

2024:PHHC:134302



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

**CM-12609-CWP-2024 in/and
CWP-12812-2022
Date of Decision: 14.10.2024**

Chamkaur Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Puneet Kumar Jindal, Advocate for the petitioner.

Mr. Navneet Singh, Senior DAG, Punjab assisted by
Mr. Tarwinder Singh, Senior Assistant,
O/o Commissioner, Ferozepur Division, District Ferozepur.

Mr. Shekhar Kumar, Advocate for respondent No.1.

HARSH BUNGER J. (ORAL)

CM-12609-CWP-2024:

Prayer in the present application is for placing on record zimni orders (Annexure P-8) passed by the learned Divisional Commissioner, Ferozepur in the appeal.

For the reasons mentioned in the application, zimni orders (Annexure P-8) passed by the learned Divisional Commissioner, Ferozepur in the appeal, are taken on record, subject to all just exceptions.

Application is accordingly disposed of.

CWP-12812-2022:

The present writ petition has been filed under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of Certiorari to set aside order dated 02.02.2018 (Annexure P-3) passed by

the learned Commissioner, Ferozepur Division, Ferozepur (for short 'the Divisional Commissioner'); whereby, order dated 26.02.2010 (Annexure P-1) passed by the learned Collector, District Moga, appointing the petitioner (Chamkaur Singh) as Lambardar (Scheduled Caste) of Village Chand Purana, Tehsil Bagha Purana, District Moga; was set aside and case was remanded to the learned Collector, Moga, for fresh decision.

1.1 A further prayer has been made for setting aside order dated 06.12.2021 (Annexure P-7) passed by the learned Financial Commissioner (Appeals), Punjab.

2. Short reply by way of affidavit dated 10.10.2024 of Mr. Vishesh Sarangal, I.A.S., District Collector, Moga, District Moga, is filed on behalf of respondents No.1 to 3 in Court today, which is taken on record, subject to all just exceptions.

3. Learned counsel for the petitioner submits that the petitioner (Chamkaur Singh) was appointed as Lambardar (Scheduled Caste) of Village Chand Purana, Tehsil Bagha Purana, District Moga by the learned Collector, District Moga vide order dated 26.02.2010 (Annexure P-1).

3.1 Learned counsel for the petitioner contends that no appeal was filed against order dated 26.02.2010 (Annexure P-1) until the year 2017, when respondent No.4 (Ekam Singh) challenged the said order (Annexure P-1) by way of filing an appeal before the learned Divisional Commissioner. It is further contended that along with the said appeal, an application seeking condonation of delay was also filed by respondent No.4; however, the learned Divisional Commissioner, without condoning the delay in filing the appeal, proceeded to pass the final order dated 02.02.2018 (Annexure P-3); whereby order dated 26.02.2010 (Annexure P-1) was set

aside and the matter was remanded to the learned Collector, Moga, for fresh decision after inviting fresh applications for the post of Lambardar of Village Chand Purana.

3.2 Feeling aggrieved against the order (Annexure P-3), petitioner preferred a revision petition (ROR No.182 of 2018) before the learned Financial Commissioner (Appeals), Punjab; however, the same was dismissed vide order dated 06.12.2021 (Annexure P-7).

4. In pursuance of order dated 16.07.2024 passed by this Court, learned State counsel, on instructions from Mr. Tarwinder Singh, Senior Assistant, O/o Commissioner, Ferozepur Division, District Ferozepur; informs that there is no order available on record as regards condonation of delay in filing the appeal by respondent No.4 before the learned Divisional Commissioner.

5. Heard.

6. It is well settled position of law that whenever the appeal is filed against an order which is beyond the period of limitation, the same has to be accompanied by an application seeking condonation of delay in filing the appeal; and till the time, the said application is not allowed, the appeal shall have no legal existence. In this regard, reference can be made to the judgment rendered by this Court in ***“Om Parkash Vs. Dogar Dass Sachdeva Trust, Fazilka”, 1999(4) R.C.R. (Civil) 458***. The relevant extract thereof, would read as under:-

“ - x - x -

A perusal of the Order 41 Rule 3-A clearly stipulates that it was incorporated in the Code from 1.2.1997. It stipulates that when the appeal is presented after expiry of the period of limitation, it has to be accompanied by an application supported by an

affidavit setting forth the facts as to why the delay should be condoned. Though the court of the Rent Controller or the Appellate Authority may not be strictly bound by the provisions of the Code, but still the basic principle, unless the facts of the case speak otherwise, must be adopted.

- x - x -

..... The Delhi High Court held that an application for condonation of delay should ordinarily be filed. Unless there is an application seeking condonation of delay along with the appeal, the appeal cannot have any existence nor entertained. In the present case, no such application had been filed and there was no ground to entertain the oral request. This is for the reason that certain peculiar facts had to be alleged as to why delay occurred in the filing of the appeal.

- x - x - ”

7. Keeping in view the aforesaid facts and circumstances, order dated 02.02.2018 (Annexure P-3) passed by the learned Divisional Commissioner, Ferozepur and order dated 06.12.2021 (Annexure P-7) passed by the learned Financial Commissioner (Appeals), Punjab; are set aside and the matter is remanded to the learned Divisional Commissioner, Ferozepur, to consider and decide the application seeking condonation of delay filed along with the appeal, by respondent No.4, in accordance with law.
8. The present writ petition is disposed of in the aforestated terms.
9. All the pending application(s), if any, shall also stand closed.

14.10.2024
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No