

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

105+232

**LPA-1783-2019 (O&M)
Decided on: 14.12.2022**

State of Punjab & others

.....Appellant(s)

Versus

Brij Bala

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr. Rohit Ahuja, DAG, Punjab, for the appellants.

Mr.Ramesh Sharma, Advocate, for the respondent.

G.S. Sandhawalia, J. (Oral)

CM-1989-LPA-2022

Application for placing on record reply filed on behalf of the respondent is allowed, in view of the averments made in the application duly supported by affidavit. Said document is taken on record, subject to just exceptions. Office to append the same at appropriate place.

CM stands disposed of.

LPA-1783-2019 (O&M)

The present appeal has been filed by the State whereby consideration is to the order dated 03.08.2018, passed by the learned Single Judge in CWP-14661-2013 which is barred by 418 days.

Application for condonation of delay has been opposed by the writ petitioner- respondent by filing reply.

A perusal of the application for condonation of delay would go on to show that after the judgment was passed by the learned Single Judge dated 03.08.2018, copy of the same had been received only on 26.09.2018 in the diary section. The matter was taken to the office of the Advocate General of Punjab and vide letter dated 19.11.2018, it was

opined that the case was not fit for filing of an appeal. The Dealing Assistant had put up the file to issue speaking order to give retiral benefits to the writ petitioner from the date of retirement i.e. 31.02.2012 and to fix the pension in the light of the judgment and the opinion of the Advocate General. The file was further put up for legal opinion on 29.11.2018 and the matter was put up for further proceedings with the Director Public Instructions (S.E.) Punjab which was received back on 04.01.2019 with the remarks to further discuss the matter. Relevant file was again sent back to the office of the Advocate General on 11.03.2019 and thereafter, sanction was taken on 09.04.2019 and decision was taken by the Secretary, School Education on 10.10.2019 for filing the appeal, which was filed on 23.10.2019.

In the reply filed, it has been averred that on account of contempt petition bearing COCP-2848-2019 and on account of notice of motion which was issued for 30.09.2019, the appeal was filed after a period of one year and therefore, the delay is intentional. It has also been highlighted that legal opinion was given by the Advocate General that it was not a fit case for filing the reply.

Keeping in view the above, we are of the considered opinion that the explanation which has been given is contrary to the extent that firstly it was not a fit case for filing an appeal. Thereafter, the matter was dragged right from November, 2018 till 09.04.2019 whereby decision was taken to take sanction and file the appeal. Thereafter, from 09.04.2019, there has been further delay in as much as the appeal was only filed on 23.10.2019, for which also, no apparent explanation has been given.

The issue of limitation specially qua private litigants and the State has always been a matter of debate. The Apex Court in **State of Nagaland Vs. Lipok AO and others, 2005 (3) SCR 108**, noticed that certain amount of latitude is to be given to the Government and there should be little play in the joints. It was held that State cannot be put to the same footing as individuals as it has an impersonal machinery working through its officers and servants. Counsel for the State has relied upon **Special Tehsildar, Land Acquisition, Kerala Vs. K.V.Ayisumma, 1996 (10) SCC 634**, **N.Balakrishan Vs. M.Krishnamurthy, 1999 (1) PLR 462** and **State (NCT of Delhi) Vs. Ahmed Jaan, 2008 (14) SCC 582**.

In **Pundlik Jalam Patil (D) by LRs. Vs. Executive Engineer Jalgaon Medium Project & another, (2008) 17 SCC 448**, the Apex Court set aside the orders of the Bombay High Court, wherein the inordinate delay of 1724 days had been condoned and held that the Limitation Act does not provide different periods to the Government. It is only in the case of fraud, certain amount of latitude had to be granted and the State could not take advantage of its negligence since it is presumed that it knew its right.

Similarly, in **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459**, the same view was taken by setting aside the order of the High Court, which had condoned the delay of 4 years in filing of the appeal. It was held that the law of limitation is based on a public policy and the purpose is that the parties do not to resort to dilatory tactics and seek the remedy without delay. In **Office of the Chief Master General & others**

Vs. Living Media India Ltd. and another, (2012) 3 SCC 563, it was held that the law of limitation binds everyone including the Government and in the absence of any proper explanation, the delay is not liable to be condoned, which was of 427 days. Relevant portion of the said judgment reads as under:-

“12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The

government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

In **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157**, the order condoning the delay of 7 years and 108 days in filing the appeal was set aside by the Apex Court, on account of the fact that successful litigant has acquired certain rights on the basis of the judgment under challenge. If the applicant was found to be negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In **B. Madhuri Goud Vs. B. Damodar Reddy, (2012) 12 SCC 693**, it was held that the law of limitation affects a particular party with rigour and the rules of limitation were for fixing a lifespan for redressal of the legal injuries. In **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649**, the following principles were laid down:

“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 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.”

Recently in **State of Jharkhand through Special CBI**

Vs. Lalu Prasad & Lalu Prasad Yadav, 2017 AIR (Supreme Court) 3389, it was held that the State and private individuals

should not be differentiated in the matter of delay, while noticing the observations earlier made in the case of Lipok AO (supra).

The argument raised by the State Counsel that State should be placed at a different footing was dealt in Lipok AO (supra). Resultantly, the position which was in favour of the State for some time has been duly reversed.

Accordingly, we do not find any ground to entertain the application for condonation of delay and the same is hereby dismissed. Resultantly, the main appeal also stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

14.12.2022
sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No