

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-2-2016 (O&M)

Date of Decision: 27.2.2019

Chandigarh Administration

...Appellant.

Versus

Shiv Kumar Suman and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Suman Jain, Advocate for the appellant.

Mr. Rakesh Gupta, Advocate for respondent No.1.

Mr. Rajesh K. Sheoran, Advocate for respondents No.2 and 3.

AJAY KUMAR MITTAL, J.

1. Challenge in this Letters Patent Appeal (LPA) is to the order dated 12.5.2014 passed by the learned Single Judge whereby CWP-5283-2009 filed by respondent No.1 was disposed of by granting damages of ₹ 5 lakhs.

2. Briefly stated, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. Dr. Manoj Datta, IIT Delhi, had joined as Director, Punjab Engineering College on 2.4.2008. He was the second Director from IIT system to join Punjab Engineering College. The post of Registrar was advertised on 11.9.2005. Mrs. Kanchan Monga was selected for the said post and as such she joined. On her leaving the college, the post of Registrar was re-advertised on 17.2.2008.

The interviews were held, but no selection was made. The Selection Committee recommended that the post be re-advertised. On 19.10.2008, the post of Registrar was again advertised and the call letters were sent to the short listed candidates for interview. In the minutes of the Selection Committee dated 12.3.2009, in which Mrs. Raji P. Srivastava, IAS, Special Secretary, Finance and Director of Public Instructions (Colleges), UT, Chandigarh was a member, the name of the respondent No.1 was recommended for appointment to the post of Registrar. The said minutes were sent to respondent No.2 for approval on 12.3.2009. On the same day, in the evening a telephonic message was received from Mrs. Raji P. Srivastava by respondent No.3 for withholding the appointment letter to respondent No.1 and for sending the file to the Home Secretary. The said message was reduced to writing by respondent No.3 and was forwarded to respondent No.2 on 13.3.2009 for consideration. On the same day, the Chairman, Selection Committee approved the minutes and send the same to respondent No.3 for issuance of the appointment letter to respondent No.1 and as such the appointment letter was issued to him on the said date. Respondent No.1 joined as Registrar, Punjab Engineering College on 13.3.2009. A letter dated 13.3.2009 at about 11.45 AM was received from the Home Secretary by fax directing respondent No.3 not to issue the appointment letter to respondent No.1 till further orders. Vide letter of the same date, the Home Secretary was informed that the appointment letter had already been issued to respondent No.1 on the directions of respondent No.2. At about 4.16 PM another letter dated 13.3.2009 was received from the Home Secretary by fax by referring to some pending inquiry and certain irregularities in the appointment of respondent No.1 and also invoking of

the Model Code of Conduct in view of para 11 of the letter dated 2.3.2009 issued by respondent No.4. The said letter dated 2.3.2009 was received in the Punjab Engineering College on 5.3.2009 vide Home Secretary circular dated 4.3.2009. Between 6.00 to 6.30 PM, a notice from the Returning Officer of Chandigarh Parliamentary Constituency was received at the residence of Director on the basis of a news report appeared in the Chandigarh Tribune on 13.3.2009 for reply within 24 hours on violation of Model Code of Conduct in appointment of respondent No.1 as Registrar. The reply to the said notice was sent to the Returning Officer on 14.3.2009. The Joint Secretary, Technical Education, UT, Chandigarh vide letter dated 16.3.2009 sent to the Director sought the record of all such allegations for conducting an inquiry into the allegations against respondent No.1 as directed by the Home Secretary and to submit a report. On the same day, the Director wrote to the Joint Secretary the said letter was being forwarded to respondent No.2 for consideration who directed the Director to take legal opinion from the counsel of the college regarding jurisdiction and competence of the Chandigarh Administration to conduct inquiries. The letter dated 5.3.2009 issued by respondent No.4 was received by the Punjab Engineering College on 16.3.2009 through a circular dated 13.3.2009 issued by the Home Secretary. The order dated 19.3.2009 (Annexure P-1) was passed under the authority of UT, Administrator and was sent by the Home Secretary to respondent No.3 for compliance and report. In response thereto, respondent No.3 vide order dated 19.3.2009 (Annexure P-2) cancelled the appointment of the respondent No.1 as Registrar, Punjab Engineering College. Accordingly, respondent No.1 filed CWP-5283-2009.

The said writ petition was contested by the appellant as well as by

respondents No.2 and 3 by filing the written statements. The averments made in the writ petition were controverted and a prayer for dismissal of the writ petition was made. Learned Single Judge vide order dated 12.5.2014 holding the cancellation of appointment of respondent No.1 to be illegal, granted damages of ₹ 5 lakhs. In case, the said amount was not paid within a period of three months from the date of receipt of certified copy of the order, respondent No.1 was held to be entitled to interest @ 10% per annum from the date of order to the date of payment. Hence, the present LPA. Since the appeal is barred by limitation, CM-6-LPA-2016 under Section 5 of the Limitation Act, 1963 (in short, the “1963 Act”) has been filed for condonation of 547 days' delay in filing the appeal.

3. We have heard learned counsel for the parties.

4. The preliminary question that arises for consideration in this appeal is whether there is sufficient cause for condonation of delay of 547 days in filing the appeal.

5. Examining the legal position relating to condonation of delay under Section 5 of the 1963 Act, it may be observed that the Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 and 15 observed as under:-

“14. 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.

15. 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-**Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil.**”

6. It was further noticed by the Apex Court in **R.B. Ramlingam v.**

R.B. Bhavaneshwari 2009(1) RCR (Civil) 892 as under:-

“.....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of “sufficient cause” is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of “sufficient cause” delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.” It was also recorded

that:-

“For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition....”

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression “sufficient cause” occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Apex Court in **Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra)** noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein.

There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

9. According to the learned counsel for the appellant, the Registrar, Punjab Engineering College vide letter dated 17.6.2014 sent a copy of the order dated 12.5.2014 passed by this Court for taking appropriate action for grant of damages of ₹ 5 lakhs to respondent No.1. Thereafter, the file was sent to the Legal Remembrancer, UT, Chandigarh on 9.7.2014 for opinion as to whether the Administration is to file a review petition or to go ahead to implement the order dated 12.5.2014 passed by this Court. The Legal Remembrancer, UT, Chandigarh vide note dated 10.7.2014 advised that on the limited ground for making prayer to reduce the amount of damages, the appellant, in its own wisdom want to challenge the order, then it may be challenged by way of LPA in this Court. On deciding to file LPA for waiving off the damages, the file was sent to the Law Department on 24.7.2014 for engaging an Advocate. The Law Department vide letter dated 31.7.2014 had appointed Shri H.S. Sethi, Advocate to file LPA against the order dated 12.5.2014 passed by this Court. The Department had supplied all the documents to the said Advocate for preparing a draft LPA and sent to this office for the approval of the competent authority. After issuance of various reminders to Shri H.S. Sethi, Advocate, he vide his letter dated 'nil' received on 19.12.2014 opined that no useful purpose would be served in filing the LPA only for the reduction of damages especially when the Law Department had already given the opinion that there was no ground to challenge the order on merits.

Thereafter, the matter was discussed with the Registrar, Punjab Engineering College, on 30.1.2015 and it was decided that since the LR has opined that we should file LPA in this Court as the amount of damages of ₹ 5 lakhs was quite on higher side, we should not review the decision which has already been taken at the level of Secretary, TE, we should insist on filing of LPA and convey the decision accordingly to Government counsel. The said decision was conveyed to Shri H.S. Sethi, Advocate vide memo dated 19.2.2015 and was required to prepare draft LPA and sent the same to the Administration for the approval of the competent authority. Shri H.S. Sethi, Advocate had informed that he had resigned from the list of Government counsel and the case was sent to the Law Department for engaging another counsel. The Law Department vide letter dated 24.7.2015 engaged Shri Vikram Vir Sharda, Advocate to file the LPA in this Court on behalf of the appellant. Accordingly, the draft of LPA and applications were prepared and after requisite verification, the present appeal was filed on 8.12.2015 in this Court. Thus, the appeal could not be filed in time and was filed after a delay of 547 days. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the appeal. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the appellant.

10. Adverting to the factual matrix in this case seeking condonation of inordinate delay of 547 days in filing the appeal, we do not find any merit in the same. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. In the present case after appreciating the matter it cannot be said that there was

sufficient cause for condonation of delay. The learned Single Judge decided the matter on 12.5.2014 and the appeal was required to be filed within the stipulated period of limitation of thirty days. But the appellant filed the appeal on 8.12.2015, after a colossal delay of 547 days. The plea of the appellant for condonation of delay in filing the appeal, as noticed hereinabove, would not satisfy the test of sufficient cause. The explanation of the appellant is bereft of sufficient cause for delay caused in filing the appeal.

11. In view of the above, finding no merit in the application bearing CM-6-LPA-2016 for condonation of 547 days' delay in filing the appeal, the same is hereby dismissed and consequently, the appeal is dismissed as time barred.

(AJAY KUMAR MITTAL)
JUDGE

February 27, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No