

IN THE HIGH COURT OF PUNJAB & HARYANAAT
CHANDIGARH

CMs-2853 to 2856-LPA-2018 in/and
LPA-1065-2018

Reserved On:27.02.2023

Pronounced on : 14.03.2023

State of Haryana through Secretary Home Department and others

... Appellants

Versus

Mahender Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO,
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr.Hitesh Pandit, Addl. A.G. Haryana.

Mr.JaiVir Yadav, Sr. Advocate, with

Mr.Nitish Sharma, Advocate, for the respondent.

M.S. RAMACHANDRA RAO, J.

CM-2854-LPA-2018

This application is filed to condone the delay of 63 days in re-filing of the appeal.

For the reasons assigned in the application, the same is allowed and the delay of 63 days in re-filing of the appeal is hereby condoned.

CM stands disposed of.

CM-2855-LPA-2018 and
LPA-1065-2018 (O&M)

This application is filed for condoning the delay of 291 days in filing of the appeal.

In this application, it is stated that this LPA is preferred against the judgment dt.18.04.2017 passed by the learned Single Judge in CWP-4139-2016; that the copy of the order was downloaded from the

website of the High Court on 25.04.2017; and the case was put up for opinion before the Law Officer in the office of Advocate General, Haryana, who conducted the case on 26.04.2017.

It is stated that the Law Officer of the Advocate General, Haryana tendered his opinion on 05.07.2017 that it was *not a fit case* for filing appeal and the learned Advocate General, Haryana agreed with the said opinion on 10.07.2017.

It is stated that thereafter the office of the Advocate General, Haryana intimated the applicant/appellant on 14.07.2017 of his view.

It is then stated that the matter was examined in different offices and thereafter the office of the Additional Chief Secretary to Government of Haryana decided to challenge the order dt.18.04.2017 passed by the learned Single Judge in CWP-4139-2016 and accordingly the office of the Advocate General, Haryana issued a letter on 22.12.2017 requesting the office of the Legal Remembrancer, Haryana to issue sanction under Para 20.4 (C) of the Law Department Manual.

It is stated that the office of the Legal Remembrancer, Haryana then issued a memo on 08.01.2008 issuing instructions to the Advocate General, Haryana for filing this appeal and thereafter the appeal came to be filed on 05.03.2018, and so there is a delay of 291 days in filing of the appeal.

It is stated that the delay in filing the appeal occurred on account of processing of the case file from one officer to another and the said delay be condoned in exercise of powers contained under Section 5 of the Limitation Act, 1963.

In the reply filed by the respondent, it is contended that the limitation for filing the appeal against the judgment passed by the learned Single Judge is only 30 days and there is no reasonable justification for condoning the period of 291 days delay in filing the appeal. It is also contended that a casual approach has been adopted by the applicant/appellant/State; there is no explanation as to what was done after receiving the Advocate General's opinion on 14.07.2017 till 22.12.2017, for almost 5 months when the file is said to have been sent to the office of Legal Remembrancer, Haryana. It is stated that the applicant/appellant/State had been negligent in taking steps to file appeal within time and the said delay is not liable to be condoned.

We have noted the contentions of both sides.

From the facts noted above, it is clear that the learned Single Judge delivered judgment in CWP-4139-2016 on 18.4.2017 and the copy was downloaded from the High Court website on 25.4.2017. Though initially the Law officer in the Office of the Advocate General opined that it was not a fit case for appeal on 5.27.2017, and the Advocate General agreed with it on 10.7.2017, and he informed the State about it on 14.7.2017, it took 8 months for the State to decide to file the appeal and only on 22.12.2017 the office of the Advocate General, Haryana issued a letter requesting the office of the Legal Remembrancer, Haryana to issue sanction under Para 20.4 (C) of the Law Department Manual.

Admittedly, the Advocate General's office had communicated that it was not a fit case for filing appeal on 14.07.2017, but for a period of 5 months thereafter, nothing was done; and it is difficult to believe that

re-examination of the decision of the office of Advocate General would be done by the Additional Chief Secretary to the Government of Haryana and that he would need 5 months to make up his mind to overrule the Advocate General's opinion.

Even thereafter from 08.01.2018 till 05.03.2018 two more months' time was taken to prepare and file the appeal.

In ***Office of the Chief Post Master General Vs. Living Media India Limited¹***, the Supreme Court has held no doubt some laxity was given for Government's inefficiency but with the technological advancement now the Judicial view prevalent earlier when such facilities were not available has been overtaken. It held:

“12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. 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 bonafide, 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.

13. 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 bonafide 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

The said decision in the **Office of the Chief Post Master General and Others** (2 Supra) has been recently reiterated in **The State of Odisha and Others Vs. Sunanda Mahakuda**². In that case, the State has filed an SLP in the Supreme Court with considerable delay. Deprecating the said practice, the Supreme Court held :-

“6.The object of such cases appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say nothing could done because the highest Court has dismissed the appeal. It is mere completion of formality to give a quietus to the litigation and save the skin of the officers who may be at fault by not taking action in prescribed time. If the state government feels that they have suffered losses, then it must fix responsibility on concerned officers for their inaction but that ironically never happens. These matters are preferred on a presumption as if this Court will condone the delay in every case, if the State Government is able to say something on merits.”

A litigant, who is guilty of laches on account of not being vigilant to avail the remedy within the prescribed period of limitation , is not entitled to be extended the benefit of Section 5 of the Limitation Act,1963. A casual and irresponsible attitude disentitles the litigant to seek such benefit. The same standard also apples to the State when it litigates. It

² 2021(11) SCC 506

cannot be allowed to proceed on a presumption that there is a chance of the delay being condoned in every case if the State Government is able to say something on merits. Mere fact that the litigant is the State or a public body, the delay is not liable to be condoned if there is no reasonable explanation for the same which falls within the ambit of 'sufficient cause' used in Section 5 of the Limitation Act, 1963. (**University of Delhi v. Union of India**³ , **State of Madhya Pradesh v. Bherulal**⁴ and **The Commissioner of the Public Instruction & Others v. Shamsuddin**⁵)

We are of the opinion that there is no proper explanation for condonation of delay of 291 days taken by the applicant/appellant/State in filing the present appeal and there is a casual and negligent approach adopted by the applicant/appellant. So delay of 291 days in filing the appeal is not liable to be condoned.

So the application for condonation of delay is dismissed.

Consequently, the appeal is also dismissed.

All pending CMs, if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

14.03.2023

Vivek

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes

³(2020) 13 SCC 745

⁴ (2020) 11 SCALE 688

⁵SLP (Civil) NO.11989 of 2020 dt.22.1.2021