

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

**LPA NO. 651 OF 2024 (O&M)**

**DATE OF DECISION : MARCH 07, 2024**

# Anirudh Dhanda

## ...Appellant

## Versus

**State Bank of India and others**

## ...Respondents

**CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA,  
ACTING CHIEF JUSTICE**

**HON'BLE MS. JUSTICE LAPITA BANERJI**

Present : Mr. D. S. Patwalia, Senior Advocate with  
Mr. Rishu Bajaj, Advocate,  
For the appellant.

**LAPITA BANERJI, J.**

Under consideration in the present letters patent appeal is a judgment and order dated February 01, 2024 passed by the Hon'ble Single Judge in Civil Writ Petition No.2117 of 2024 whereby the writ petition was dismissed on the ground of the appellant/writ petitioner acquiescing to the action of the respondents by his act and conduct thereby waiving off his legal right, if any. Furthermore, it was held that as the appellant approached the Court after inordinate delay, exercise of extra ordinary writ jurisdiction was not warranted.

2. The facts of the case are narrated in brief hereinafter:

i) The appellant joined the respondent-bank as a Probationary Officer on December 03, 1984. He was granted Middle Management Grade Scale-II (in short MMGS-II) with effect from August 01, 1990. As per the policy in vogue, the appellant was eligible for promotion to the grade of MMGS-III with effect from November 01, 1993.

ii) In 1991 while the appellant was posted in Assam, an FIR under Sections 326, 376 of the Indian Penal Code (in short IPC) had been registered against the appellant and the appellant was arrested. The petitioner was suspended from service with effect from August 23, 1991. During the pendency of the criminal proceedings, the petitioner was reinstated in service with effect from August 30, 1994.

iii) The appellant was allowed the benefit of continuance of service along with other admissible benefits from the date of suspension till the date of reinstatement vide order dated April 20, 1995. The criminal proceedings against the appellant were set-aside by the Gauhati High Court vide order dated May 09, 2001. The respondent-bank granted promotion to the appellant to the grade of MMGS-III with effect from November 01, 2002.

iv) The appellant made a representation for being granted benefits of MMGS-III with effect from November 01, 1993 instead of November 01, 2002. Upon rejection of the representation of the petitioner by the respondent authorities, vide impugned orders dated May 04, 2001 and March 06, 2002, he challenged the same by way of filing a civil writ petition being CWP No.17051 of 2002. An Hon'ble Single Judge of this Court vide order dated October 12, 2004 disposed of the same by holding that the period of suspension could not in any way make him ineligible for promotion from MMGS-II to MMGS-III. On reinstatement, the appellant was entitled to have his entire case reconsidered on merits, more so as he had received "Commendation Certificate" for his excellent work after reinstatement. The appellant's case for promotion from the date when he became eligible for the same or from the date when his juniors/batch mates were promoted was directed to be considered by the respondent authorities within three months from the date of the order. The appellant was directed to be given all consequential benefits of his promotion.

v) The respondent-bank preferred an Intra-Court appeal being LPA No.437 of 2004. During pendency of the appeal, the bank reconsidered the case of the appellant as a special case. As per the prevalent promotional policy in 1993, 04 years' ACRs (1990-91, 1991-92, 1992-93 and 1993-94) of the appellant were required to be considered for promotion. Since the appellant was under suspension, his ACRs showed "Zero Mark" for the years ending March 31, 1992, March 31, 1993 and March 31, 1994.

vi) The respondent-bank with intent of granting MMGS-III asked the appellant to qualify in a written test in terms of the promotional policy of 2003 since they could not assess his ACRs for the aforesaid three years. The appellant refused to sit in the written test by taking a plea that since he had already been promoted with effect from November 01, 2002, the promotional policy of 2003 could not be made applicable to him.

vii) Admittedly, there was no requirement for qualifying a written test prior to 2003. Since the appellant refused to sit qualifying test, respondent-bank vide order dated July 18, 2005 (Annexure P-5) decided not to promote him with effect from November 01, 1993. The said rejection order dated July 18, 2005 is impugned in the present LPA arising out of CWP No. 2117 of 2024.

viii) A copy of the impugned order had been placed before the Coordinate Bench that was adjudicating LPA No.437 of 2004. The Coordinate Bench had dismissed the appeal on 04.01.2006 (Annexure R-2/1) on the ground that a *suo-moto* decision was taken by the bank to conduct a written test for promoting the appellant and there was no direction to that effect by the learned Single Judge. As the bank took a decision that was independent of the directions given by learned Single Judge in CWP-17051-2002, the appeal was held to be rendered infructuous. However, it was observed that in the event the appellant was aggrieved by such a decision of the bank, he would be at liberty

to challenge the same either by departmental or Court proceedings. As the bank had sought to give benefits to the appellant as a special case, the Coordinate Bench was of the opinion that the bank had taken a fair decision in order to do justice to him as he was gravely wronged.

ix) During pendency of the previous appeal, the appellant/writ petitioner filed a contempt petition being COCP No.1062 of 2005 which was disposed of by an Hon'ble Single Judge vide order dated January 16, 2024, after a period of 18 years. The relevant extract of the order dated January 16, 2024 reads as under :

*“However, since the Division Bench had granted liberty to the petitioner to challenge the order dated 18.07.2005 passed by respondents (Annexure R-3) while considering his case for promotion to the post of MMGS III with effect from 1993, and thereafter, the matter remained pending in the instant contempt petition for a long period of 18 years, therefore, the petitioner is granted liberty to still challenge that order dated 18.07.2005 or any consequences thereof.”*

x) Upon liberty being granted to the petitioner to challenge the order dated July 18, 2005 by the Contempt Court, the petitioner filed the present writ petition being CWP-2117 of 2024.

3. In view of the facts narrated herein above, the Hon'ble Single Judge in CWP No.2117 of 2024 came to the finding that a Co-ordinate Bench while disposing of the previous letters patent appeal being No.437 of 2024 granted liberty to the appellant to challenge the impugned order dated July 18, 2005 but the appellant chose not to challenge the same. The appellant sought to continue with the contempt petition which was filed prior to disposal of LPA. The petitioner in his wisdom decided not to assail the impugned order dated July 18, 2005 and even though the contempt Court granted liberty again to the petitioner to challenge the impugned order, the said Court did not form an opinion whether the writ petition should be entertained after expiry of 18 years from the date of the order under challenge.

The Hon'ble Single Judge after relying on the judgment of "*Kartar Singh v. Managing Director, HVPNL*", CWP No.26962 of 2015 passed by a Coordinate Bench and also the judgment of Apex Court in "*Union of India v. N. Murugesan*" 2022 (2) SCC 25 came to the finding that neglect on the part of a litigant to do the act which law requires him to do, must stand in his way for getting any relief or remedy. Two essential factors being a) the length of delay and b) developments during the intervening period were needed to be considered while condoning delay. Delay by the appellant in availing of his remedy on the facts of the case amounted to waiver of his rights since despite the previous Coordinate Bench specifically observing that the impugned order dated July 18, 2005 was independent of the order passed by learned Single Judge in CWP No.17051 of 2002, still the appellant refrained from assailing the same from 2006 to 2023. Therefore, he could not be permitted to lay challenge to the same at a belated stage and the writ petition was dismissed.

4. After considering the submissions of the parties and materials placed on record, this court finds that the respondent was suspended due to the registration of a criminal case under Sections 326, 376 IPC. The said criminal proceedings related to purely personal involvement of the appellant and had no connection with regard to any proceedings initiated by the employer bank. After the charges framed by the Sessions Court in criminal proceedings were set-aside/quashed by the Gauhati High Court vide order dated May 09, 2001, the appellant was granted promotion to MMGS-III with effect from November 01, 2002. The appellant was successful in his challenge to rejection of his prayer by the bank to promote him with effect from November 01, 1993 in CWP-17051 of 2002. During the pendency of the appeal by the bank in LPA No.437 of 2004, the appellant's case was considered as a special one and since four ACRs could not be evaluated as the existing policy in 2002, the

petitioner/appellant was asked to qualify in a written test as per the new 2003 policy.

5. Perusal of the detailed impugned decision dated July 18, 2005 taken by the General Manager (Promoting Authority), State Bank of India would reveal that by the time the first writ petition was disposed of vide order dated October 12, 2004, the process of promotion for the year 2004-05 had been over and the next round of promotion for the year 2005-06 was already initiated during May, 2005. The appellant's case was considered in terms of the provisions relating to *residual promotions* since the annual confidential reports (ACRs) from November 01, 1994 to November 01, 1997 earned "zero score" as the appellant remained under suspension during the said period. It was a policy of the bank that the officers who for various reasons could not be considered in promotional exercise for the year in question for which they were eligible for promotion, when they were to be considered in terms of provisions relating to *residual promotions*. The appellant was also asked to appear for the written test which was scheduled to be held on June 05, 2005, like the other officers eligible for *residual promotion*.

6. Accordingly, the appellant was relieved from his branch (Tarn Taran) on June 03, 2005 but instead of appearing in the written test he submitted a letter dated June 04, 2005 requesting the bank to consider his case as per the old promotional policy whereby written test was not a part of the promotional process. Such request was submitted belatedly by a letter dated June 04, 2005 which was faxed to the local head office after closing of the working hours of the bank when the test was scheduled for June 05, 2005. The bank took a specific stand that an officer did not become *entitled for* promotion automatically from a back date even if he was *eligible* for the same on the ground that he had been promoted to that very grade with effect from the later date as promotion to a higher grade with effect from a particular date

involved appraisal of the officer on several parameters, for the years preceding the year of promotion.

7. As per bank's policy, the residual cases for promotion were required to be considered as per the new promotion policy which came into effect in 2003. In order to avoid making the appellant ineligible for promotion as 1992, 1993, 1994 ACRs were marked "zero score", the bank decided to consider the appellant's case under the new promotional policy of 2003. As the *residual policy* was applicable to all the officers similarly placed following a different promotional policy for the petitioner would have amounted to a marked departure from the policy that was being followed and would have been patently discriminatory. Consequently, there was no valid reason for the bank to deviate from its *residual policy*.

8. Despite being offered an opportunity to be considered for promotion with effect from 1993, the appellant chose not to avail of the same. Therefore, the prayer of the appellant for being granted promotion with effect from November 01, 1993 was rejected by the bank as he disqualified himself for promotion.

9. After considering the rival submissions of the parties and materials placed on record, this Court finds that not only the writ petition was barred on the grounds of delay, acquiescence and laches but also on merits as the appellant after voluntarily choosing not to participate in the promotional exercise could not later turn around and agitate his grievance. The respondent-bank had given a fair opportunity to the appellant to participate in the promotional process and it is appellant who failed to do. There was nothing arbitrary or perverse in the decision making process of the bank. The bank genuinely considered the case of the appellant as a special one while considering his representation for promotion from November 01, 1993, which was also noted by the Division Bench earlier on 04.01.2006.

10.           The Apex Court has reiterated on number of occasions that in judicial review only the “decision making process” of the executive authorities has to be reviewed and not the “decision” itself. The impugned decision dated July 18, 2005 enumerating detailed and cogent reasons for complying with the 2003 policy is neither perverse nor shocks the conscience of the Court, in any manner. Neither the impugned decision dated July 18, 2005 nor the impugned order passed by the Hon’ble Single Judge dated February 01, 2024 merit any interference.

11.           Accordingly, this letters patent appeal is dismissed *in limine* and connected applications, if any, are also disposed of.

**(G. S. SANDHAWALIA)**  
**ACTING CHIEF JUSTICE**

**(LAPITA BANERJI)**  
**JUDGE**

**MARCH 07, 2024**  
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|-----------------------------|-----|
| Whether speaking/reasoned : | Yes |
| Whether reportable :        | No  |