

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.M. No. 3033-LPA of 2017 in/and
LPA No. 1407 of 2017 (O & M)
Date of decision: 20.05.2022

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Jagjit Singh Shekhon

....Appellant(s)

Versus

Canara Bank and others

....Respondent(s)

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

Present: Mr. Rajesh Arora, Advocate,
for the appellant.

Mr. Nitin Gupta, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The present letters patent appeal, which is barred by limitation of 278 days in filing the same, has been filed by the writ petitioner against the judgment dated 29.08.2016 in CWP No. 15689 of 2016, whereby the learned Single Judge has upheld the rejection of the claim whereby, his request to join the Pension Scheme was rejected on the ground of limitation vide communication dated 04.05.2016 (Annexure P-9).

The learned Single Judge noticed that the petitioner had two opportunities to join the Pension Scheme, one in the year 1995 and another in the year 2010 after his retirement but he chose not to do so on either of the two occasions. Five years after the closure of the Pension Scheme, he filed an application on the ground that he was unfit due to severe Hepatitis-

C. The learned Single Judge, distinguished the judgment in ***Janak Raj***

by noting that in the said case, circular had been issued on 23.08.2010 and the limitation was to file the applications was till 25.10.2010. The employee as such was away to the United States of America and Canada and only came back on 18.11.2010 and had applied immediately thereafter. In such circumstances, it was noticed by the learned Single Judge that the co-ordinate Bench has granted the relief in *Janak Raj (supra)*. Accordingly, it was held in the present case that having not availed the opportunity, now after the expiry of 5 years, there was only a lame excuse of illness. In order to bring his case with parity, counsel has now submitted that he had left India on 24.08.2010 and only returned on 07.12.2010 while placing reliance upon Annexure A-1. A total somersault has now been taken that he had gone abroad in order to bring his case in parity with *Janak Raj's case*.

A perusal of the judgment in *Janak Raj case (supra)* would go on to show that the petitioner in the said case could not exercise his option within time as he had gone abroad and was not having knowledge of the circular. In such circumstances, it was held in appeal by the co-ordinate Bench that he had exercised option within 3 months after the cut off date being abroad and the appeal was dismissed.

The matter was then taken to the Apex Court in ***Civil Appeal No.7757 of 2019, Oriental Bank of Commerce and others vs. Janak Raj Sharma*** and the Apex Court has rather held that the matter is not to be treated as a precedent in any other case. The relevant portion reads thus:-

“(9) In the normal circumstance when a publication of the cut- off date was made while introducing the scheme, it would be appropriate to hold that the option should have been exercised within the

last date as prescribed as otherwise there would not be finality. We uphold the Pension Scheme 2010 and with cut-off date for exercising option as on 25.10.2010.

(10) However, considering the fact that the respondent had rendered long period of service to the appellants-Bank and keeping in view that in exceptional circumstance the learned Single Judge as well as the Division Bench of the High Court had directed the appellants-Bank to accept the option exercised by the respondent herein, we are not inclined to interfere with the impugned order. However, we reiterate and make it clear that such direction issued is in the exceptional circumstance keeping in view the facts involved in the instant case and the same shall not be treated as a precedent in any other case. It is also made clear that in respect of the said Pension Scheme if any other matter is pending before any other Court in respect of the appellant-Bank herein or other public sector banks, the direction as approved in the instant appeal shall not be treated as a precedent in such cases and the said cases shall be dealt with independently on its own merits.”

It is thus apparent that even the Apex Court had reiterated the fact that a person is bound to apply within the cut off period and cannot as such take his sweet time and wake up and join as and when he desires subject to his own convenience.

Thus, we are of the considered opinion that the learned Single Judge was well justified in not exercising his extra ordinary writ jurisdiction. Even otherwise, the present appeal is time barred as it has been filed after a delay of 278 days. The sufficient cause which is again sought to be made out is that the appellant was not in India when the decision was

pronounced and he only came back to India in the month of May, 2017. Thus, it is apparent that at all stages, the appellant has been sleeping over his rights and we do not feel that it is a fit case for interference even otherwise also to condone the delay.

Accordingly, the application for condonation of delay of 278 days in filing the appeal as well as the main appeal stand dismissed.

(G.S. SANDHAWALIA)
JUDGE

20.05.2022
shivani

(VIKAS SURI)
JUDGE

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