

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

**CM-1530-LPA-2020 in/and
LPA No.568 of 2020 (O&M)
Date of decision: 16.09.2020**

Gursewak Singh alias Sweak Singh

... Appellant

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. J.P.S. Sidhu, Advocate, for the applicant-appellant.
Ms. Lavanya Paul, Assistant Advocate General, Punjab.

ARUN PALLI, J.

CM-1530-LPA-2020

The matter is being taken up and heard by video conferencing owing to the prevailing Pandemic (COVID-19).

This is an application under Section 5 of Limitation Act, 1963 read with Section 151 CPC, for condoning the delay of 880 days in filing the accompanying appeal.

Before we even advert to the explanation tendered by the applicant to condone the delay that has occurred in filing the appeal, it would be apposite to point that even the writ petition filed by the applicant, assailing the order of his dismissal from service dated 04.09.2001, was dismissed by the learned Single Judge, for, it suffered from a gross delay of 16 years:

**“In the case in hand, petitioner served the Education
Department, Punjab since September 15, 1965 till September
04, 2001. He stood convicted for an offence under Section 302**

IPC vide judgment dated August 31, 2000. He preferred an appeal viz. Criminal Appeal No.445-DB of 2000 against his conviction & sentence, which stood dismissed vide judgment dated April 16, 2009 (Annexure P-3) passed by this Court. Pursuant to conviction of petitioner by the trial court, his services were terminated vide impugned order dated September 14, 2001 (Annexure P-1) which has now been challenged by him in the month August 2017 i.e. after almost 16 years through the instant writ petition as well as claiming relief of retiral benefits such as gratuity etc. There is no plausible reason as to why he did not prefer any such petition seeking writ of certiorari of challenging impugned order or mandamus, earlier. There is an inordinate delay in filing the petition. Thus, petitioner is guilty of long delay and latches which is suggestive of the fact that he is deemed to have acquiesced or waived off his claim or right. Such a relief cannot be claimed ignoring the long and unexplained delay. Though, petitioner preferred an appeal challenging his conviction, which was decided on April 16, 2009, even almost more than 8 years have passed since his conviction was upheld by this Court.”

Concededly, the impugned judgment and order was passed on 18.09.2017, whereas the accompanying appeal was instituted on 17.08.2020 and, thus, it suffers from a delay of approx. 2½ years (880 days).

The grounds set out in the application and upon which the applicant seeks delay to be condoned read thus:

“2. That the order was passed on 18.09.2017 and writ petition was dismissed and after that appellant fell ill and was not able to file case and thereafter petitioner had applied for the copy of order on 09.02.2018 after recovery from illness and copy was prepared on 24.05.2018 and copy was delivered on 28.05.2018 and thereafter summer vacations had started and after that appellant fell ill suffered heart ailment and remained under treatment as he is heart patient and one day in month of July 2018 appellant came to sign the papers on bus but his condition again deteriorated on way and he suffered minor attack due to which he was not able to sign and went back to his house and remained under treatment for heart ailments. That appellant is more than 74 years of age and due to heart ailment appellant had forgotten about status of case and now his health recovered after which he contacted his counsel after which appeal has been prepared and is filed with a delay of 880 days and delay has occurred in filing the appeal which is neither intentional nor willful and has occurred due to the facts mentioned above. That otherwise appellant is entitled to leave encashment and same cannot be withheld even in case of dismissal because it is treated as part of salary and claim for getting retirement dues cannot be dismissed on grounds of delay alone.”

Ex facie, the explanation/version of the applicant lacks bonafides.

The plea that post judgment and order dated 18.09.2017, the applicant fell ill and after recovering from the alleged illness he applied for the copy of the

impugned judgment on 09.02.2018, which was delivered on 28.05.2018, lacks conviction. Nothing is explained or placed on record to show as to the nature of illness, and if during this period the applicant was under any medical attention/ treatment. Likewise, the plea that after he obtained the copy of the impugned judgment on 28.05.2018, the court closed because of the summer break, is equally incredible. For, the court actually closed on 04.06.2018, and even during vacations nothing prohibited the applicant to file the appeal as the registry was open for filing purposes. Nothing cogent is brought on record either to show why the appeal was not filed even after the court re-opened in July, 2018. Equally amusing is the version of the applicant that in July 2018, while he was coming to sign the necessary papers for filing the appeal, his condition deteriorated on the way and he returned home and was under treatment thereafter. Again, apparently the explanation is vague, uncertain and lack material particulars. Nothing is brought on record to substantiate the said plea. Further, even if it is assumed that the applicant was indisposed in July 2018, but still the onus was upon him to show that he continued to remain ill and was under medical attention for over two years for the accompanying appeal was filed in August, 2020. Thus, on an analysis of the assertions set out in the application and the material on record, the only and the inevitable conclusion that could be reached: the explanation sought to be tendered by the applicant is concocted. Rather, it appears that having lost before the writ court, the applicant re-conciled with his fate and accepted the impugned judgment. Thus the accompanying appeal appears to be merely speculative and an afterthought. It would also be expedient, at this juncture, to refer to the observations recorded by the Hon'ble Supreme Court in **Balwant Singh (dead) v. Jagdish Singh and others, (2010) 8 SCC 685**, wherein in reference

to its earlier decisions in Union of India v. Ram Charan, AIR 1964 SC 215, P.K. Ramachandran v. State of Kerala, (1997) 7 SCC 556 and Katari Suryanarayana v. Koppiseti Subba Rao, (2009) 11 SCC 183, it was concluded:

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

Likewise, in N. Balakrishnan v. M. Krishnamurthy, AIR 1998 SC 3222, it was concluded:

“The law of limitation fixed a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is

precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

As demonstrated above, the grounds set out in the application do not constitute sufficient cause to condone the gross, inordinate and unexplained delay of 880 days in filing the appeal. Needless to assert that courts of law always yearn and endeavour to decide the lis on merits unless a party owing to its negligence, inaction, willful and deliberate default deprives itself of such indulgence. Unfortunately, such is the position in the matter at hands.

Accordingly, the application is dismissed. Consequently, the accompanying appeal too is dismissed being time barred.

(Ravi Shanker Jha)
Chief Justice

(Arun Palli)
Judge

16.09.2020

Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO