

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

LPA No. 256 of 2018 (O & M)

Date of decision: 18.08.2022

State of Punjab and others

....Appellant(s)

Versus

Bimla Singla

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Abhay Pal Singh Gill, AAG, Punjab,
for the appellants.

Mr. Ashok Kumar Nabhewala, Advocate,
for the respondent.

G.S.SANDHAWALIA, J.

CM-652-LPA-2018 has been filed for condonation of delay of 363 days in filing the appeal against the judgment dated 13.01.2017 passed by the learned Single Judge in CWP No. 7772 of 2015, Bimla Singla vs. State of Punjab and others.

It has been averred in the application that the certified copy of the judgment was received in the office of appellant No.2 on 21.02.2017 and legal opinion was received from the office of the Advocate General on 20.03.2017. The sanction was taken apparently prior to legal opinion which was on 21.02.2017 and received on 07.03.2017 and the file was sent for preparing the draft for filing the appeal, which was prepared on 10.04.2017. The office of the Director, Higher Education is stated to have been shifted from Sector 17, Chandigarh to its new building on 04.05.2017 and thereafter on 17.11.2017 to Mohali. During shifting, some official record was

on 26.12.2017. The case was then sent to the Legal Cell of the department to prepare the draft and documents to file the appeal, which were provided to the Legal Cell on 10.04.2017.

It is a matter of record that the appeal was only filed on 08.02.2018 and there is no explanation as such given for the period between April, 2017 till the filing of the appeal. Even otherwise, it is to be noticed that for the earlier period also the explanation is lame that the LPA had been prepared on 10.04.2017 but was not filed and bald averment has been made that during shifting some official record has been misplaced. Nothing has been brought on record that any action was taken against any person for the misplacement of the record.

Another aspect which is to be noticed is that the dispute before the learned Single Judge was qua the claim of counting of *ad hoc* service towards seniority and promotion for the period pertaining from August, 1979 till the date of regularization on 05.10.1995. The respondent-writ petitioner was retired on 29.02.2012 and from the perusal of the order dated 07.01.2017 which has now been attached alongwith the reply, it would be clear that her service from 22.08.1979 to 04.10.1995 was considered due to additional qualifications of M.Phil and her pay was fixed to a senior scale from 01.09.1987. The grade pay was also fixed and her pay was again fixed by the Principal, Government Girls College, Patiala. The relevant part of the order dated 07.01.2017 fixing her pay at various stages from 1987 onwards read thus:-

*“Regarding from the order no. 31/5-2013
Services (7) dated Chandigarh 15.12.2016 from
Director Education Department (College) Punjab, the
service which had been done by Smt. Bimla Singla*

(RTD.) Associated Professor (Economics) Dated from 22.08.79 to 04.10.1995 continuously adhoc service without any (break) on order of Govt. dated 05.10.1995 on regular joining and due to her additional qualification of M.Phil and attention is drawn towards her leave without pay of 10 days and pay is fixed from 01.09.1987 towards senior scale and from 1.09.1994 towards selection grade had been awarded, on completion of five year services in selection grade pay is hereby fixed at the stage of 14940/1. On behalf of pay is again fixed as detail given below that on joining regular service from 05.10.1995 and her additional Qualification of M.Phil at that time taken leave without pay of ten days and Senior Scale is fixed from 1.09.1987 and selection grade from 01.09.1994 is hereby awarded. On completion of five year service in selection grade pay has been fixed at the stage of 14940/-. That due to that concerned retired officer pay has again fixed as detail given below: ”

Keeping in view the above fact that the exercise has already been done rather prior to the judgment of the learned Single Judge also, which fact obviously was not brought to the notice of the learned Single Judge, we are of the considered opinion that for the said reason also, no case for condonation of delay is made out. It is settled principle that delay has to be satisfactorily explained and the State cannot be placed at a better pedestal than a private litigant. The principles of condonation have been laid down in ***B. Madhuri Goud vs. B. Damador Reddy, (2012) 12 SCC 693*** and followed in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649***. It was specifically held that the State or a public body or an entity representing a

such cannot be treated as a non serious matter and if delay as such which is exhibited in a non-challant manner which requires to be curbed. The said principles read thus:-

“15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to

the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

Thus, keeping in view the above, we are of the considered opinion that the delay has not been sufficiently explained for two different periods, as discussed above and thus, no case is made out for condonation of delay of 363 days. Resultantly, the application as well as the appeal, both stand dismissed on that account.

(G.S. SANDHAWALIA)
JUDGE

18.08.2022
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No