

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-448-2016 (O&M)

Date of Decision: 17.1.2019

State of Haryana and others

...Appellants.

Versus

Jagmal Singh and others

...Respondents.

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

PRESENT: Mr. Randhir Singh, Additional Advocate General, Haryana,
for the appellants.

Mr. Virender Kumar, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. Challenge in this Letters Patent Appeal is to the judgment dated 18.3.2010 passed by the learned Single Judge whereby CWP-6115-2008 filed by the respondents was allowed.

2. The facts, in brief, necessary for adjudication of the present appeal as narrated therein may be noticed. In the year 1997, the respondents were appointed on different posts in Shaheed Udham Singh National College Committee, Matak Majri, Indri, Karnal. Before the expiry of the period of their service, the respondents were re-engaged and their services were confirmed on the posts held by them in the said College which was an aided college and was governed by the Haryana Affiliated Colleges (Security of Services) Act, 1979. They also became the members of the Provident Fund Scheme. The said college was taken over by the Government vide memo dated 17.5.2005. After taking over of the college,

respondents No.3 to 5 were appointed against Class IV posts vide orders dated 17.6.2005 and 28.6.2005, respectively. The appellants framed a policy dated 8.2.1994 for grant of higher standard pay scale to Group C and D employees on completion of 10/20 years of regular service. The respondents claimed the benefit of higher standard pay scale on completion of 10 years of service including the service rendered in the aided college. Their claim was rejected by the appellants vide orders dated 18.2.2008 and 19.2.2008 on the grounds that they were appointed regularly in the government service only in the year 2005; that they had not completed the requisite service of 10 years and that their ACRs had been written by the Senior Clerk/Assistant who were not competent to write the ACRs. Accordingly, the respondents filed CWP-6115-2008 challenging the said orders. The learned Single Judge vide impugned order dated 18.3.2010 allowed the writ petition and directed the appellants to count the services rendered by the respondents in the aided institution for the purpose of grant of ACP/higher standard pay scale. Hence, the present Letters Patent Appeal. As the appeal is barred by limitation, CM No. 979-LPA of 2016 under Section 5 of the Limitation Act, 1963 (in short, the “1963 Act”) has been filed for condonation of 2162 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 2162 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 appellants, the copy of the order dated 18.3.2010 was received in the office of the appellants on

14.7.2010 who vide letter dated 10.8.2010 sought advise of the learned Advocate General whether it was a fit case or not for filing an appeal. The learned Advocate General, Haryana vide letter dated 9.8.2010 received on 20.8.2010 opined that it was not a fit case for filing an appeal. The learned Legal Remembrancer vide letter dated 19.8.2010 received on 3.9.2010 also opined that it was not a fit case for filing an appeal. Thereafter, the department of the appellants submitted all the documents including applications in the office of the Advocate General, Haryana for vetting the LPA where some deficiencies were pointed out. After removing the said deficiencies, the department of the appellants vide letter dated 24.1.2011 again submitted the same. Further, RA-173-2011 was filed and the learned Single Judge vide order dated 24.8.2015 dismissed the said review application. The certified copy of the order dated 24.8.2015 was received by the appellants on 17.9.2015 and 1.10.2015, respectively. The learned Advocate General, Haryana vide letter dated 19.10.2015 opined that it was a fit case for filing LPA. The learned Legal Remembrancer vide letter dated 17.11.2015 opined that Ex-post facto sanction for defence of the case be also accorded and conveyed the same to this department. Vide order dated 12.12.2015, sanction to file LPA against the order dated 18.3.2010 in CWP-6115-2008 was accorded by the competent authority. Accordingly, the draft of LPA and applications were prepared and after vetting the same, the present appeal was filed on 15.3.2016 in this Court. Thus, the appeal could not be filed in time. 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 appellants.

10. Adverting to the factual matrix in this case seeking condonation of inordinate delay of 2162 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 18.3.2010 and the appeal was required to be filed within the stipulated period of limitation of thirty days. But the appellants filed the appeal on 15.3.2016, after a colossal delay of 2162 days. The plea of the appellants praying for condonation of delay in filing the appeal, as noticed hereinabove, would not satisfy the test of sufficient cause. The explanation of the appellants 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-979-LPA-2016 for condonation of 2162 days' delay in filing the appeal, the same is hereby dismissed and consequently, the appeal is dismissed as time barred.

12. CM Nos. 978, 1669 and 1670-LPA of 2016 are also disposed of.

(AJAY KUMAR MITTAL)
JUDGE

January 17, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No