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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-8255-2018 (O&M)

Date of decision:-29.01.2019

State of Haryana and others

....Petitioners

Versus

P.C. Dhiman

....Respondent

CORAM: HON'BLE Mr. JUSTICE AVNEESH JHINGAN

Present:- Mr. Vishal Kashyap, Asst. AG, Haryana.

Mr. I.P.S. Pabla, Advocate
for the respondent.

AVNEESH JHINGAN J. (Oral)

The present civil revision petition has been filed being aggrieved of impugned order dated 13.07.2018 passed by the District Judge, Kurukshetra (hereinafter referred as 'Appellate Court') dismissing the application of the petitioners under Section 5 of the Limitation Act, 1963 (for short 'the Act') for condoning the delay in filing the appeal.

In brief, the facts of the case are that the respondent was working as Junior Engineer in the office of Executive Engineer Construction Division No. 14, Kurukshetra. He retired on 31.07.2002, the Department paid ₹ 40,160/- as arrears of pay and ₹ 6080/- as arrears of leave encashment on 21.11.2014 on which interest was sought by filing a suit for declaration. The suit was decreed vide judgment and decree dated 05.09.2017, directing the defendants to pay interest @ 12% per annum on the delayed payment. The interest was to be calculated from the date of retirement till its realization.

Aggrieved of the order, the petitioners preferred an appeal along with an application under Section 5 of the Act seeking condonation of delay of 99 days in filing the appeal. The application was dismissed and hence, the present petition has been filed.

Learned State counsel argued that there was delay of only 99 days . The delay occurred as the process for filing the appeal took time as the office of the District Attorney recommended filing of an appeal only on 28.09.2017. Thereafter, Legal Rememberancer, Haryana gave his opinion on 26.10.2017 and only then the documents were sent for drafting and filing of the appeal. It was for this reason that the delay occurred.

Learned counsel for the respondent argued that no satisfactory explanation is forthcoming explaining each days' delay. The Appellate Court has rightly dismissed the application.

The impugned order dated 13.07.2018 is set aside and delay of 99 days in filing the appeal is condoned. A liberal approach should be adopted where the delay is of a shorter period and a strict and more conscious approach should be adopted where the delay is inordinate. In the present case, 99 days delay in filing the appeal cannot be termed as inordinate.

The Hon'ble Apex Court in ***Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation, 2010(5) SCC 459*** has held as under:-

“8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within

which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in [Section 5](#) of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate."

The expression "sufficient cause" should be considered with pragmatism in justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice oriented process. The appellate Court is directed to decide the appeal on merits. Since the issue involved is regarding the interest on the retiral benefits of an employee, the Appellate Court shall consider to decide this appeal as expeditiously as possible.

The civil revision petition is allowed.

29th January, 2019

shabha

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *Yes*