

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

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**CM-4021-LPA-2017 in/and
LPA-1865-2017 (O&M)**

Housing Board Haryana, Panchkula through its Chairman and another

.....Appellants

Versus

Krishan Chander and others

.....Respondents

(2)

**CM-4032-LPA-2017 in/and
LPA-1870-2017 (O&M)**

Housing Board Haryana, Panchkula through its Chairman and another

.....Appellants

Versus

Atam Parkash Setia and others

.....Respondents

(3)

CWP-16880-2020

Yatinder Kumar Gupta and others

..... Petitioners

Versus

State of Haryana and others

.....Respondents

Decided on : 19.05.2022

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

Present:- Mr. Deepak Balyan, Advocate and
Mr. Viresh Dahiya, Advocate
for the appellant (in LPA-1865-2017 & LPA-1870-2017)
for respondents No.4 & 5 (CWP-16880-2020).

Mr. Manish Kumar Singla, Advocate,
Ms. Shikha Singla, Advocate and
Mr. Dinesh Kumar, Advocate
for the petitioners (in CWP-16880-2020) and
for the respondents (in LPA-1865-2017 & LPA-1870-2017)

Ms. Palika Monga, DAG, Haryana.

G.S. Sandhawalia, J. (Oral)

The present judgment shall dispose of three cases i.e.
LPA Nos.1865 & 1870 of 2017 and CWP No.16880 of 2020.

2. In the present set of cases, the appeals have been filed by the appellant-Board, wherein directions have been issued by the learned Single Judge in CWP No.27736 of 2013 titled *Krishan Chander & others Vs. State of Haryana & others* and CWP No.12263 of 2014 titled *Atam Parkash Setia Vs. State of Haryana & others*, on 06.10.2016 that the writ petitioners, who were Board employee were entitled for medical reimbursement at par with the Haryana State Government employees in terms of the Rules applicable to the Haryana State Government employees until and unless regulations regarding medical reimbursement are framed by the Haryana Housing Board (in short 'Board')

3. In the said writ petitions challenge was to the order dated 21.08.2013 (Annexure P-5) wherein the Principal Secretary to the Government of Haryana had written to the Board that reimbursement of indoor/outdoor medical expenses is admissible only to pensioners/family pensioners of the State Government/Public Enterprises and not to any other category. The reasoning given was that in case of the State Public Enterprises where Contributory Provident Fund Scheme is applicable, the facility of reimbursement of medical benefits is given at the time of retirement of such

employees and allowing such facility entails huge unforeseen liabilities for all times to come, which the State Public Enterprises may not be in a position to meet from their resources.

4. It is not disputed that in pursuance to the directions issued by the learned Single Judge and the interim orders passed by the coordinate Bench in the present appeals on 05.12.2018, the Board, in view of the previous sanction given by the Government vide letter dated 07.01.2020 issued the notification dated 28.01.2020 (Annexure P-7) wherein the regulations of Haryana Housing Board (Recruitment and Conditions of Service of Officers & Employees) Regulations, 2006 were amended. Thus, the employees were placed at par and would be governed by the corresponding policy but the facility was not admissible to the retired members of the service. The said notification reads as under:

“HARYANA GOVERNMENT, HOUSING DEPARTMENT
Notification

The 28th January, 2020

No.9/5/2020— I.— Housing. In exercise of powers conferred by clause (d) of Section 74 of the Haryana Housing Board Act, 1971, Chief Administrator, Housing Board Haryana, with the previous sanction of the State Government conveyed vide memo No.20/28/2019/Accts./HDPE(FD) dated 7th January, 2020 hereby makes the following regulations further to amend the Haryana Housing Board (Recruitment and Conditions of Service of Officers and Employees) Regulations, 2006.

1. These regulations may be called the Haryana

Housing Board (Recruitment and Conditions of Service of Officers and Employees) Regulations, 2019.

2. In respect of pay, leave and all other matters not expressly provided for in these regulations, the member of Service shall ordinary be governed by the corresponding rules of the State Government, the following entry be inserted namely:-

In respect of medical facilities i.e. fixed medical allowance, reimbursement of outdoor expenses incurred on chronic disease and or indoor treatment, the member of service shall ordinary be governed by the corresponding rules of the State Government whereas this facility will not be admissible to the retired members of service.”

5. CWP-16880-2020 thus challenges this portion whereby the facility is not admissible to the retired members of the service.

6. The appeals filed by the Board, in our considered opinion are firstly not liable to be entertained on account of the inordinate delay of 313 days. As noticed, the writ petitions were decided on 06.10.2016 and the certified copies are stated to have been supplied on 23.12.2016 and received on 02.01.2017 with the Board. It has been averred that the case was placed for legal opinion whether the same was fit for filing an appeal and thereafter, it was decided to file the LPA after the approval by the competent authority. Counsel, as such, was engaged on 07.04.2017 after a period of 5 months. Nothing has been mentioned as to whether opinion was in the positive for filing the appeal by the Legal Cell and there was only an averment that it was decided to file after

approval by the competent authority. It is stated that counsel then applied for the certified copy of the complete paper-book and the same was prepared on 03.08.2017. Admittedly, the appeals were then filed on 14.09.2017.

7. It is apparent that there is no explanation given between 02.01.2017 till the time the matter was sent to the counsel on 07.04.2017. Even thereafter also, the certified copies though were applied at a subsequent point of time and the appeals were then filed on 14.09.2017, which apparently shows that the Board was not interested in prosecuting the case. Rather the same was fortified by the fact that in compliance of the directions of the learned Single Judge, notification dated 28.01.2020 (Annexure P-7) has also been issued. The law has been laid down by the Apex Court repeatedly on the issue of limitation and reference can safely be made to the principles laid down in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649**, which read as under::

“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.”

8. Accordingly, we are of the considered opinion that the appeals are patently barred and therefore are liable to be dismissed on that account and it is ordered accordingly. Resultantly, the

appeals filed by the Board are dismissed.

9. While coming to the writ petition wherein challenge has been raised to the notification dated 28.01.2020 whereby retired members of the service have been left out of the said benefits, the defence taken by the Board is that the service conditions of the employees/writ petitioners are not at par with the State Government employees and they cannot claim parity and equality. The pension scheme applies to ones' who have not been given one time medical allowance at the time of retirement whereas the Board was paying one-time amount at the time of retirement as the pension scheme does not apply to its employees.

10. The said stand is fallacious to the extent that as per Clause 5 of the letter of appointment dated 11.07.1977 (Annexure P-1) the petitioners were entitled to medical attendance subject to such regulations as adopted by the Haryana Government. Clause 7 provides that till the time the Board frame its own service rules and regulations in all other matters not expressly provided for, they would be governed by the Haryana State Civil Service Rules as applicable to the Haryana Government employees. The said clauses read as under:

“5. Medical Attendance:-

You will be entitled to free Medical Attendance for yourself and for the members of your family who are wholly dependent upon you and are actually residing with you except medical examination for first entry into Board's

service for which you will have to pay the requisite medical fee, subject to such regulations as are adopted by the Haryana Government.

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7. Till such time, the Board frames its own service Rules and Regulations in all other matters not expressly provided for in this offer of appointment, you will be governed by the Haryana State Civil Services Rules as applicable to Haryana Government employees.”

11. The learned Single Judge had also noticed that in the year 2006, the Board had framed the regulations which provided that for all other matters not expressly provided in the regulations, the members of the service shall be ordinarily governed by the corresponding rules of the State Government. Regulation 13 reads as under:

“13. In respect of pay, leave and all other matters not expressly provided for in the regulations, the member of the service shall ordinarily be governed by the corresponding rules of the State Government”

12. Learned Single Judge has also relied upon the opinion of the learned Advocate General, Haryana wherein the issue of having a distinction between the retired Government employees and retired Housing Board employees had been opined upon to come to the conclusion that it was for the Board to take a decision at its own level, but it was not justified. The said opinion reads as under:

“In my considered opinion, “In view of the terms and conditions of the appointment letter, as reproduced above

and the various instructions issued by the State from time to time regarding medical reimbursement, it may not be possible to draw a legally sustainable distinction between retired Government employees and retired housing Board employees in so far as the applicability of Medical Rules. It is also important to note that some Boards and Corporations i.e. Haryana Warehousing Corporation, Haryana State Electricity Board, Haryana Financing Corporation and Haryana State Khadi and Village Industries Board and allowing medical reimbursement facility to their retired employees on the pattern of the retirees of the State Government. However, it is also mentioned in the Noting at page-15 that some other Boards and Corporation are not allowing the facility of medical reimbursement to their retirees. However, this question is not being examined or opined upon.

In view of the fact that the Housing Board, Haryana is certainly an instrumentality of a welfare State under Article 12 of the Constitution of India, the chances of raising a defence of a distinction, as noted above, between retired employees of the Board and retired State Government employees in so far as medical reimbursement is concerned, may be very bleak in a Court of law. However, it is for the Board to take a decision at its own level in the matter, more so, in view of the fact that a reference has already been made to the Haryana Bureau of Public Enterprises by the Board in this regard.

The opinion is rendered in the above terms and the file is sent back herewith.”

13. It was in such circumstances directions had been issued by the learned Single Judge to extend the same benefit to the serving and retired employees as applicable to State Government employees

until and unless a regulation is framed by the Board. As noticed, the amendment had necessarily been made on 28.01.2020 but has created a different class of retired employees who are not to be given the said benefits whereas the similarly situated serving employees of the Board were given the said benefits. The same is not applicable to the Government employees and therefore, the distinction which has been made to the retired members of the service of the Board is hit by Article 14 of the Constitution of India as there is no intelligible differentia made out to put them in a different classification. The Board cannot shrug off its responsibility to provide the benefits for its retired employees on account of financial difficulties as the Board has taken the services of the employees during the youthful days and when medical reimbursement is required after retirement on account of aging process which the human being has to undergo, they then are put in a different class and rather when they require the said benefit more than the ones' who are serving. No such distinction could be pointed out that State Government employees who had retired were also liable to be treated likewise.

14. In such circumstances, we are of the opinion that the amendment which has been made whereby facility is not admissible to the retired members of the service is ultra-vires of Article 14 of the Constitution of India and deserves to be struck down and it is ordered accordingly. The appellant-Board shall continue to grant the

same benefits of medical allowance as are being given to the members of the service by the State whether they are retired or serving. The Board shall process the case of the employees accordingly without any distinction as such and make payments within a period of 2 months from the receipt of the certified copy of this order.

15. Mr. Singla is well justified to submit that in view of Regulation 13 once the serving member was to be governed by the corresponding rules of the State Government, merely on retirement, it would amount to a withdrawal of his vested rights. Therefore, he has rightly relied upon the judgment of the Apex Court in **Punjab State Co-operative Agricultural Development Bank Ltd. Vs. Registrar, Co-operative Societies and others, 2022 (1) SCT 405.**

16. In the said case the Apex Court was dealing with the issue of retired employees and the service conditions governed by the Punjab State Co-operative Agricultural Land Mortgage Banks Service (Common Cadre) Rules, 1978 and employees who had opted for pension had become members of the pension scheme. Their interests were varied on account of unviable financial constraints and therefore, on account of discontinuing the pension scheme, the matter had been challenged. The learned Single Judge of this Court had decided the issue in favour of the employees which was upheld by the Division Bench on the ground that the amendment had taken

away the vested and accrued rights of the employees to get pension and that too with retrospective effect, which would be violative of Article 14 of the Constitution of India. Same was subject matter of challenge before the Apex Court by the appellant-Bank and the order of the Division Bench was upheld and the stand of financial difficulty of the Bank was rejected. Relevant portion of the judgment reads as under:

“54. So far as the submission made by learned counsel for the appellant about the financial distress of the appellant Bank to justify the impugned amendment to say that it may not be possible to continue the grant of pension any more is concerned, suffice to say, that the rule making authority was presumed to know repercussions of the particular piece of subordinate legislation and once the Bank took a conscious decision after taking permission from the Government of Punjab and Registrar, Cooperative, introduced the pension scheme with effect from 1 st April 1989, it can be presumed that the competent authority was aware of the resources from where the funds are to be created for making payments to its retirees and merely because at a later point of time, it was unable to hold financial resources at its command to its retirees, would not be justified to withdraw the scheme retrospectively detrimental to the interests of the employees who not only became member of the scheme but received their pension regularly at least upto the year 2010 until the dispute arose between the parties and entered into litigation.

55. In our view, non-availability of financial resources would not be a defence available to the appellant Bank in

taking away the vested rights accrued to the employees that too when it is for their socioeconomic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour.”

17. The said judgment would also be squarely applicable to the facts and circumstances of the present case. Accordingly, CWP-16880-2020 is allowed with the abovesaid directions passed in paragraph No.14.

(G.S. SANDHAWALIA)
JUDGE

May 19, 2022
Naveen

(VIKAS SURI)
JUDGE

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