

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

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**CM-4033-LPA-2017 in/and
LPA-1871-2017 (O&M)
Decided on : 12.05.2022**

State of Punjab and others

.....Appellants

Versus

Sikander Pal Singh

.....Respondent

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

Present: Ms. Monica Chhibber Sharma, Senior DAG, Punjab.

Mr. D.S. Matya, Advocate for the respondent.

G.S. Sandhawalia, J. (Oral)

The present letters patent appeal is directed against the order dated 25.07.2016 of the learned Single Judge passed in CWP No.28323 of 2013 and the order passed in Review Application No.379 of 2016 dated 12.07.2017. The learned Single Judge vide the impugned order dated 25.07.2016 had directed the appellants herein to send the writ petitioner to attend Lower School Course for undergoing basic proficiency test.

The appeal is time barred by 392 days in filing the appeal. The explanation given in the application for condonation of delay is that the certified copy of the order dated 12.07.2017 was received on 02.08.2017. The opinion was sought whether it is a fit case from the office of the Advocate General, Punjab. Thereafter, the office of the Advocate General, vide its letter dated 28.08.2017 sent its opinion, wherein it was opined that it was a fit case for filing the appeal. The same was received in the office of Senior Superintendent of Police, Patiala on 04.09.2017 and the sanction was

granted on 15.09.2017. Thereafter, the office of the Advocate General was approached for vetting on 19.09.2017 and resultantly, the appeal has been filed now on 26.09.2017.

A perusal of the paper-book would go on to show that the review application bearing Review Application No.379 of 2016 was filed before the learned Single Judge, which was barred by 126 days in filing the same and which was dismissed on 12.07.2017. Learned Single Judge noticed the explanation given before it that as per legal opinion it was not a good case for filing the appeal. Thus, it is apparent that at the first instance, the opinion had been sought from the office of Advocate General and it was found that it was not a good case for filing the appeal.

Learned Single Judge found that the delay as such has not been explained in the review application and when the case was sent for opinion and when the same was received. In such circumstances, keeping in view the law laid down in **State of M.P. and others Vs. Nandlal Jaiswal and others, AIR 1987 SC 251; Chhajju Ram Vs. Neki, AIR 1922 PC 112; Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulouse Athanasius and others, (1955) 1 SCR 520 and Union of India Vs. Sandur Manganese & Iron Ores Ltd. and others, 2013 (3) Recent Apex Judgments (R.A.J.) 436** the review application was dismissed also on the grounds of delay and on merits that he had not been permitted to appear in the test on account of the fact that a departmental inquiry

was initiated against him, but the charge-sheet had not been issued to him at that point of time and thereafter, he was also successfully exonerated.

It is the settled principle that for condoning the delay even if it is inordinate, sufficient cause has to be shown. In the present case there seems to be none and the State is hell-bent in prosecuting the matter in which there is no public interest involved and only a right of individual for consideration is the subject matter. On an earlier occasion in spite of not having positive legal opinion, it still preferred to file the review, which was dismissed. Thereafter, not being satisfied now it has chosen to file the application for condonation of delay without even any mentioning in the application that the review application was dismissed but by referring to the order dismissing the review.

The application itself thus does not bring out complete picture of sequence of events that on an earlier occasion, on 25.07.2016 the case had been allowed in favour of the writ petitioner. It only talks about the subsequent order of review and an effort has been made to show this Court that there was a positive legal opinion and the appeal was filed within time, though there was an negative opinion at an earlier point of time. Rather perusal of the CM-15115-2016 filed in the review application before the learned Single Judge would go on to show that in paragraph No.3, it was mentioned as under:-

“3. That after receiving the certified copy of the order dated 25.07.2016, the Director General of Police, Punjab sought the legal opinion from the office of Advocate General Punjab, Chandigarh, vide its letter dated 22.8.2016, as to whether it is a fit case for filing further appeal or otherwise. Thereafter, the office of the Advocate General, Punjab, vide its letter dated 3.10.2016, sent its opinion, wherein it is opined that it is not a fit case for filing of Appeal, against the order dated 25.07.2016.”

The application was supported by affidavit of Shri Sukhdev Singh, PPS, the then Superintendent of Police (Headquarters), Patiala. Therefore, it is apparent that the present application for condonation of delay conceals more facts rather than showing the true picture.

In such circumstances, once the State has not come to the Court with clean hands, we are of the considered opinion that it does not deserve indulgence to be heard on merits. Accordingly, application for condonation of delay in filing the appeal is dismissed, resultantly the main appeal also stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

May 12, 2022
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes/No
Yes/No