

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CM-4517-LPA-2019 and
CM-4518-LPA-2019 in/and
LPA-1982-2019
Date of Decision: 13.03.2023****Sukhwinder Singh****.....Appellant****Vs.****State of Punjab and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN****Present: Mr. L.S. Lakhanpal, Advocate,
for the applicant-appellant.*************G.S.SANDHAWALIA, J. (ORAL)****CM-4517-LPA-2019**

By this application, the applicant-appellant seeks condonation of delay of 53 days in re-filing the appeal.

In view of the averments made in the application, which is duly supported by an affidavit of counsel himself, the application is allowed and the delay of 53 days in re-filing the appeal is hereby condoned.

CM-4518-LPA-2019

By this application, the applicant-appellant seeks condonation of delay of 39 days in filing the appeal.

In view of the averments made in the application, which is duly supported by an affidavit of the appellant, the application is allowed and the delay of 39 days in filing the appeal is hereby condoned.

LPA-1982-2019

1. The consideration in the present Letters Patent Appeal is to the order of the learned Single Judge, dated 15.05.2019, passed in CWP-13668-2018, titled **Sukhwinder Singh vs. The State of Punjab and others**, whereby the writ petition was dismissed and the Award dated 06.11.2017 (Annexure P-1) passed by the Industrial Tribunal-cum-Labour Court, Ambala (for short 'the Tribunal'), dismissing the reference as such of the appellant-workman was upheld.

2. Learned Single Judge noticed that on an earlier occasion when the appellant-workman had filed a case before the Labour Court, the same was decided in favour of the department and the workman had never challenged the said Award dated 11.08.2006, arising out of reference No. 219 of 2001. It is noticed that the dispute now in question was raised by serving a fresh demand notice dated 07.08.2008 and from the record which had been produced by the management, the name of the workman did not find mention except for the period from February 1996 to May 1996 which was subject matter of the earlier termination and which Award had never been challenged by the workman. Resultantly, a finding was recorded that after his termination on 09.07.1996, having been upheld in the Award, there is no evidence having been led by appellant to show that the workman had been appointed thereafter or for that matter having continued uptill 31.12.2007 as claimed and therefore, the writ petition was dismissed.

3. Learned counsel for the appellant vehemently submitted that there was an affidavit of such a co-worker on record to show that the

appellant had worked after 1996 also and his termination was on 31.12.2007.

4. We are of the considered opinion that the argument raised by learned counsel for the appellant-workman is not sustainable only on account of a self serving affidavit of a co-workman. A perusal of the paper-book would go on to show that the claim was raised on account of the fact that the workman had been transferred on 29.03.1996 from Malakpur to Bhimpur and thereafter, on 09.07.1996 to Aminpur and that he had been working w.e.f. 21.11.1995 and was getting salary @ of ₹4,600/- per month and his services were terminated on 31.12.2007 without any notice. At the time of his termination, he was already getting salary of ₹10,300/- per month. The demand notice was apparently raised on 07.08.2008, i.e. after 08 months of his termination. The defence, as such, of the respondent-State was that he had worked at Malakpur Sub-Division, UBDC, from 27.11.1995 to 23.02.1996 for 89 days @ of ₹2,122/- per month and his services were terminated after a period of 89 days on 23.02.1996. He had filed a court case in the Labour Court which was decided in favour of the department and it was denied that there is any transfer order as claimed.

5. It was specifically pleaded that the salary of all the officials was being paid through banks and all accounts were opened in the Bank of India, Gurdaspur, and the State Bank of India. It is further stated that if the workman worked in Tibri Sub-Division, he should have produced the account number/pass-book/salary statement of these banks from 02/2005 to 31.12.2007. It is also a matter of record that RW-2 Kashmir Singh, Sub-

Divisional Officer, UBDC Sub-Division, Tibri, had produced the cash registers for the period 29.03.1996 to 31.12.2007 and the name of the appellant-workman did not find mention therein. Similarly, the earlier Award was placed on record Ex. R-1/1 and along with the earlier demand notice and the statement of claim etc. The Labour Court noticed that the earlier period of employment was from 21.11.1995 and he had worked till 09.07.1996 as per the earlier Award and thus, decided issue No. 1 decided against the workman and in favour of the management that the termination was not illegal.

6. Thus, from the above evidence, it is clear that for the earlier work period from November 1995 to July 1996 challenge had been raised unsuccessfully. The pleadings now show that he continued in service up-till 31.12.2007 which is contrary to the stand earlier taken. The earlier Award has also not been appended as an Annexure for perusal of this Court and was neither placed before the learned Single Judge. An adverse inference has necessarily to be drawn against the appellant for withholding the document as such which was obviously not serving his cause.

7. We fail to understand that if his services were already terminated in July 1996 and there was a labour dispute pending where was the question of him continuing in service till the year 2007 and why should he have filed the earlier reference and raised the dispute. Nothing has been placed before the Labour Court to show that he was paid any amount as claimed to the tune of ₹10,300/- per month. The management pertains to the Government, as such, to the Irrigation Department, as he was working

with the Upper Bari Doab Canal (UBDC), had taken a plea that the payments were being made in bank accounts of the Nationalized Bank and in the absence of any such evidence that the amounts had been deposited from July 1996 to 31.12.2007 in any Bank, the workman, as such, had failed to prove the onus of employment as such, that he was employed as claimed in the claim petition.

8. Resultantly, we find that the order of the learned Single Judge does not call for any interference in the absence of any evidence on record as per settled principle that while sitting on the writ side, the learned Single Judge is not acting an appellate Court and is only to correct an error if the Award suffers from the perversity.

9. In our considered opinion, keeping the facts and circumstances as discussed above, the learned Single Judge was well justified to dismiss the writ petition.

10. Accordingly, we do not find any merit in the present appeal, which is consequently, dismissed.

(G.S. SANDHAWALIA)
JUDGE

March 13, 2023
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No