

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(109) LPA-925-2024 (O&M)
Decided on : 18.04.2024

Bharat RattanAppellant(s)
Versus

State of Haryana & othersRespondent(s)

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

Present: Mr.Vijay Pal, Advocate for the appellant (s).
Mr.Deepak Balyan, Addl.A.G., Haryana.

G.S. Sandhawalia, Acting Chief Justice (Oral)

1. Consideration in the present appeal, which is barred by 402 days in filing, is against the judgment of the Learned Single Judge dated 03.02.2023 passed in CWP-32052-2018.
2. Vide the said judgment, the Learned Single Judge directed that the appellant shall be offered the post of Warder on the basis of the assurance given vide Annexures P-6 & P-7, within a period of three months. However, the benefit of salary, seniority, increment etc. for the post of Warder was granted from the day he joins the post. Thus, the present appeal challenges this aspect of the denial.
3. The argument raised by counsel for the appellant is that the seniority aspect was wrongly denied as the appellant is getting the same pay-scale as a Peon on which post he was initially appointed.
4. It is also pertinent to notice that the State expeditiously complied with the order on 01.03.2023 (Annexure A-1) which is mentioned in the application filed under Section 5 of the Limitation Act, 1963. It is after a period of more than a year, the present appeal has been filed on 09.04.2024. The ground for condoning the delay is that since the appellant was on probation for a period of 2 years, his services were liable to be terminated if he would prefer the appeal and also that there is not much difference of pay from the post of Peon.

5. The reason for making out a case of sufficient cause is not convincing. Apparently the appellant having reaped the fruits of litigation chose to be satisfied with the same. It is after a period of over a year now he is seeking the issue of seniority and salary w.e.f. 2006 onwards. We are also of the considered opinion that if such an exercise is permitted, without impleading the concerned persons who are not even party herein, they would be adversely affected and the same would lead to a lot of heart-burning within the Department.

6. Once the appellant did not exercise his right expeditiously, he cannot now turn around and seek condonation of delay as a matter of right. Reliance can 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 **Isha Bhattacharya Vs. Managing Committee of Raghunathpur, Nafar Academy & others, 2014 (4) SCC (Crl.) 450** 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 fact situation.
- 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 non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

7. Another factor which weighs with us is that after the appellant was appointed on 30.11.2004 (Annexure P-7), the first request for appointment at a higher post of Clerk was rejected on 22.02.2007 (Annexure P-9). The appellant did not challenge the said order. The second rejection by the State was more than 10 years later on 16.10.2018 (Annexure P-12) which led to the filing of the writ petition. In such circumstances, it is the appellant himself who let the water pass under the bridge and now cannot expect it to run upstream.

8. Accordingly, keeping in view the peculiar circumstances, we do not find it a fit case to condone the delay in filing the appeal and the application for condonation of delay of 402 days in filing the appeal is hereby dismissed. Resultantly, the main appeal as well as all pending application bearing CM-2268-LPA-2024 also stand dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

18.04.2024
Sailesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No