

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

**LPA No. 171 of 2021 (O&M)
Date of decision 22.03.2021**

State of Haryana and another ...Appellants

Vs.

Gurmail Kaur and ors. ...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. B.R. Mahajan, Advocate General Haryana with
Mr. Hitesh Pandit, Add.A.G. Haryana
for the appellants.

Mr. Rajiv Atma Ram, Sr. Advocate assisted by
Mr. R.S. Kalra, Advocate
for the caveator-respondent Nos. 2 and 3.

Mr. Anurag Goyal, Advocate
for the caveator/respondent No. 11

Ritu Bahri, J.

Appellants/State has filed the present letters patent appeal under clause 10 of the Letter Patent Act, seeking setting aside of the judgment dated 27.05.2015 passed by learned Single Judge in C.W.P No. 7626-2015 titled as ***Gurmail Kaur and others vs. State of Haryana and others*** and order dated 08.01.2021 passed in RA-CW-115-2020.

Respondents filed CWP No. 7626-2015 wherein the question for consideration before this Court was whether the authorities can withhold the appointments letters by taking the aid of the judgment in ***Kartar Singh vs. Union of India and others, 2013 (1) RSJ 224***, despite there being an interim order of Hon'ble the Supreme Court dated 14.12.2012 in SLP (Civil)

No. 35793-35796 of 2012, whereby the aforementioned judgment has been

challenged. Vide judgment dated 27.05.2015, this Court allowed the writ petitions and directed the respondents to issue appointment letters to the candidates by putting a condition in the same manner, as has been put while issuing appointment letters to the candidates, who have challenged the exemption clause vis-a-vis sitting in HTET/STET examination forthwith. The respondents were further directed to issue re-appointment letters to the petitioners, whose services have been dispensed with by putting the same condition.

Learned State counsel has not disputed the fact that against order/judgment dated 27.05.2015, the State preferred LPA No. 1215-2015, which was withdrawn by State of Haryana on 19.08.2019 to approach the learned Single Judge for filing the review application. However, the review application was also dismissed on 08.01.2021.

Learned State counsel has informed the Court today that appeals have been filed against the writ petitions, which were allowed by this Court and notice of motion has also been issued. He further states that State is not seeking stay of the above judgment dated 27.05.2015 and the State will implement the judgment, subject to outcome of the appeals pending before this Court.

At this stage, Mr. Atma Ram, learned senior counsel for the caveators/respondent Nos. 2 and 3 has argued that initially the State has filed LPA No. 1215-2015 against the judgment dated 27.05.2015 but the same was withdrawn on 19.08.2019 with a liberty to approach the learned Single Judge for filing review application in judgment dated 27.05.2015. Further the review application also stands dismissed on 08.01.2021. No

liberty was granted to the State to file LPA. Reference has been made to

judgment passed by Hon'ble the Apex Court in a case of ***Vinod Kapoor vs. State of Goa and others, 2012 (12) SCC 378*** wherein High Court dismissed the writ petition, vide order dated 29.01.2000. The appellant filed Special Leave Petition against said order dated 29.01.2000, but the same was withdrawn with the permission to pursue his remedy by way of review against the order dated 29.01.2000. The appellant had not taken any liberty from the Court to challenge the order dated 29.01.2000 afresh by way of special leave in case he did not get any relief in the review application. Hon'ble the Supreme Court dismissed the appeal and held that since earlier Special Leave Petition against the same order had been withdrawn without any liberty to file a fresh Special Leave Petition, therefore, the appeals are not maintainable. In Para 10 and 11, it has been observed as under:-

10. Moreover, on the High Court rejecting the application for review of the appellant, the order rejecting the application for review is not appealable by virtue of the principle in Order XLVII, Rule 7 of the CPC. In Shanker Motiram Nale v. Shiolalsing Gannusing Rajput; Suseel Finance & Leasing Co. v. M. Lata and [Others and M.N. Haider and Others v. Kendriya Vidyalaya Sangathan and Others](#) (supra) cited by the learned counsel for respondent No.8, this Court has consistently held that an appeal by way of Special Leave Petition under [Article 136](#) of the Constitution is not maintainable against the order rejecting an application for review in view of the provisions of Order XLVII, Rule 7 of the CPC.

11. There is nothing in the decisions cited by the appellant to show that this Court has taken a view different from the view taken in [Abhishek Malviya v. Additional Welfare Commissioner and Another](#) (supra) with regard to maintainability of an appeal by way of Special Leave under [Article 136](#) of the Constitution against an order of the High Court after an earlier Special Leave

Petition against the same order had been withdrawn without any liberty to file a fresh Special Leave Petition. Similarly, there is nothing in the decisions cited by the appellant to show that this Court has taken a view that against the order of the High Court rejecting an application for review, an appeal by way of Special Leave under [Article 136](#) of the Constitution is maintainable.

Learned State counsel has not been able to dispute that there is unexplained delay of 1724 days in filing the present appeal. However, learned State counsel has argued that on 19.08.2019 in LPA No. 1215-2015, the Hon'ble Division Bench ordered that Limitation will not come in the way of the appellants/State in view of Section 14 of the Limitation Act, 1963. Thus, the review application has wrongly been dismissed on the ground of limitation. He stated that earlier LPA No. 1215-2015 against order dated 27.05.2015 was filed with delay of 36 days and after getting the liberty, vide order dated 19.08.2019, the review application was filed and the delay should be condoned, in view of Section 14 of the Limitation Act, 1963, as per order dated 19.08.2019.

Heard learned counsel for the parties at length.

Reference at this stage can be made to judgment of Hon'ble the Supreme Court in a case of ***Sandhya Educational Society and another vs. Union of India and others, 2014 (7) SCC 701*** wherein while referring to ***Vinod Kapoor's case (supra)***, it has been held that once the Special Leave Petition is dismissed as withdrawn without obtaining appropriate permission to file a special leave petition once over again after exhausting the remedy of review petition before the High Court, the same is not maintainable.

The ratio of law laid down in the above mentioned judgments,

CWP No. 7626-2000 was allowed on 27.05.2015 and against this order, LPA No. 1215-2015 was filed, which was dismissed as withdrawn on 19.08.2019 with the liberty to pursue the remedy of filing review application in CWP No. 7626-2000. Thereafter, the review application was also dismissed on 08.01.2021 on the ground of delay.

It is not in dispute that the appellant/State has not taken any permission on 19.08.2019 when LPA No. 1215-2015 was dismissed as withdrawn, to file a fresh appeal against order dated 27.05.2015 and thus, the present LPA No. 171-2021 after a delay of 1724 days is not maintainable.

In view of the discussion made above, the appeal is dismissed.

Since the main appeal is decided, all the pending miscellaneous applications stand disposed of.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

22.03.2021
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No