



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

108 LPA-956-2024 (O&M)
Date of Decision: 05.11.2024.

Ravi Kumar through LRs and others ...Appellants.
Versus
State of Punjab and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Narinder Kumar Vadehra, Advocate
for the appellants.

Mr. R.S. Pandher, Sr. DAG, Punjab.

LISA GILL, J. (Oral)

CM-2339-LPA-2024

Prayer in the application is for impleading legal representatives of appellants/ petitioners No.1 and 4. Learned counsel for appellants submits that appellant No.1 had died on 04.04.2023 and appellant No.4 had passed away on 01.02.2007. The fact of passing away of appellant No.4 was however not in the knowledge of learned counsel representing the appellants before learned writ Court.

Notice of the application.

Mr. R.S. Pandher, Sr. DAG, Punjab, accepts notice on behalf of the respondents and does not raise serious objection to the prayer.

Keeping in view facts and circumstances as portrayed, application, duly supported by an affidavit of the applicant, is allowed,

subject to just exceptions. Legal representatives of appellant No.1 as detailed in para No.3 of the application and legal representatives of appellant No.4 as detailed in para No.4 of the application, are brought on record for the purpose of pursuing this appeal and amended memo of parties annexed alongwith the application, is taken on record.

Application is disposed of accordingly.

CM-2338-LPA-2024

Heard.

There is a delay of 248 days in re-filing of the appeal.

For the reasons mentioned in the application and arguments addressed, it is considered just and expedient to hear the appeal on merits rather than dismiss it on ground of delay. Thus, delay of 248 days in re-filing of the appeal is condoned.

Application is disposed of accordingly.

CM-2337-LPA-2024

Heard.

There is a delay of 74 days in filing of the appeal.

For the reasons mentioned in the application and arguments addressed, it is considered just and expedient to hear the appeal on merits rather than dismiss it on ground of delay. Thus, delay of 74 days in filing of the appeal is condoned.

Application is disposed of accordingly.

LPA-956-2024

1. Prayer in this appeal is for setting aside order dated 31.01.2023 passed by learned Single Bench, whereby CWP-6649-1995 filed by

appellants/ writ petitioners, has been dismissed.

2. Petitioners filed the above said writ petition seeking a direction to the respondents to regularize their services w.e.f. 01.04.1987 instead of 11.09.1991. It is the case of appellants/ writ petitioners that they along with respondent No.4 were working as Jail Warders on ad-hoc basis. Departmental Regularization Committee found them unfit on the ground of non fulfilment of physical standards qua chest and height. Services of the appellants along with respondent No.4 were terminated on 01.04.1987 alongwith number of other persons. CWP-1912-1987 was filed by appellants and respondent No.4, which was dismissed as withdrawn on 24.07.1987 with permission to file afresh, if so advised. Respondent No.4, filed CWP-562 of 1988 which was allowed in terms of CWP-72-1988. Services of respondent No.4 were regularized after he was found medically fit and fulfilling the prescribed physical standards. Present appellants, thereafter, filed CWP-1245-1991 which was disposed of on 03.06.1991, wherein it is observed that after medical examination of the present appellants, they were found to be qualified and fit for appointment. It is further noted that as posts of Jail Warders were not available against which these appellants could be accommodated, it was directed that as and when the posts of Jail Warders are available, the same shall not be filled by open advertisement but shall be first offered to the appellants. As and when vacancies arose, appointment was offered to the appellants and they were appointed vide order dated 09.09.1991. Subsequently, CWP-6649-1995 was filed by the present appellants seeking regularization of their services w.e.f. 01.04.1987. Learned Single Bench dismissed the same while observing that

respondent No.4 was appointed pursuant to directions of the Court in CWP-562-1988 filed by him. The present appellants were re-appointed in the year 1991, pursuant to the directions of the Court in CWP-1245-1991. The protection against discrimination, it is observed, is a positive concept, appellants having approached the Court in 1991 were appointed subsequently, no ground was thus found to interfere. Writ petition was dismissed. Aggrieved therefrom, present appeal has been filed.

3. Learned counsel for appellants vehemently argued that appellants are entitled to appointment from the same date as of respondent No.4. They had at the first instance filed CWP-1912 of 1987 together. Furthermore, it is incorrectly observed that appellants did not fulfill the requisite requirement. It is, therefore, prayed that this appeal be allowed and CWP-6649-1995 filed by the appellants be allowed as prayed for.

4. Learned counsel for the respondents (on advance notice) has opposed this appeal. Dismissal thereof has been sought.

5. We have heard learned counsel for the parties and have perused the file with their able assistance. However, we do not find any ground whatsoever to cause interference of this matter. It is a matter of record that appellants and respondent No.4 had together filed CWP-1912-1987 which was dismissed as withdrawn on 24.07.1987 with liberty to the petitioners therein to file afresh, if so advised. Present appellants approached this Court in the year 1991 whereas respondent No.4 had approached this Court much earlier in 1988 with CWP-562 of 1988 which was allowed in terms of CWP-72-1988. Appointments were afforded in terms of decisions in the respective writ petitions. Order dated 03.06.1991 passed in CWP-1245-1991 reads as

under:-

“In pursuance of our order dated 27.05.1991, learned Deputy Advocate General, Punjab has got the medical examination (chest and height measurement) conducted by the Medical Officer, Civil Dispensary, Punjab and Haryana High Court today. As a result of the examination, petitioner No.6-Raghubir Sharma and petitioner No.11-Kulbhushan, have been found short in height and thus not eligible for the post of Jail Warder. Therefore, this writ petition qua the above named petitioners is dismissed.

So far as the remaining petitioners are concerned, they have been found fully qualified and fit for appointment. According to the learned Deputy Advocate General, Punjab at present the posts of Jail Warders in Central Jails are not available against which these petitioners could be accommodated.

After hearing the learned counsel for the parties, we direct that as and when vacancies of Jail Warders are available, these vacancies shall first be offered to the remaining petitioners and they shall be considered for appointment as such provided they fulfil the other qualifications, that is academic and experience if any. It is further made clear that the post of Jail Warder, whenever available, shall not be filled by open advertisement, but shall be first offered to the petitioners as aforesaid.

This petition thus stands disposed of.”

6. Appointments were thereafter offered to appellants and order dated 09.09.1991 was passed. There is no dispute qua this aspect. In the given factual matrix we do not find any merit in the arguments as raised on behalf of appellants seeking regularization from the same date as of respondent No.4. Writ petition filed by them has been correctly dismissed.

7. No other argument has been addressed.
8. Learned counsel for appellant is unable to point out any illegality, infirmity or irregularity in the impugned order dated 31.01.2023 passed by learned Single Judge.
9. Keeping in view the facts and circumstances as above, this appeal is dismissed with an order as to cost.
10. Pending application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

05.11.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No