

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

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2024:PHHC:062444-DB

LPA No. 1128 of 2024 (O&M)

Date of Decision: 06.05.2024

Kulwinder Singh

.....Appellant(s)

Versus

Punjab State Power Corporation Ltd. and others

.....Respondent(s)

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

Present: Mr. Ashish Nagar, Advocate,
for the appellant.

Mr. Ashwani Talwar, Advocate,
for the respondents.

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

1. Consideration in the present letters patent appeal, which is barred by 380 days in filing the same, is to the order dated 09.03.2023 passed by the learned Single Judge in CWP-2946-2023, Kulwinder Singh vs. Punjab State Power Corporation Ltd. and others.

2. The present is a classic case of a luxury litigation initiated by a Non-resident Indian, who is settled in Canada through Power of Attorney regarding his service, from which he had taken voluntary retirement to go to Canada in June, 2013. The sufficient cause which is sought to be made out is that the appellant is a person of meager means and had to arrange for the funds for filing an appeal apart from the fact that he had to file applications under The Right to Information Act, 2005.

3. The said explanation as such is in total contradiction with the status of the appellant, who is residing abroad and we are not in a position to swallow the said explanation except with a pinch of salt. The terms 'sufficient cause' has been

explained time and again by the Apex Court. The learned Single Judge has also noticed that it is a case where the claim for promotion to Upper Division Clerk has been sought to be raked up after more than 10 years, writ petition being filed in the year 2023 by a person who has voluntarily retired in 2013 and is a migrant to Canada in search of greener pastures.

4. In such circumstances, we are of the considered opinion that no case is made out to condone the delay in view of the settled law. 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 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 non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

5. Resultantly, we decline to condone the delay and the appeal is also accordingly dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

06.05.2024

shivani

Whether reasoned/speaking

Whether reportable

(VIKAS BAHL)
JUDGE

Yes

No