

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

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LPA-516-2020 (O&M)

Date of Decision: March 28, 2022

State of Punjab & others

....Appellants

VERSUS

Sukhjad Singh & others

....Respondents

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr.S.P.S.Tinna, Addl.A.G., Punjab, for the appellants.

Mr.Gaurav Sharma, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral) :

Present letters patent appeal is directed against the order dated 19.12.2018 passed by the Learned Single Judge in CWP-11427-2015 whereby 135 persons had been given the benefit of regularization after recording a finding that the petitioners were to be regularized after completing 3 years of services in the year 2013 and thus, were covered by the instructions dated 18.03.2011.

The appeal is barred by limitation of 349 days since it was filed only on 05.08.2020. A perusal of the application for condonation of delay would go on to show that on receipt of the certified copy of the order on 08.02.2019, a request was made for an opinion from the Learned Advocate General, Punjab, who found that it was not a fit case for filing an appeal. The matter thereafter remained pending consideration between various departments and the Personnel Department and thereafter on

30.07.2019, advise was given to the applicants to again obtain legal opinion from the Advocate General, Punjab. The proposal was again sent to the Advocate General for legal opinion on 09.08.2019 and the second opinion was also obtained that it is not a fit case for filing an appeal. Vide memo dated 01.01.2020, the Personnel Department issued further clarification and on 23.01.2020, a proposal was sent by the Director, Health Services (Family Welfare), Punjab and sanction was granted to file the appeal on 14.02.2020. Resultantly, as noticed, the appeal was filed on 05.08.2020.

In the application, it has been further averred that implementation of the judgment would put cost on the State Exchequer of Rs.47.57 crores on account of payment of arrears. Another set of litigation was stated to be pending consideration and the said persons would also become entitled for the same benefit and the employees working in different departments would also seek similar relief. Thus, condonation of the delay has been prayed for as the same was neither intentional nor deliberate but due to the lengthy departmental procedures.

The application has been opposed by filing reply by the writ petitioners, taking the plea that on account of advise of the Advocate General Punjab on both occasions not to file the appeal, the Personnel Department had advised the department to proceed at own level. Reliance is placed upon the judgment of the Apex Court in SLP (C) Diary No.9217 of 2020 titled as "*The State of Madhya Pradesh & others Vs.*

Bherulal” decided on 15.10.2020 wherein delay of 663 days was sought to be condoned, which was declined by imposing costs of Rs.25,000/-.

During the course of arguments, it transpires that out of the 135 writ petitioners, 134 have been regularized vide order dated 16.09.2020 wherein it had been noticed that directions have been issued on 09.10.2020 in CM-7813-CII-2020 in COCP-3141-2019 that compliance be made of the order within one month. It is thus apparent that even the benefit has been granted to the writ petitioners except for one petitioner.

The Apex Court in **Office of the Chief Post Master General & others Vs. Living Media India Ltd. & another (2012) 3 SCC 563**, has held that the State cannot be placed in a better position but a liberal view can be taken keeping in view the fact that sufficient cause is made out for condoning the delay. It has been further held that the object for fixing time-limit for litigation is based on public policy fixing a life-span for legal remedy for the purpose of general welfare and where there is absence of plausible and acceptable explanation, the applications for condonation of delay are liable to be dismissed. In the said case, there was delay of 427 days in filing the appeal before the Apex Court. Resultantly, it was held 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.”

The facts have already been noticed above. Despite seeking the opinion of the Advocate General, Punjab on two occasions that there was no case made out to file the appeal, the appellant-Department was consistent in taking an opinion, whereby the litigation has been prolonged. If the opinion was not suitable at the first instance, there was no such reason for the appellants not to have filed the appeal at the first instance by grant of appropriate sanction. The considerable delay in filing the appeal and the reasoning which has been given is not justified as the appellants cannot be permitted to seek the indulgence time and again that the opinion favourable to them should come from the Advocate General's office to file the appeal.

In such circumstances, keeping in view the facts and circumstances of the present case and the fact that the impugned order has already been implemented, it would only be travesty of justice to re-open the matter which already stands foreclosed and in which a decision has already been taken. The claim that huge financial outlay would arise also seems to have been redressed by taking a decision to implement the judgment.

In such circumstances, no cause is made out for condoning the delay, in the facts and circumstances of the case. Accordingly, the application for condoning the delay of 349 days in filing the appeal is hereby dismissed and consequently, the main appeal as well as all

pending CM applications, if any, are also dismissed.

Needless to say that we have not decided on the merits of the case, pertaining to the reasoning of the learned Single Judge.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 28, 2022
sailesh

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