

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:062839-DB



(110) LPA-1138-2024 (O&M)
Decided on : 07.05.2024

Dr. Ram Niwas Dahiya and anotherAppellant(s)

Versus

State of Haryana and othersRespondent(s)

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

Present:- Mr. J.S. Sohal, Advocate for
Mr. Vipin Pal Yadav, Advocate for the appellants.

Mr. Deepak Balyan, Addl. AG, Haryana.

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

Present letters patent appeal has been preferred by respondent Nos.12 & 14 against the order of the learned Single Judge passed in **CWP-19616-2017 'Dr. Virender Kumar & others Vs. State of Haryana & others'** decided on 21.12.2022, which was filed by respondent Nos.3 to 6 herein. The appeal is barred by 455 days in filing.

2. The reasons given in the application for condonation of delay are that instead of filing an appeal at an earlier point of time, the appellants alongwith two other doctors namely Dr. Meenakshi Chopra and Dr. Harvinder Kaur had approached this Court by filing CWP-4245-2024, in which directions were issued to decide their representation. Eventually their case was rejected on 06.03.2024 and they were reverted to the post of Medical



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Officer. Apparently, the Principal Secretary to Government of Haryana, Labour Department passed the order dated 14.03.2024 reverting the Senior Medical Officers to the post of Medical Officers while deciding their representations, since the revised seniority had already been fixed in compliance of the order dated 21.12.2022 passed by the learned Single Judge. The appellants then chose to file CWP-7027-2024 challenging the said order and never preferred to file any appeal during this period. The learned Single Judge while noting the contents of the impugned order dated 14.03.2024, apparently passed the second order on 02.04.2024, which reads as under:-

“After arguing for some time, learned counsel for the petitioners submits that as per his instructions, the petitioners intend to approach the Division Bench in respect of the order passed in CWP No. 19616 of 2017 dated 21.12.2022, hence the present petition along with CM-5238-CWP-2024 may kindly be disposed of having been not pressed any further.

Ordered accordingly.”

3. It is in such circumstances, the present appeal has now been filed. We are puzzled by the manner in which the litigation has been contested. The appellants being respondent Nos.12 & 14 were well aware that in the said writ petition, the learned Single Judge had issued directions that the seniority list circulated vide letter dated 03.05.2017 (Annexure P-12) and 10.08.2017 (Annexure P-14) were not correct and earlier decision dated 25.01.2012 (Annexure P-5) was correct. The Medical Officers of the Health Department who had given their option upto 15.07.2007 were placed higher in the seniority list and ones who had given their option after the cut-off-date were accordingly put at the tail end. Instead of challenging the said judgment at that point of time, a circuitous method of filing the representation and filing CWP-



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4245-2024, was preferred to get the representation decided. Apparently, it was not brought to the notice of the learned Single Judge that the matter has already been adjudicated upon and the writ petitioners/appellants herein were also respondents in the earlier litigation. The learned Single Judge chose to issue directions on 23.02.2024 to decide the representation without taking a response from the State, which apparently led to the passing of the order dated 06/14.03.2024. It is not that the appellants are illiterate persons, but are Medical Officers and working in the ESI Department. We can only castigate the appellants regarding the procedure they have resorted to.

4. Similarly respondent Nos.3, 11 and 13 had also attempted to challenge the said judgment at an earlier stage by filing **LPA-807-2024 ‘Yogesh Lata & others Vs. State of Haryana & others’**, which was barred by 424 days. The same was dismissed while noting the fact that they were private respondents and on account of the tentative seniority list being issued in January, 2024, it would not give them sufficient cause to challenge the judgment of the learned Single Judge at the belated stage. The order dated 01.04.2024 passed in LPA-807-2024 reads as under:-

“Consideration in the present appeal, which is barred by 424 days, is to the judgment dated 21.12.2022 passed by the Learned single Judge in CWP-19616-2017 titled Dr.Virender Kumar & others Vs. State of Haryana & others.

2. The reasons given in the application for condonation of delay is that the applicants-appellants, who were the private-respondents before the Learned Single Judge, were assured by the official-respondents that the Government of Haryana would file the appeal within the stipulated time against the impugned judgment and the appellants need not file any appeal. It is the case of the applicant-appellants that they were kept in dark by the State and the seniority list was prepared



according to the directions issued by the Learned Single Judge and circulated on 12.01.2024 and thereafter, they decided to challenge the judgment as the Medical Officers who were junior to them in the Health Department, Haryana were placed above them in the tentative seniority list.

3. It is in such circumstances an effort has been made to argue on merits that the delay is bona-fide and neither intentional nor deliberate. It has further been pleaded that had it been known that the official respondents would not file the appeal, the appellants would have filed the same in time as non-filing of the appeal would put them to heavy loss in their service career. The application is supported by affidavit of appellant No.1 who is a Medical Officer in the ESI Department.

4. We are of the considered opinion that for the substantial delay which is well over a period of one year, no sufficient cause has been shown to condone the same and rather the reason given is the death knell of the lack of sufficient cause. It is trite law that there has to be sufficient cause to condone the delay as limitation of 30 days has been provided for filing the appeal. As per the own case of the appellants, they chose to sleep over the issue with the hope that the State would agitate for their grievances which it has not done, being satisfied with the judgment of the Learned Single Judge. A finding has been recorded that the impugned seniority lists circulated on 03.05.2017 and 10.08.2017 (Annexures P-12 & P-14) were not correct and the earlier decision dated 25.01.2012 (Annexure P-5) was correct. The Medical Officers of the Health Department had given their option upto 15.07.2007 were placed higher in the seniority list and the ones who had not given their option were accordingly put at the tail end.

5. It is settled principle of law that each and every day's delay may not be explained as has been held by the Apex Court in **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others'** (1987) 2 SCC 107 but it does not mean that the appellants who are holding the post of Medical Officer in the Health Department and who are well versed with



the litigation, can take the benefit of being ignorant and uneducated in any manner and let their vested right slip away and for their indolent behavior, this Court will not exercise its discretion to condone the delay.

6. The four writ petitioners who are now arrayed as private respondents had challenged the seniority of private-respondents No.3 to 26 in the writ petition. The appellants herein were arrayed as respondents No.3, 11 & 13. Thus, not only the writ petitioners' interests are involved but also large number of private-respondents had also accepted the judgment of the Learned Single Judge. Therefore, at this belated stage, only on account of a tentative seniority list being issued now in January, 2024, it would not be prudent to re-open the seniority issue, keeping in view the act and conduct of the appellants. Reliance in this regard can be placed upon the judgment of the Apex Court in **N.Balakrishnan Vs. M.Krishnamurthy, 1998 AIR (SC) 3222** wherein it has been held as under:

“11. Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”



7. Reliance can also be placed upon the judgment of the Apex Court in **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation & another, 2010 (5) SCC 459**. In **Esha Bhattacharjee Vs. Managing Committee of Reghunathpur Nafar Academy and others 2013 (12) SCC 649**, wherein delay of 2449 days had been condoned by the Division Bench of the Calcutta High Court but Hon'ble the Apex Court had set aside the same by holding 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.

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.”



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8. Keeping in view the above discussion, the application for condonation of delay of 424 days in filing the appeal is dismissed. Resultantly, the appeal along with all pending application(s) also stand dismissed.”

5. Resultantly, keeping in view the above background, we find no plausible reason as such to condone the delay. The litigants are serving as Medical Officers with the ESI Department and are well versed with the niceties of service litigation. Resultantly, the application for condonation of delay of 455 days in filing the appeal as well as main appeal stand dismissed. All pending civil miscellaneous applications including **CM-2744-LPA-2024** for additional evidence also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

07.05.2024
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No