

CM-7010-C-2018, CM-7011-C-2018
CM-7012-C-2018, CM-7013-C-2018 in/and
RSA-2659-2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(242) CM-7010-C-2018
CM-7011-C-2018
CM-7012-C-2018
CM-7013-C-2018 in/and
RSA-2659-2018
Date of Decision : February 21, 2023

Nachhatar Singh .. Appellant

Versus

Punjab Government and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Hitesh Sood, Advocate, for the appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-7012-C-2018

Present application has been filed for condonation of delay of
75 days in filing the appeal.

As per the averments made in the appeal, the appellant did not
knew about the passing of the impugned order dated 09.07.2015 by which,
the lower Appellate Court had already dismissed his appeal and the
appellant being old, sick and poor person did not had the knowledge of the
order passed by the lower Appellate Court, hence, it is prayed that delay of

75 days in filing the appeal be condoned.

Keeping in view the facts mentioned in the application, which is duly supported by an affidavit, the same is allowed and delay of 75 days in filing the appeal is condoned.

CM-7010-C-2018

As prayed for, the application is allowed.

CM-7011-C-2018

Present application has been filed for condonation of delay of 516 days in re-filing the appeal.

Keeping in view the facts mentioned in the application, the same is allowed and delay of 516 days in re-filing the appeal is condoned.

CM-7013-C-2018

As prayed for, the application is allowed.

RSA-2659-2018

Learned counsel for the appellant argues that the findings which have been recorded by the Court below are perverse to the evidence on record and the termination of the services of the appellant by the respondent on the ground that he remained absent, are perverse and liable to be set aside.

Learned counsel for the appellant further argues that after the appellant met with an accident, he had submitted an application for the grant of leave and it was only due to the accident, he could not discharge his duties, hence, the findings of the Court that the appellant remain absent, is perverse.

It may be noticed that though the said argument has been raised

but even in the cross-examination, the appellant himself had conceded the fact that he never moved any application for leave and further, with regard to the occurrence of accident, there is no report either lodged with the police authorities or any other officials of the Department. That being so, the argument that the appellant failed to join duty due to the accident he suffered on 14.01.2002, has not been proved on record, therefore, once the said fact has not been proved on record, the findings of the Courts below cannot be treated as perverse.

Further, with regard to the demand of salary for certain period, nothing has come on record to show that any salary for the period for which the appellant had worked, was not given to him. Once, a claim was made by the appellant for the release of the salary, it was for him to prove that he had discharged the duties for a particular period but is yet to be paid for the same. Learned counsel for the appellant has not been able to show any evidence which has come on record that for seeking the payment of salary or the allowance for the period he had worked, he was not paid.

Further, the argument of the appellant that without passing an order of termination, merely on the ground of absence, the respondents could not have dispensed the services of the appellant.

The said argument also cannot be accepted as first of all, the appellant was working as Home Guard Volunteer and the said engagement is not a job. Further, it has been conceded by the learned counsel for the appellant that under the Punjab Home Guard and Civil Defence (Field)

Class III Service Rules, whenever, a Home Guard Personnel who remain

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absent from duty for a period of seven days, it has to be treated that the said volunteer is no longer interested in performing the duties.

That being so, it cannot be said that the appellant was an employee or was required to be given a show cause notice for any absence before any order terminating the service is passed.

In the absence of any perversity brought to the notice qua the findings recorded by the Courts below, no interference is called for by this Court in the Regular Second Appeal.

Dismissed.

February 21, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No