

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

RSA-2289-2019 (O&M)
Reserved on : 02.08.2022
Pronounced on : 16.08.2022

State of Haryana & others

..... Appellants

Versus

Shakuntla

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Rohit Arya, DAG, Haryana.

Mr. Pankaj Maini, Advocate
for the respondent.

Manjari Nehru Kaul, J.

CM-6133-C-2019

This is an application under Section 5 of Limitation Act for condonation of delay of 264 days in filing the appeal.

Learned State counsel has inter alia vehemently urged that the delay of 264 days in filing the instant appeal has occurred on account of the long departmental procedure. In case, the delay is not condoned the appellants would suffer irreparable loss as a meritorious case like the one in hand, if thrown out on account of delay in filing, would defeat the cause of justice.

Learned counsel for the respondent has opposed the prayer made by the learned counsel for the appellant and submitted that the delay in filing has not been satisfactorily explained.

Hon'ble Apex Court time and again by way of various pronouncements has reiterated that Courts should adopt a liberal pragmatic and justice oriented approach while dealing with the application for condonation of delay as the intent of the Limitation Act, 1963 is to promote substantial justice. No doubt, it was indeed expected from the appellant-State to be more vigilant, however, if the case in hand is thrown out at the very threshold, it would defeat the cause of justice.

This Court would, therefore, deem it appropriate to condone the delay and decide the matter on merits after hearing the parties. It would be relevant to refer to the observations of Hon'ble Supreme Court in ***Collector Land Acquisition Anantnag and another Vs. Mst. Katiji and others : AIR 1987 SC 1353***, which is reproduced as follows:

*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.”

Accordingly, application is allowed as prayed for and delay of 264 days in filing the appeal is condoned.

Main Case

The appellant-State is impugning the judgment of reversal passed by First Appellate Court on 10.05.2018 vide which the findings recorded by the trial Court in a suit for declaration and mandatory injunction instituted by the respondent-plaintiff was set aside. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Brief facts as pleaded by the plaintiff while filing the suit in question may be noticed as thus; plaintiff is the widow of Sh. Bhim Sain Arora, who died on 04.04.2010 while posted as Clerk in the office of Deputy Commissioner, Sirsa. It was averred that the husband of the plaintiff was sponsored by the Employment Exchange, Sirsa and thereafter, duly selected by the Selection Committee. Consequently, he was appointed as Clerk-cum-typist on ad hoc basis by the competent authority i.e. The Haryana State Minor Irrigation and Tubewell Corporation (hereinafter referred to as 'HSMITC') vide letter No.5551/4E dated 15.08.1975. His services were regularized by the department w.e.f. 21.08.1975 and he

worked on the said post up till 31.07.2002. Thereafter, HSMITC was closed by the Government of Haryana. On 31.10.2006 the deceased joined on the post of Clerk in the office of Deputy Commissioner on revised pay scale, where he was also given a new pay band. He, however, died on 04.04.2010 while in service as Clerk with the office of Deputy Commissioner, Sirsa. It was prayed that since the deceased had served HSMITC as regular Clerk-cum-Typist from 21.08.1975 to 31.07.2002, his earlier service should also have been included for all intents and purposes towards her service benefits etc. when he rejoined the services in the year 2006.

In the written statement, defendant *inter alia* submitted that the HSMITC was closed down w.e.f. 30.07.2002 and the services of all its employees including that of the husband of the plaintiff were terminated, as a result of which, they were relieved from their duties w.e.f. 31.07.2002. At that time, all the employees including the husband of the plaintiff were paid all their terminal benefits including gratuity, contributory pension fund, leave encashment etc. and hence, the relationship of Master and Servant between them ceased to exist from 31.07.2002. The plaintiff was also being paid family pension from HSMITC on account of her husband's earlier service with HSMITC. The State Government vide notification dated 21.06.2006 had given fresh appointment in Government Departments/Boards/Corporations to the retrenched employees of various Boards/Corporations including the husband of the plaintiff as a special case and it had been specifically clarified that in view of their fresh appointments in various Departments/Corporations etc. they would not be entitled to claim benefits of their previous services i.e. prior to their retrenchment and

also for the period when they remained out of service, as a result of such retrenchment. It was thus, submitted that the status of the husband of the plaintiff was one of retrenched employee of the Corporation as he had never been absorbed. Still further, when the husband of the plaintiff died in a road accident on 04.04.2010, Ex gratia amount of Rs.25,000/- as per the Service Rules alongwith outstanding amount of leave encashment earned, after reappointment, was also paid to the plaintiff by the office of defendant No.2. A prayer, therefore, was made for dismissal of the suit in question as the plaintiff was not entitled to the relief prayed for.

Trial Court did not find any merit in the suit filed by the plaintiff and dismissed the same on the ground that the pension scheme was neither in existence in the previous organization i.e. HSMITC where the husband of the plaintiff was employed prior to 31.07.2002 nor did it exist in the subsequent organization which the husband of the plaintiff joined on 31.10.2006.

Lower Appellate Court while relying upon *Savitri Devi vs. State of Haryana, 1996(2) RSJ 854* reversed the findings of the trial Court by holding that as per the 1964 rules, the legal heirs of an employee were entitled to family pension, even if, an employee died within a period of one year of joining his job. Learned Appellate Court further held that that since the deceased would have been definitely medically examined before joining, as per the exception given under Rule 4 of Family Pension Rules, the plaintiff would be entitled to family pension.

Learned counsel for the appellants-defendants submits that no

doubt, the deceased was earlier employed with respondent No.4-department and worked there till the year 2002, however, once HSMITC closed down, the services of the deceased were terminated w.e.f. 30.07.2002 and all the benefits, which were due to the deceased, were duly paid to him. He further submits that it was only subsequently on 31.10.2006, the deceased was appointed as Clerk and died while in service on 04.04.2010. The appellant No.2-department had no concern with HSMITC and still further, at the time of joining in the year 2006, the deceased was fully aware and conscious of the terms and conditions, and had joined the department only after accepting all the terms and conditions, which was evident from the fact that he had also furnished an affidavit in that regard that he would not claim any benefits of his previous service with HSMITC and would abide by all the terms and conditions of Appointment Letter (Annexure A-1). Learned counsel for the appellant has drawn the attention of this Court to ***LPA No.1105 of 2017*** titled as ***The State of Haryana and others versus Nathu Singh (decided on 29.05.2018)***, which was filed by the State Government in identical circumstances and had since been allowed. Learned counsel submits that thus, the issue and controversy involved in the case in hand already stood settled by the Division Bench of this Court in *Nathu Singh's case (supra)*. Learned counsel has further reiterated that the husband of the plaintiff had never been absorbed in the Department and his status was only of a retrenched/terminated employee of HSMITC and this had to be appreciated from the fact that the deceased employee had remained out of service from 31.07.2002 to 12.10.2006 and thus, his subsequent

appointment from 31.10.2006 was a fresh one for all intents and purposes.

Per contra learned counsel for the respondent-plaintiff vehemently argued that though her husband had been appointed as a Clerk in the office of Deputy Commissioner, Sirsa, however, she was entitled to get financial assistance from the respondent-department w.e.f. 04.04.2010 i.e. the date when her husband died. He further submitted that the notification of December 2020 would be applicable in her case as it clearly provided that certain family members of the deceased employees would be entitled to honorarium. It was submitted that in the circumstances, the services of the deceased employee from 21.08.1975 to 30.07.2002 were rightly taken into account by the Lower Appellate Court while directing the Department to pay all the pensionary benefits.

Heard learned counsel and perused the judgments and decree passed by the Courts below.

It is not disputed by the counsel for the respondent that the appointment of the deceased with defendant No.4 – HSMITC was under non-pensionable scheme. No material has been brought forth that the appointment of the deceased in the year 2006 with the defendant No.2-department was pensionable. Though the plaintiff placed reliance on the policy instructions of the State Government dated 07.01.2002, however, a perusal of the instructions makes it abundantly clear that they were applicable to only those employees, where pension scheme was not provided in the previous organization but provided for in their new organization. In the instant case, however, neither any pension scheme was in existence in the previous organization where the husband of the plaintiff

was serving prior to his retrenchment in the year 2002 nor any existed in the subsequent organization, which the husband of the plaintiff joined on 31.10.2006. Admittedly, the husband of the plaintiff did not also exercise his option qua pension scheme, which he was supposed to do and could have done within a period of six months from his appointment in the new organization. It is also a matter of record that all the retiral benefits of the deceased stand already disbursed and received by the plaintiff including Ex gratia amount of Rs.25,000/- to the plaintiff.

Division Bench of this Court in *Nathu Singh's case(supra)* has held as under:

“There were specific conditions laid down in the letter of offer of appointment regarding appointment being afresh; at the beginning of the scale; to be placed at the bottom of the seniority and with no benefit of past service. Specific condition was there that in case the aforesaid conditions are acceptable to the person concerned, he may join service. The respondent with his eyes open joined service. Meaning thereby, he accepted all the terms and conditions as laid down in the letter of offer of appointment. Further, he continued to serve the department for a period of more than six years without raising any grievance or challenging the terms of his appointment or the scheme under which his appointment had been made. He, now cannot be permitted to turn around and file a petition nearly two years after his retirement claiming that his past service be counted for the purpose of pensionary benefits especially, when the service rendered in the Corporation, was not pensionable.”

It is evident that the deceased employee i.e. husband of the plaintiff, at time of joining his service in the year 2006 accepted all the

terms and conditions and till his death on 04.04.2010 never even raised any grievance much less challenged the terms and conditions of his appointment, the plaintiff could not have after the death of her husband and that too after receiving all his retiral benefits etc., claim family pension under the 1964 Rules.

As a sequel to above, this Court has no hesitation in setting aside the judgment and decree of Lower Appellate Court and affirming the judgment and decree of the trial Court. Accordingly, the present appeal stands allowed.

(MANJARI NEHRU KAUL)
JUDGE

16.08.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No