

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

101

CR-7393-2017 (O&M)
Date of decision: 10.05.2022

State of Punjab and othersPetitioners
Versus
Ranjit SinghRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Abhay Pal Singh Gill, AAG, Punjab
for the petitioners/State.

Ms. Harmanpreet Kaur (Simmi), Advocate
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition has been preferred against the order dated 25.05.2017 passed by the learned Additional District Judge, Patiala vide which the lower appellate Court disposed of an application under Section 5 of the Limitation Act, 1963 by declining to condone the delay of 318 days in filing of the appeal.

The petitioners/State preferred an appeal against the judgment and decree passed by the trial Court in a suit for declaration and mandatory injunction for stepping up the pay of the respondent/plaintiff at par with his junior Raj Kumar. The said suit was decreed with costs to the effect that order No.6461/5NGA/1/2012 dated 03.09.2012 passed by petitioner No.3/defendant No.3 whereby petitioner No.2/defendant No.2 had rejected the case of the respondent/plaintiff for stepping up the pay at par with his junior Raj Kumar being illegal, null and void. Still further the respondent/plaintiff was held entitled to fixation of his pay at par with his junior Raj Kumar with effect from 01.11.2006 at Rs.26,860/- and Rs.27,760/- with effect from 01.01.2007, Rs.28,510/- with effect from 19.01.2007, Rs.29,380/-

with effect from 01.01.2008 and Rs.30,260/- with effect from 01.01.2009 along with arrears of pay and allowances and re-fixation of pensionary benefits along with interest @ 6% per annum from the respective dates. Besides this mandatory injunction was also issued in favour of the plaintiff/respondent with directions to the petitioners/defendants to comply with the order within a period of two months. The State i.e. the petitioners/defendants preferred the appeal before the lower appellate Court after a delay of 318 days. The lower appellate Court dismissed the appeal preferred by the petitioners/defendants only on the ground that no sufficient explanation had been brought-forth to explain the inordinate delay in filing the appeal.

The petitioners herein are impugning the judgment and order of dismissal of the appeal on the ground of limitation.

Learned counsel for the petitioners/State *inter alia* contends that out of the delay of 318 days, 126 days' delay had been satisfactorily explained. No doubt qua the remaining 192 days the delay had not been entirely explained, however, it had been caused due to the sanction and approval from the quarters concerned not being given in time on account of the long departmental procedure. It has been vehemently urged by learned State counsel that the petitioners would suffer irreparable loss and injury in case the instant revision petition is not allowed.

On being put to notice, Ms. Harmanpreet Kaur (Simmi), Advocate has put in an appearance on behalf of the respondent/plaintiff and opposed the prayer made by the counsel opposite by submitting

that no satisfactory explanation has come forth by the State with respect to the inordinate delay of 192 days in the filing of the appeal before the lower appellate Court.

I have heard learned counsel for the parties and perused the relevant material placed on record.

The Hon'ble Supreme Court in ***Collector Land Acquisition Anantnag and another Vs. Mst. Katiji and others : AIR 1987 SC 1353*** observed that ordinarily a litigant would not stand to benefit by preferring an appeal at a late stage, and rather would run a serious risk. Refusing to condone delay could in many cases result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned at best the matter would be decided on merits after hearing the parties. A Court of law is to be respected not on account of its powers to legalize injustice on technical grounds but because it is capable of removing injustice and that it is what is expected of it. The Hon'ble Supreme Court in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others : 2013(12) SCC 649*** has reiterated the principles applicable to an application for condonation of delay by observing that the intent of the Limitation Act, 1963, is to promote substantial justice which is paramount and pivotal coupled with the fact that technical consideration should not be given undue and uncalled for emphasis. Hence, what flows from various pronouncements of the Hon'ble Supreme Court is that Courts should adopt a liberal, pragmatic and justice oriented approach and a litigant should not be made to suffer for the misdemeanour or inaction on the part of his counsel. No doubt it

was indeed expected from the petitioners/State to be more vigilant but the failure of the petitioners/State in not being vigilant and their counsel representing them before the trial Court also failing to inform them promptly about the suit being decreed against them should not have been made a ground for ousting them from the litigation with respect to a service matter which concededly is of a valuable nature.

As a sequel to the above, the petitioners/defendants have been able to convincingly explain the delay in preferring the appeal against the impugned judgment and decree passed by the trial Court. Due to the inaction and laxity on the part of the petitioners/defendants and/or their counsel in preferring the appeal, which definitely resulted in the litigation getting delayed for which the other party needs to be compensated by way of costs.

The revision petition is accepted/allowed. The impugned order passed by the learned appellate Court dated 25.05.2017 is set aside. The appeal is hereby ordered to be restored to its original number and the lower appellate Court shall proceed to decide it on merits, in accordance with law. The petitioners/defendants are burdened with costs of Rs.10,000/- which shall be a condition precedent to be paid to the respondent/plaintiff. Both the parties are directed to appear before the lower appellate Court on 28.07.2022.

10.05.2022

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(MANJARI NEHRU KAUL)
JUDGE

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