given relief in the light of the decision delivered in Harwindra Kumar. The Court refused to extend the benefit applying the principle of delay and laches. It was held that an important factor in exercise of discretionary relief under [Article 226](#) of the Constitution of India is laches and delay. When a person who is not vigilant of his rights and acquiesces into the situation, his writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to the persons similarly situated who were vigilant about their rights and challenged their retirement. In para 7, the Court quoted from *Rup Diamonds*. In para 8, *S.M. Kotrayya* was taken note of.”*

Learned counsel for the appellant relied on decision passed in the case titled as ***State of Karnataka versus Y.Moideen Kunhi (dead) by LRs and others*** reported in 2009(13) SCC 192. The said decision is distinguishable for the reasons that importance of question of law is not highlighted by the appellant so as to consider. Accordingly, it is distinguished. Moreover, in view of the later decision of the Supreme Court appellants have not made out a case to condone the delay. Accordingly, appeal stands dismissed on the ground of delay.

15.01.2018

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons:

Yes/No

Whether Reportable:

Yes/No