

107 IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

LPA-657-2022 (O&M)  
Date of Decision:17.11.2022.

Suresh Kumar

.....Appellant

Versus

The Hon'ble High Court of Punjab and Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH  
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. S.K. Malik, Advocate  
for the appellant.

Mr. Dhiraj Chawla, Advocate  
for the respondents.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-1520-LPA-2022

Prayer in this application is for condonation of delay of 144 days in  
filing the appeal.

Notice of the application.

Mr. Dhiraj Chawla, Advocate, accepts notice on behalf of the  
respondents and opposes the prayer with regard to condonation of delay by  
asserting that except for mentioning that delay was due to Corona Pandemic, there  
no other material and details given therein.

Counsel for the applicant-appellant has pointed out that it is a known  
fact that from 20.03.2020, the Corona Pandemic had started and so declared by the  
Government of India leading to a total lockdown. It is during this period that the  
applicant-appellant was unable to approach the counsel and file the appeal.

For the reasons as have been stated by the counsel for the applicant-

appellant, we accept the same and condone the delay of 144 days in filing the appeal.

Application is allowed accordingly.

**LPA-657-2022**

Challenge in this appeal is the judgment passed by the learned Single Judge dated 12.02.2020 wherein the prayer for re-fixation of the pay of the appellant from the date of his entitlement has been declined on the ground that he had earlier exercised his option vide a communication dated 10.02.1998 after the adoption of the pay-scales w.e.f., 01.01.1996 by the Punjab Government. The said option was accepted and his pay initially at Rs.4814/- had been upgraded to Rs.5,000/-. Another option was submitted by the appellant on 24.02.1998 (Annexure P-2/A) which option was duly considered and rejected by the respondents by observing that the appellant had already exercised his option and once an option has been exercised that would be the final option. The said earlier option was rejected vide memo dated 06.03.1998.

The appellant thereafter moved an application on 16.03.1998 for once again claiming the grant of increment w.e.f., 01.01.1996, which request under a misconceived assumption that he had not earlier exercised the option as there was no mention thereof in the said application, was granted to him by the dealing Assistant leading to fixation of his pay at Rs.5160/- per month w.e.f., 01.01.1996. The said error came to light when one of the co-workers in the Court also claimed the same benefit by seeking stepping up of her pay on the basis of the benefit granted to the appellant. It is at this stage that the show-cause-notice was issued to the appellant as to why the said benefit which had been illegally granted to him, should not be withdrawn, to which reply had been filed by the appellant and on consideration of the said reply the respondent had proceeded to pass the impugned

order dated 16.12.2005 (Annexure P-9).

On considering all the aspects, the learned Single Judge has proceeded to dismiss the writ petition on two grounds one of which is with regard to non-disclosure of true facts and the second aspect is that since option had already been exercised, the same benefit could not have been claimed by the appellant in a subsequent prayer which was being sought to be projected. Reliance in this regard has been placed upon Rule 6 (2) which has been referred to contend that an option exercised under sub-rule (1) shall be final and shall be intimated by the Government employee to the Head of his Office. Once the option has been exercised, the same could not have been withdrawn or re-exercised.

Learned counsel for the appellant has assailed the said order by contending that the option could be got revised in case the entitlement was more than what was granted to him. In the light of the fact that there was option which could be exercised within a period of 90 days and within the said period he had opted for the further benefit of the increment, which was allowed by the competent authority and therefore could not have been withdrawn. This contention of the learned counsel for the appellant cannot be accepted in the light of the provisions as contained in Rule 6 which reads as follows:-

“6. Exercise of option:-

1. The option under rule 5 to elect the existing scale or the revised scale shall be exercised in writing in the form of option appended to these rules, so as to reach the authority specified in sub-rule (2) within a period of three months of the date of publication of these rules in the official gazette or where an existing scale has been further revised by any subsequent order then another option may be exercised within three months of the date of such order:-

Provided that:-

- (i) In the case of Government employee who is on the date of such publication or order, as the case may be out of India or on leave or on deputation or on foreign service or on active service, the option shall be exercised in writing, so as to reach the authority specified in sub-rule (2) within a period of three months from the date of his taking charge of his post under the State Government. and
- (ii) where a Government employee is under suspension on that date, the option shall be exercised within a period of three months of the date of his return to his duty if that date is later than the date specified in this sub-rule.

Explanation- “active service” means service abroad with Armed Forces, but does not include service in the Indian Mission Abroad.

- 2. An option exercised under sub -rule (1) shall be final and shall be intimated by the Government employee to the Head of his office.
- 3. If the intimation regarding option is not received within time mentioned in sub-rule (1), it shall be deemed that the Government employee has opted for the revised scale on and with effect from the First day of January 1996.

Note 1: Persons, whose services were terminated on or after the First day of January 1996, but before the publication of these rules in the official gazette and who could not exercise the option within the prescribed time limit, on account of death, discharge on the expiry of the sanctioned post, resignation, dismissal or discharge of disciplinary grounds are entitled to the benefits of this rule.

Note 2: Persons who have died on or after the First day of January 1996, and have not exercised option within the prescribed time limit, shall be deemed to have opted for

the revised scale on and from the First day of January 1996 or such later date as is most beneficial to their dependents.”

Perusal of the above Rule has clearly laid down that although the period of three months have been prescribed for giving such option but as far as sub-rule (2) of Rule 6 is concerned once an option has been exercised, the same shall be final and therefore in this case the appellant having firstly exercised his first option was not entitled to the second option. Although, the prayer which has been put-forth by the counsel for the appellant is that earlier there was no request with regard to the grant of increment from 01.01.1996 but the said plea at this stage cannot be permitted to be taken.

We do not find any illegality in the order passed by the learned Single Judge, which would call for any interference in the present appeal. The appeal, therefore, stands dismissed.

**(AUGUSTINE GEORGE MASIH)**  
**JUDGE**

**17.11.2022**

*rekha sharma*

**( VIKRAM AGGARWAL)**  
**JUDGE**

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