

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

118

CWP-13487-2023

Date of Decision : 04.07.2023

Naresh Kumar

..... Petitioner

Versus

UOI and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Chanderhas Yadav, Advocate
for the petitioner.

Mr. Sudhir Nar, Senior Panel counsel for UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking quashing of order dated 18.09.2021 (Annexure P-8) whereby appeal of the petitioner against order dated 15.11.2006 passed by the competent authority has been dismissed on the ground of delay.

2. The petitioner came to be dismissed from service by order dated 15.11.2006 passed by respondent No.3. The petitioner had remedy to file appeal within three months, however, petitioner preferred appeal after more than 11 years. The appeal came up for consideration before appellate authority which vide impugned order dated 18.09.2021 dismissed on the ground of delay.

3. The petitioner opted to remain silent for more than 11 years and thereafter, preferred an appeal before the appellate authority which came to be dismissed vide order dated 18.12.2021. The appellate authority has

noticed the fact that the appeal has been filed after 11 years and 06 months and there is no plausible explanation of exorbitant delay.

4. The relevant extract of order dated 18.09.2021 reads as :

“Whereas, per provision contained under Rule-28A of BSF Rules, 1969, an enrolled person, who considers himself aggrieved by any order of termination of service passed under Chapter-IV of BSE Rules, 1969, may present a petition to the Inspector General, who may pass such order on the petition as deemed fit. Under the said rule, the limitation period for filing Such petition has been prescribed as 03 months from the date of order of order of termination or from the date of receipt of such order, whichever is later. However, in the instant case, the petitioner was dismissed from service w.e.f. 15.11.2006 (AN), whereas, the instant petition/appeal for re-instatement in service claimed to be filled on 16.05.2018 i.e. after a huge and unexplained delay of about 11 years and 6 months, as such, said appeal of the petitioner is highly time barred.”

5. It is settled proposition of law that the appellant is not supposed to explain delay of each and every day and Courts are not supposed to take pedantic approach rather it should be pragmatic and justice oriented approach.

6. Hon’ble Supreme Court while adverting with an application seeking condonation of delay in Collector (LA) v. Katiji, (1987) 2 SCC 107 has held that court should not adopt pedantic rather it should be pragmatic and justice oriented approach. The court has held:

3. The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal

or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay,

every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

7. Hon'ble Supreme Court while advertng with an application seeking condonation of delay filed by State in **Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563**, has held:

28. 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 bona fides, 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.

29. 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 bona fide 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

8. In the present case, period prescribed for filing appeal is 03 months whereas the petitioner had filed appeal after the expiry of 11 years and 06 months. The petitioner has failed to advance any plausible reason for the prolonged delay. In the absence of any plausible reason explaining the delay, there is no ground to interfere with the impugned order.

9. In view of afore-stated facts and findings, the present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

04.07.2023
anju

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

