

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

110

CR-6155-2022

Date of decision : 05.01.2023

Dharam Pal Singh

... Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

.. Respondents

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Vivek Singla, Advocate for the petitioner.

Anupinder Singh Grewal, J. (Oral)

The petitioner has challenged the order dated 23.12.2015 (Annexure P-3) whereby the appeal preferred by him had been withdrawn, the order dated 17.02.2016 (Annexure P-6) whereby his application for modification of the order dated 23.12.2015 (Annexure P-3) was dismissed and the order dated 14.09.2022 (Annexure P-10) whereby the application for condonation of delay along with restoration of the appeal was dismissed.

Learned counsel for the petitioner, *inter alia*, submits that the petitioner had filed a suit seeking promotion w.e.f. 1996, the date whereon his juniors had been promoted. The suit had been partly decreed vide the judgment and decree dated 26.08.2013 (Annexure P-1) and the petitioner preferred an appeal thereagainst seeking relief which had been declined to him. The appeal preferred by the petitioner had been dismissed as withdrawn on 23.12.2015 (Annexure P-3) on the wrong advise of the counsel and therefore, the petitioner should not suffer on account of erroneous advise furnished by the counsel. In support of his submissions, he has relied upon the judgment of the Delhi High Court in the case of **Balwant Singh versus M/s Indraprastha Builders Pvt.**

Ltd., 1995(60)DLT 136.

Heard.

The petitioner/plaintiff had filed a suit for declaration with consequential relief of mandatory injunction to the effect that he is senior on the post of Deputy Superintendent and entitled to promotion with effect from the date his juniors had been promoted. The suit was partly decreed on 26.08.2013 (Annexure P-1) with cost to the effect that recovery of Rs.21,654/- effected from the pay of the plaintiff is illegal, unlawful and could not be effected and the reduction in his pay from 1991 was held to be illegal. The amount recovered was to be refunded to the petitioner/plaintiff along with interest @ 18% p.a. The petitioner had preferred an appeal thereagainst before the Appellate Court with regard to seniority and promotion which had been dismissed as withdrawn on 23.12.2015 (Annexure P-3). A perusal of the order dated 23.12.2015 (Annexure P-3) indicates that the petitioner himself was present at the time of withdrawal of the appeal. He, thereafter, had preferred an application for recalling of the order dated 23.12.2015 (Annexure P-3) which was dismissed on 17.02.2016 (Annexure P-6). The order dated 17.02.2016 (Annexure P-6) was not challenged by the petitioner and had, thus, attained finality. He had once again preferred an application for restoration of the appeal along with an application for condonation of delay of 361 days before the Appellate Court in the year 2017 which has been dismissed by the Appellate Court vide the impugned order dated 14.09.2022 (Annexure P-10).

The judgment relied upon by the counsel for the petitioner in the case of **Balwant Singh versus M/s Indraprastha Builders Pvt. Ltd.(supra)** would not help the case of the petitioner as there is no denial to the proposition of law laid down therein that it is left to the discretion of the Court whether the

revocation of the order of withdrawal of an appeal should be permitted.

I do not find any merit in the contention of the counsel for the petitioner that the petitioner had erroneously withdrawn the appeal. A perusal of the paper book indicates that the petitioner is a law graduate and had retired as Superintendent from the respondent/DHBVNL and therefore, it could not be said that he was not aware of the consequences of the withdrawal of the appeal.

In view of the above especially when the appeal had been withdrawn in the presence of the petitioner, I do not find any infirmity in the order of the Appellate Court declining the application for restoration of the appeal.

Consequently, the petition stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

January 05, 2023
sonia gugnani

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