

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

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LPA No.1668 of 2019 (O&M)

Hanuman and others

... Appellant (s)

Versus

Haryana Vidyut Prasaran Nigam Ltd. and others

... Respondent (s)

(2)

LPA No.735 of 2018 (O&M)

Rajesh Kumar and others

... Appellant (s)

Versus

Haryana Vidyut Prasarn Nigam Ltd. and others

... Respondent (s)

Decided on : 19.04.2022

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

Present: Mr. S.S. Sahu, Advocate for the appellants.

G.S. Sandhawalia, J. (Oral)

CM-3739-LPA-2019 in LPA-1668-2019

Application for condoning the delay of 170 days in refiling the appeal is allowed, in view of the averments made in the application, duly supported by affidavit of the appellant No.1. The delay of 170 days in refiling the appeal is condoned.

CM stands disposed of.

CM-2031-LPA-2018 in LPA-735-2018

Application for condoning the delay of 7 days in refiling the appeal is allowed, in view of the averments made in the application, duly

supported by affidavit of the appellant No.1. The delay of 7 days in refileing the appeal is condoned.

CM stands disposed of.

Main appeals (O&M)

In both the appeals i.e. LPA No.1668 of 2019 and LPA No.735 of 2018 applications have been filed for seeking permission to file LPA under Rule 2 Chapter 1, Part-A, Vol. 5 of High Court Rules and Order read with Section 151 CPC.

The applicants claimed that they were selected for the post of Shift Attendants and Assistant Lineman, which appointment had been set aside in an earlier round of litigation and had been upheld by the Apex Court. It is submitted that the respondent had committed irregularities while selecting the private respondent, which was challenged by way of filing the writ petition bearing **CWP No.15641 of 2009 'Haryana Rajya Bijlee Board Se Barkhast Karamchari Vs. Haryana Vidyut Prasarn Nigam Ltd. and others**, in which the impugned order was passed.

It is their claim that they were not writ petitioners and filed an application to implead themselves as party, which had been moved in the year 2010 and had been dismissed on account of delay and laches by the learned Single Judge. It is their claim that they could not be denied the benefit, as they were similarly placed by the writ petitioners, whose selection had been aside and, therefore, challenged the selection.

LPA-1668-2019 is also time barred by 330 days. The explanation as such has been given that against the judgment passed in **CWP No.15641 of 2009 (supra)** decided on 21.12.2017, the applicants could not prefer the appeal in time, since earlier they had signed the power of attorney wherein Hem Raj, who was looking after the interest of the group. They had then come to know that no LPA had been filed except **LPA No.735 of 2018 titled 'Rajesh Kumar and others Vs. Haryana Vidyut Prasarn Nigam Ltd. and others'**. Thus, sufficient cause as such sought to be made out by filing an appeal alongwith an application seeking permission to file the appeal, since applications for impleadment had also been dismissed by the learned Single Judge.

A perusal of the paper-book would go on to show that the original writ petitioners as such had challenged the selection and appointment of the private respondents, who had been arrayed as party from Serial No.5 to 287. The challenge had been raised on the ground that it was against the directions of the Apex Court and were in excess of the advertised posts and the consideration was sought of the Advertisement dated 02.03.1992.

It is not disputed that the original writ petitioners had not preferred any appeal against the order of the learned Single Judge. The learned Single Judge had noticed that the earlier decision had been finalized by the Apex Court on 18.02.1997 (Annexure P-3) in **SLP (Civil) No.11946-11947 of 1996**. It was

also noticed that a contempt petition bearing **Contempt Petition (Civil) No.119 of 1999** had also been disposed of on 18.11.1999 (Annexure P-4) by the Apex Court.

The first leg of litigation had been started in the year 2001 and the learned Single Judge had rejected the application and it was noticed that services of the petitioners had been terminated in the year 1997, but they had not approached the Court and, therefore, the writ petition was barred by delay and laches, since the selection process was of the year 1997. The matter had already been challenged in CWP No.4376 of 2001, which had been withdrawn on 03.09.2009 with liberty to file a fresh petition. It was noticed that the re-selection was conducted in terms of the earlier orders passed and, therefore, the factum of the applicants being impleaded as petitioners also was not permissible, as it was filed at a belated stage, having been filed between the year 2009 to 2016, which was far beyond the date of termination of the applicants in the year 1997.

On 02.09.2019 in LPA No.735 of 2018, the following order was passed by the Coordinate Bench:-

Learned counsel for the appellant, at the outset, states that an identical issue was pending before the Hon'ble Apex Court wherein arguments have been heard and judgment has been reserved.

Propriety demands that outcome of the proceedings before the Hon'ble Apex Court be awaited.

To be listed on 15.10.2019.”

The matter was repeatedly adjourned thereafter at the

instance of counsel for the appellants. Eventually on 14.03.2022 the following order was passed:-

“Counsel has very fairly conceded that the matter has also been dismissed by the Apex Court and prays for time to place the said order on record and to address arguments.

List on 19.04.2022.”

Today, counsel has placed on record the order dated 14.08.2019 passed in the **Review Petition (Civil) Diary No (s).30565 of 2018**, whereby the review petition was dismissed, which reads as under:-

“Permission to file Review Petition is granted.

There is enormous delay of 6815 days in filing the Review Petition for which no satisfactory explanation has been given. Even otherwise, we do not find any merit in the Review Petition. The Review Petition is dismissed on the ground of delay as well as merits.”

Thus, an effort was also made by the appellants to get the matter re-opened before the Apex Court by filing the above said review application, but remain unsuccessful.

In such circumstances, since the present litigation had been rightly nipped in bud by the learned Single Judge, we are of the considered opinion that no case is made out to allow the applications for granting permission to file LPA or either to condone the delay in LPA-1668-2019. The matter was settled before the Apex Court way-back and the present litigation is only an attempt to get the same alive, which is not liable to be permitted.

Accordingly, there is no merit in the present applications and the same are dismissed. Resultantly, the appeals also stand dismissed.

(G.S. SANDHAWALIA)
JUDGE

April 19, 2022
Naveen

(VIKAS SURJ)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes/No
Yes/No