

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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- (1)

LPA-518-2017 (O&M)

Chairperson, Punjab State Social Welfare Board

....Appellant
- VERSUS

Usha Bhanot & others

....Respondents
- (2)

LPA-519-2017 (O&M)

Chairperson, Punjab State Social Welfare Board

....Appellant
- VERSUS

Sudesh Kumari & others

....Respondents
- (3)

LPA-520-2017 (O&M)

Director, Punjab State Social Welfare Board

....Appellant
- VERSUS

Mohinder Kaur & others

....Respondents
- (4)

LPA-543-2017 (O&M)

Chairperson, Punjab State Social Welfare Board

....Appellant
- VERSUS

Prem Lata & others

....Respondents
- (5)

LPA-546-2017 (O&M)

Chairperson, Punjab State Social Welfare Board

....Appellant
- VERSUS

Bimla Devi & others

....Respondents
- (6)

LPA-567-2017 (O&M)

Director, Punjab State Social Welfare Board

....Appellant
- VERSUS

Kashmir Kaur & others

....Respondents

Date of Decision: April 21, 2022

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

Present:- Mr.K.S.Dadwal, Advocate, for the appellants.

Mr.P.K.Dwivedi, Advocate, for respondent No.1
in LPA-518, 519, 543 & 546-2017.

Mr.B.S.Kanwar, Advocate,
for respondent Nos.4 & 5 in LPA-518, 519, 543 & 546-2017
for respondent No.9 in LPA-520-2017
for respondent Nos.9 & 10 in LPA-567-2017.

None for respondent Nos.1 to 8 in LPA-520-2017
and for respondent Nos.1 to 5 in LPA-567-2017.

Ms.Monica Chhibber Sharma, Sr.DAG, Punjab.

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

CM-1049-LPA-2017 in LPA-518-2017
CM-1052-LPA-2017 in LPA-519-2017
CM-1055-LPA-2017 in LPA-520-2017
CM-1121-LPA-2017 in LPA-543-2017
CM-1127-LPA-2017 in LPA-546-2017
CM-1170-LPA-2017 in LPA-567-2017

Applications for exemption, allowed as prayed for.

CMs stand disposed of.

CM-1048-LPA-2017 in LPA-518-2017
CM-1051-LPA-2017 in LPA-519-2017
CM-1054-LPA-2017 in LPA-520-2017
CM-1120-LPA-2017 in LPA-543-2017
CM-1126-LPA-2017 in LPA-546-2017
CM-1169-LPA-2017 in LPA-567-2017

Applications for condoning the delay of 70-112 days in
refiling the appeals, are allowed in view of the averments made in the
applications, duly supported by affidavit. Delay of 70-112 days in
refiling the appeals is hereby condoned.

CMs stand disposed of.

CM-1050-LPA-2017 in LPA-518-2017
CM-1053-LPA-2017 in LPA-519-2017
CM-1056-LPA-2017 in LPA-520-2017
CM-1122-LPA-2017 in LPA-543-2017
CM-1128-LPA-2017 in LPA-546-2017
CM-1171-LPA-2017 in LPA-567-2017

Applications for condoning the delay of 1305-1306 days in filing the appeals against the order dated 01.03.2013 and the subsequent order dated 27.05.2016 have been preferred. No reply has been filed to the same by the respondents. Even otherwise, we find that the appellant-Board had approached the Co-ordinate Bench by filing LPAs which were disposed of on 23.02.2015 and it was relegated to approach the learned Single Judge by way of review petition which now has been dismissed on 27.05.2016. Thus, the appellant-Board has been pursuing its remedy in accordance with law and therefore, sufficient cause has been shown to condone the delay. Resultantly, the present applications are allowed and delay of 1305-1306 days in filing the appeals is hereby condoned.

CMs stand disposed of.

Main cases

The appellant-Board is aggrieved against the conditional order which had been passed whereby the review petitions were dismissed on 27.05.2016 by the learned Single Judge preferred against the order dated 01.03.2013.

Mr.Dadwal submits that the learned Single Judge was in error by not allowing the review petitions as there was dispute regarding

the wrong name mentioned in the affidavit filed on 01.03.2013 and therefore, only correction had been sought for withdrawal of the name given of one 'Naresh Kumari' which should have been 'Bimla Devi'.

A perusal of the paperbook would go on to show that the writ petitions had been filed by the respondents for release of 2/3rd salary of the petitioners for the period from 01.11.2006 to 31.08.2009 after revision of the salaries w.e.f. 01.01.2006 in view of the recommendations made by the 5th Pay Commission and the salary for the month of March, 2010 and the release of the retiral dues etc. were also prayed. Vide order dated 29.01.2013, the learned Single Judge was dealing with as many as 6 writ petitions wherein while noticing that the petitioners had retired but part of salary and other retiral dues were still outstanding. Accordingly, a conditional order was passed to release the balance amount of the retiral dues along with interest. The said order dated 29.01.2013 reads as under:

“The petitioner has retired from the service of respondents on 30.10.2010. She was not paid a part of her salary and other retiral dues and thus, has approached this Court.

There appears to be a dispute with regard to the apportionment towards the petitioner's retiral benefits between the respondents. However, it is not in dispute that during the pendency of this writ petition some of the retiral benefits have been paid whereas benefits like full payment of salary, benefits of pay revision and interest on such arrears is still to be paid.

List on 01.03.2013.

Meanwhile, respondents are directed to release the balance amount of salary and other retiral benefits alongwith

interest at the rates as noticed in the order dated 3.4.2012 to the petitioner and file a compliance report, failing which, the Chairperson, Punjab State Social Welfare Board, Chandigarh as well as the Secretary, Department of Women and Child Development, shall remain present in the Court and explain why exemplary costs be not imposed upon them in terms of order dated 3.4.2012.

List on 01.03.2013.

To be heard alongwith CWP No.22869 of 2011.”

Apparently, since the Chairperson of the Board was to come forth to explain why exemplary costs were not to be imposed, affidavit was filed by Shri Hussan Lal, IAS, the then Chairperson on 01.03.2013. It was admitted in the affidavit that only the interest part remained to be paid and as per the earlier order demand draft dated 28.02.2013 had already been prepared and dispatched to the writ petitioners against the interest element. It was further averred in the affidavit that the employees of the Border Area Project have not been granted the benefit of pay-revisions as they were not entitled to receive the revised pay and only one Naresh Kumari was inadvertently granted the benefit of the revised pay-scales by way of retiral benefits. It was further mentioned that necessary show cause notice had been issued as to why the amount had been released to the said Naresh Kumari and that proceedings to recover the said amount from Naresh Kumari would also be initiated. Resultantly, the learned Single Judge vide order dated 01.03.2013 put a condition that if the benefit had been wrongly given to Naresh Kumari, the same were liable to be withdrawn within a period of 3 months and in case it was not

to be done, the petitioner shall be liable to be paid the benefits forthwith. Resultantly, the petitions were disposed of as having been rendered infructuous by imposing the appropriate conditions. Relevant part of the said order reproducing with the contents of the affidavit dated 01.03.2013 read as under:

“Para Nos.3 to 6 of the aforesaid affidavit reads thus:-

“That this Hon'ble Court, vide order dated 29.01.2013, was pleased to observe that some of the retiral benefits have been paid like full payment of salary, benefits of pay revision and interest on such arrears is still to be paid. This Hon'ble Court was further pleased to direct the respondent to release the balance amount of salary and other retiral benefits alongwith interest at the rates as noticed in the order dated 03.04.2012 to petitioner and file a compliance report. It is submitted that the similar orders were passed in Civil Writ Petition Nos.23484, 23479, 23526, 23511 of 2011 and 9284 of 2012.

That it is submitted that the payment of salary and other retiral benefits has already been made to the petitioners earlier and only interest part remained to be paid. The deponent, in compliance of the orders dated 29.01.2013, has made the payment of the interest amount by way of Demand Drafts dated 28.02.2013 and the same has been dispatched to the addresses of the petitioners in different writ petitions.

That it is humbly submitted that the employees of Border Area Project have not been granted benefit of pay revision and as such they are not entitled to receive revised pay. It is submitted that only one employee namely Naresh Kumari was inadvertently

granted the benefit of revised pay scales in retiral benefits only by the Child Development Project Officer. The show cause notice has been issued to the erring official to explain as to why he had released the retiral benefits to said Naresh Kumari under the revised pay scales. It is only submitted that the proceedings to recover the amount from the said Naresh Kumari will also be initiated. Thus, the petitioners in all the similar writ petitions are not entitled to receive salary and retiral benefits under the revised pay scales.

That the deponent has duly complied with the directions issued by this Hon'ble Court in letter and spirit and as such the compliance affidavit is being filed.”

Sh. Manjeet Singh, Advocate appearing on behalf of respondent No.2 further states that the petitioners have not been granted benefit of pay revision in retiral benefits as they are not entitled to receive the same. Such benefits was given to one Naresh Kumari wrongly and the same is being withdrawn and in case such benefits could not be withdrawn from said Naresh Kumari, within three months, the petitioner shall be paid the said benefit forthwith.

In view of the averments made in the affidavit and the submission made as noticed above, this Court is satisfied that grievance of the petitioner has been redressed and the present petitions have been rendered infructuous.

Ordered accordingly.

A photocopy of this order be placed on the file of each connected case.”

Apparently, CM-8099-2014 in CWP-23484-2011 and CM-9835-2014 in CWP-23526-2011 for example in two cases were filed on

14.07.2014 well after a period of 3 months supported by affidavit of Shri A.K.Ranga, Secretary, Punjab State Social Welfare Board, Chandigarh. Thus, a clarification was then tried to be given in the said applications that it was not Naresh Kumari but Bimla Devi who had been granted the benefits wrongly. The Learned Single Judge dismissed the applications on 12.08.2014 by coming to the conclusion that there was nothing to show the basis on which it could be said that the name of Naresh Kumari was wrongly mentioned instead of Bimla Devi and the applications were filed only to wriggle out of a contempt petition alleged to be pending in this Court. The said order dated 12.08.2014 reads as under:

“Prayer in this application is to correct the name of “Bimla Devi” instead of “Naresh Kumari” as referred to in the judgment dated 1.3.2013 whereby CWP No.23484 of 2011 along with a bunch of writ petitions was disposed of.

At this stage, it may be noticed that the aforesaid order was passed on the basis of an affidavit filed on behalf of the respondents and the learned State Counsel representing the State at that time had made submissions on the basis of the aforesaid affidavit.

In para No.4 of the application, it has been stated that benefit of revision of pay scale was extended to Smt.Bimla Devi instead of Naresh Kumari and her name was wrongly mentioned. However, there is nothing before this Court on the basis of which it can be said that the name of Naresh Kumari was wrongly mentioned instead of Bimla Devi. It seems that the instant applications have been filed only to wriggle out of a contempt petition alleged to be pending in this Court.

In view thereof, prayer made in this application is rejected.”

It is thus apparent that the conditional order of the Learned Single Judge had already come into effect as the amount had not been withdrawn from either Naresh Kumari or Bimla Devi within the prescribed period of 3 months and thus, there was no right of the Board to file the said applications.

Not satisfied with the said litigation which should have, in normal circumstances, come to an end, LPAs were preferred against the said order which, as noticed, were disposed of with liberty on 23.02.2015 to file appropriate applications before the Learned Single Judge. Thereafter, in the review applications filed on 13.10.2015, explanation was sought to be given by the then Chairperson Smt.Varinder Kaur Thandi, the then Chairperson, that Bimla Devi was the person who had received the excessive amount and that she had been asked to refund the excess amount vide order dated 31.03.2013 and that efforts were being made to recover the amount from her positively. It is to be noticed that Bimla Devi is one of the petitioners and therefore, the Board could not contend that the excessive amount was paid to her and it was not Naresh Kumari as per the original affidavit filed.

It is in such circumstances we are of the considered opinion that the Learned Single Judge rightly came to the conclusion on 27.05.2016 while dismissing the review applications that it was only an attempt to argue the case again and that no correctional surgery had been done by any administrative order at any stage prior to the institution of

the applications. It was also held that the Board would be free to recover the monetary value of the dispute from the erring officials who mislead this Court and filed a false affidavit to defeat the claim of the petitioners, which apparently has not been done.

However, the Board was protected to the extent that the decision would be confined to those 6 cases and not binding upon persons other than the writ petitioners in the said cases. The said conditional order reads as under:

“This order shall dispose of aforementioned applications for condonation of delay of more than 700 days in filing the respective review applications to seek review of the order passed by this Court on 01.03.2013.

Having heard learned counsel for the parties, I find the explanation given regarding sufficient cause for the delay of more than 700 days in filing the review application to be far from satisfactory and therefore the applications deserve to be dismissed as time barred.

Apart from this, the argument of Mr. Dadwal touching the merits of the case that benefit of Section 14 of the Limitation Act deserves to be given to the Board merits rejection since the Board has not pursued its remedy in a bona fide manner or with reasonable and due diligence. Besides, in view of nature of the request for review it would amount to change of opinion and a vain effort is made to argue the case full length which is not permissible with passing of multiple orders by this court on the subject matter at different invocations by the Board. If a mistake was made in name of persons then no correctional surgery was done and presented before this Court by way of an administrative order at any stage prior to the presentation of this application, which the

Board was always to free to pass even in the face of pending litigation.

For the above reasons, I would dismiss the application/s.

However, at best the Board will be free to recover the monetary value of the dispute from the pockets of those erring officials, who mislead this Court and filed a false affidavit only to defeat the claims of the petitioner(s) and on which affidavit the case of the petitioners rested.

However, the prayer of Mr. Dadwal is accepted save and limited to the extent that the relief in these cases will be confined to these six cases and in any future litigation on the point and both the parties will have a right to present their cases in accordance with law, but in litigation involving persons other than the present petitioners, who are protected by principles of res judicata.

In any case, no substantial injustice has been done in the matter calling for exercise of review jurisdiction under Section 114 read with Order 47 Rule 1 CPC.”

We do not find any irregularity or illegality in the said order since it is to be noticed for the sake of repetition that when the order was passed on 01.03.2013 putting the necessary condition of 3 months. No effort was made by the Board till 14.07.2014 and well after a period of almost 1 year and 4 months and in an effort to wriggle out of the statement made in the affidavit filed earlier the applications were preferred, supported by affidavit of the Secretary but not of the Chairperson. A perusal of the same would go on to show that contempt proceedings had been initiated and for that reason alone the applications were filed. In the CM applications filed also no such details were given

regarding the benefits which had been wrongly extended to Bimla Devi or that any such notice had been issued to her. The conditional order thus had come into play and therefore, we are of the considered opinion that the Learned Single Judge was correct in dismissing the applications at that stage, as it was only an attempt to wriggle out of the earlier affidavit given and the time stipulated therein had lapsed since long. In such circumstances, no case is made out to interfere in the orders which are subject matter of challenge.

Resultantly, the present Letters Patent Appeals are dismissed in the peculiar facts and circumstances of the case as narrated above, especially when the appellant-Board has already been protected to the extent that the order should not be treated as a precedent in the case of other employees.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

APRIL 21, 2022
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No