

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

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2024:PHHC:043355-DB

LPA-839-2024 (O & M)
Date of Decision: 01.04.2024

State of Haryana and another

.....Appellant(s)

Versus

Laxmi Saraswat (Now Deceased) through L.Rs. and others

....Respondent(s)

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

Present: Mr. Deepak Balyan, Addl. A.G., Haryana.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. Consideration in the present letters patent appeal is to the judgment dated 12.02.2018 passed by the learned Single Judge in CWP-16147-2013, Laxmi Saraswat vs. State of Haryana and another. The appeal as such is barred by 2080 days in filing the same on account of the fact that during the intervening period, a review application had been filed i.e. RA-CW-227-2019, which was also delayed by 392 days and was dismissed on 22.02.2023 by noting that under the garb of review application, the case was being re-argued, which was not permissible. It was accordingly noticed by the learned Single Judge that on an earlier occasion, the notification in question dated 20/27.08.2009 had been taken into account which clinched the issue in controversy and it had been held that the writ petitioner, who is the wife of the deceased employee, was entitled to the relief claimed in the writ petition. The writ petitioner had been granted the benefit of re-fixation of pension in the grade of Rs.37,400-68,000 + band pay of Rs.9,000/- w.e.f. January 01, 2006 to February 26, 2013. Resultantly, the family pension was also to be refixed alongwith interest @ 9% per annum after the expiry of 3 months from the date of demise of the husband i.e. 26.02.2013. Needful was to be done

2. The State had continued to deny the said relief by virtue of the time barred appeal. It is also to be noticed that after the order was passed in review application also on 22.02.2023, there is a patent delay as such as the appeal apparently was only filed on 11.03.2024 i.e. after more than one year. The reasons given in the application for condonation of delay also do not make out any sufficiency as apparently at an earlier point of time, there was a consensus of legal opinion given by the Advocate General's office and by the Legal Remembrancer that it is not a fit case for filing the appeal. Apparently, on account of the objection being put by the Finance Department, the reference was again made and a contrary opinion was taken from the same office on 13.06.2023 and then the appeal has been filed.

3. In such circumstances, we are of the considered opinion that in the absence of any sufficient cause as such and merely because the Finance Department is insisting to file the appeal on account of financial burden involved, it would not be a good ground to condone the delay. The Apex Court has time and again reiterated that the Government cannot be considered on a different footing for considering the issue of limitation, though there can be some latitude. Reliance can be placed upon the judgment of the Apex Court passed in ***Office of the Chief Post Master General and others vs. Living Media India Ltd. and another, (2012) 3 SCC 563*** wherein, the following principles have been laid down:-

“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.”

4. Reliance can further be placed upon the principles laid down by the

Apex Court in ***Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial***

Development Corporation & another, 2010 (5) SCC 459 and Esha Bhattacharya vs. Managing Committee of Raghunathpur, Nafar Academy & others, (2013) 12 SCC 649 wherein it has specifically been held that if the explanation is fanciful and there is lack of bona fide, then the delay is not to be condoned. Relevant portion of the judgment reads as under:

“15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining factsituation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it

cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the

courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a nonserious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

5. In such circumstances, we dismiss the applications for condonation of delay of 2080 in filing the appeal and 82 days in refiling the appeal. Resultantly, the present letters patent appeal also stands dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

01.04.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No