

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-6285-2023(O&M)

Date of decision : 08.08.2023

Tarsem Singh

... Petitioner

Versus

The State Transport Commissioner and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Lekh Raj Sharma, Advocate,
Mr.Abhishek Sharma, Advocate and
Mr.Abhikant Vats, Advocate
for the petitioner.

Mr.Ferry Sofat, Addl.A.G. Punjab.

Mr.Anurag Chopra, Advocate
for respondent no.5.

VIKAS BAHL, J.(ORAL)

CM-12828-CWP-2023

1. This is an application under Section 151 CPC for preponment of the date of hearing of the main petition which is listed for 30.11.2023.

2. For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the main petition is preponed from 30.11.2023 to today for hearing.

CWP-6285-2023 & CM-12829-CWP-2023

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari for setting aside / modifying impugned order dated 15.12.2021 (Annexure P-1).

2. Learned counsel for the applicant-petitioner has moved an

application i.e. CM-12829-CWP-2023 for withdrawal of the main petition so as to avail the remedy of appeal before the appropriate court /authority i.e. State Transport Appellate Tribunal, Punjab.

3. Learned counsel for the petitioner has submitted that the petitioner would file the appeal within a period of one month from today and prays that the delay be condoned. It is submitted that in the present case, meetings of the Regional Transport Authority were held on 15.12.2021 but a perusal of page no.42 of the paper book would show that no date of pronouncement of the order has been mentioned. It is submitted that the order was not dictated in the presence of the parties and thus, it was not possible for the petitioner to find out as to when the said order had been pronounced moreso, when no date has been mentioned with respect to the pronouncement. It is further submitted that on a conjoint reading of Section 80 of the Motor Vehicles Act 1988 and Rule 85 of the Punjab Motor Vehicles Rules 1989, the same would show that the period of limitation of 30 days is to start from the date of the receipt of the copy of the said order, meaning thereby that the order was supposed to be communicated by the authority to the petitioner and the said order was never communicated by the authority to the petitioner. It is further submitted that the moment the petitioner learnt about the said order, the petitioner moved an application for getting a copy of the said order on 16.01.2023 and the same was supplied on 15.03.2023 and immediately thereafter, the present writ petition was drafted and filed on 21.03.2023 and was listed for hearing on 27.03.2023 on which date, a coordinate Bench of this Court was pleased to issue notice of motion and notice regarding stay. It is submitted that in such circumstances, the delay deserves to be condoned and at any rate, after

he now seeks to withdraw.

4. Learned counsel for respondent no.5 has submitted that the delay in the present case be not condoned and relied upon the judgment of the Hon'ble Full Bench of this Court in ***Jagtar Singh vs. The State Transport Appellate Tribunal and others*** passed in ***CWP No.8229 of 2007 decided on 30.01.2009*** to contend that it is not the date of receipt of the order, which is the starting point of limitation but it is the date of knowledge of the same, which is the starting point of limitation. It is further submitted that in the present case, respondent no.5 had started plying the route in the last week of December, 2021 and the petitioner, who is also desirous of a permit for the same route, would have known about the same and thus, had constructive knowledge and therefore, the delay cannot be condoned.

5. With respect to the aspect of limitation, this Court has heard learned counsel for the petitioner as well as counsel for respondent no.5. The Hon'ble Full Bench of this Court in ***Jagtar Singh's*** case (supra) in the concluding portion of the judgment had observed as under:-

“Whether or not the aggrieved party had any such knowledge will, however, be a matter to be seen by the Tribunal in each case depending upon its peculiar facts and circumstances. It will not, therefore, be necessary or proper for us to enumerate exhaustively situations in which such knowledge can be imputed to the party aggrieved, while examining whether or not the appeal is within limitation.

The reference is answered accordingly. The petition shall now be placed before the Appropriate Bench for hearing and disposal in accordance with law.”

6. A perusal of the same would show that it was observed by the Hon'ble Full Bench that whether or not, the aggrieved party has any knowledge, would be a matter to be seen by the Tribunal in every case depending upon its peculiar facts and circumstances while examining

whether or not, the appeal is within limitation. Thus, while permitting the petitioner to withdraw the present petition and granting liberty to the petitioner to file an appeal, the question as to whether or not, there is any delay from the date of the passing of the impugned order till 21.03.2023, the date when the present writ petition was filed, would be considered by the Tribunal. It would be open to both the parties to raise all pleas, which have been raised before this Court and are available to them, before the said authority. The benefit of the proceedings initiated before this Court i.e., from 21.03.2023 to 08.08.2023 would be given to the petitioner only in case the petitioner files an appeal within a period of one month from today.

7. Pending miscellaneous application, if any, shall stand disposed of in view of the abovesaid order.

August 08, 2023

Davinder Kumar

(VIKAS BAHL)
JUDGE

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No