

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

114+238

CWP No.18654 of 2021 (O&M)

Union of India and others

.....Petitioners

Versus

Ram Chander and another

.....Respondents

CWP No.18655 of 2021 (O&M)

Union of India and others

.....Petitioners

Versus

Sarwan Kumar and others

.....Respondents

CWP No.18660 of 2021 (O&M)

Union of India and others

.....Petitioners

Versus

Harnek Singh and others

.....Respondents

Decided on : 09.05.2022

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE PANKAJ JAIN**

Present: Mr. Ashish Rawal, Advocate
for the petitioners.

Mr. Rishav Sharma, Advocate
for the private respondents.

G.S. Sandhawalia, J. (Oral)

**CM-7023-CWP-2022 in CWP-18654-2021
CM-7021-CWP-2022 in CWP-18655-2021 &
CM-7024-CWP-2022 in CWP-18660-2021**

Applications for placing on record resolution dated 01.10.2021

as Annexure P-7/P-5, are allowed, subject to all just exceptions. The same

is taken on record. Office to append the same at the appropriate place.

CMs stand disposed of.

CM-7025-CWP-2022 in CWP-18654-2021

Application for impleading India Optel Limited and Director General Ordinance (C&S) as petitioner Nos.3 & 4, respectively, are allowed, in view of the averments made in the application. Amended memo of parties is taken on record. Office to append the same at the appropriate place.

CM stands disposed of.

**CM-7022-CWP-2022 in CWP-18655-2021 &
CM-7026-CWP-2022 in CWP-18660-2021**

Applications for impleading India Optel Limited as petitioner No.4 and for substituting the name of petitioner No.2 i.e. DGOB & Chairman, Ordinance Factory Board, 10-A, S.K. Bose Road, Kolkatta with Director General Ordinance (C&S), Directorate of Ordinance (C&S), 10-A, S.K. Bose Road, Kolkatta.

Accordingly, in view of the averments made in the applications, the same are allowed. India Optel Limited is impleaded as petitioner No.4 and name of petitioner No.2 stand substituted with Director General Ordinance (C&S), Directorate of Ordinance (C&S), 10-A, S.K. Bose Road, Kolkatta. Amended memo of parties are taken on record. Office to append the same at the appropriate place.

CMs stand disposed of.

Main cases

Challenge herein at a belated stage by the Union of India in CWP No.18655 of 2021 is to the order dated 17.12.2012 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh in **OA No.468 of 2011 'Sarwan Kumar and others Vs. Union of India and others'**. The writ petition was filed only on 27.05.2021 after 9 years. The learned Tribunal had issued directions to the petitioners herein to grant the employees both the ACPs on a finding that the grant of placement to them as LDCs came about by way of fresh appointment and not by way of promotion.

The said order admittedly was implemented by the petitioners as per the pleadings made in paragraph No.10 of CWP No.18655 of 2021. Now on account of the fact that similarly situated persons have filed similar applications, the present petition has been filed by the Union of India.

In such circumstances, we are of the considered opinion that the challenge to an order which was passed earlier is not liable to be entertained, keeping in view the settled principles of law of delay and laches, as no sufficient cause has been shown. Admittedly, no sufficient cause has even been pleaded as such and there is an admission by the petitioners themselves that they have chosen to implement the orders.

The issue of limitation specially qua private litigants and the State has always been a matter of debate. The Apex Court in

State of Nagaland Vs. Lipok AO and others, 2005 (3) SCR 108, noticed that certain amount of latitude is to be given to the Government and there should be little play in the joints. It was held that State cannot be put to the same footing as individuals as it has impersonal machinery working through its officers and servants. In **Pundlik Jalam Patil (D) by LRs. Vs. Executive Engineer Jalgaon Medium Project & another, (2008) 17 SCC 448**, the Apex Court set aside the orders of the Bombay High Court, wherein the inordinate delay of 1724 days had been condoned and held that the Limitation Act does not provide different periods to the Government. It is only in the case of fraud certain amount of latitude had to be granted and the State could not take advantage of its negligence since it is presumed that it knew its right.

Similarly, in **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459**, the same view was taken by setting aside the order of the High Court, which had condoned the delay of 4 years in filing of the appeal. It was held that the law of limitation is based on a public policy and the purpose is that the parties do not to resort to dilatory tactics and seek the remedy without delay. In **Office of the Chief Master General & others Vs. Living Media India Ltd. and another, (2012) 3 SCC 563**, it was held that the law of limitation binds everyone including the Government and in the absence of any proper explanation, the delay was not liable to be

condoned, which was of 427 days. Relevant portion of the said judgment reads as under:-

“12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the

process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

In Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157, the order condoning the delay of 7 years and 108 days in filing the appeal was set aside by the Apex Court, on account of the fact that successful litigant has acquired certain rights on the basis of the judgment under challenge. If the applicant was found to be negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In **B. Madhuri Goud Vs. B. Damodar Reddy, (2012) 12 SCC 693**, it was held that the law of limitation affects a particular party with rigour and the rules of limitation were for fixing a lifespan for redressal of the legal injuries.

In Esha Bhattacharjee Vs. managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649, the following principles were laid down:

15. From the aforesaid authorities the principles that can broadly be culled out are:

- i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is

that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario.

They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

Recently in **State of Jharkhand through Special CBI Vs. Lalu Prasad & Lalu Prasad Yadav, 2017 AIR (Supreme Court) 3389**, it was held that the State and private individuals should not be differentiated in the matter of delay, while noticing the observations earlier made in the case of **Lipok AO (supra)**.

Thus, it would be clear from the above settled principles that in the present set of cases, the State has not been able to explain its negligence as such for a period of almost a decade, for which no steps for legal redressal had been taken.

In such circumstances, once the petitioners themselves have not been interested in contesting the litigation, we are of the considered opinion that the private respondents who are long retired would be adversely affected and they would be forced to defend this litigation, in the evening of their life. Accordingly, we are of the opinion that no case is made out to exercise the extra-ordinary jurisdiction of this Court.

Similarly, the other two writ petitions are based upon the decision passed in the case of **Sarwan Kumar (supra)** and the impugned order was also passed in the year 2017 (in CWP No.18654 of 2021) and in the year 2013 (in CWP No.18660 of 2021). On the basis of said order, the writ petitions have been filed. The said writ

petitions also suffer from the same infirmity as in the main case and, therefore, without commenting upon the merits of the case, all three writ petitions are dismissed. Needless to say that we are not commenting upon the merits of the decision of the Tribunal in any manner.

(G.S. SANDHAWALIA)
JUDGE

May 09, 2022
Naveen

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No