

**CM-5106-07-LPA-2024 in/and
LPA-2155-2024**

2024:PHHC:146814-DB



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

**CM-5106-07-LPA-2024 in/and
LPA-2155-2024
Date of Decision: November 11, 2024**

PIARO DEVI

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present: Mr. B.S. Sidhu, Advocate for the appellant.

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

LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 16.02.2024 passed by learned Single Bench whereby CWP-3451-2024 filed by appellant (writ petitioner) has been dismissed.
2. Appellant (writ petitioner) filed CWP-3451-2024 seeking directions to the respondents to grant service benefits under Old Pension and General Provident Fund alongwith all consequential benefits. It is the case of appellant (writ petitioner) that her husband was serving as Head Constable with Punjab Police when he unfortunately passed away on 02.05.2003 while in service. Appellant submitted application dated 29.05.2003 seeking appointment to the post of Clerk on compassionate basis. Office of Director

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General of Police forwarded the case of appellant to the Department of Home Affairs and Justice on 17.02.2004 stating therein that the case is covered under relevant instructions regarding priority based case but there was no vacant post of Clerk with Police Department. Appellant was ultimately offered appointment vide order dated 10.04.2006. She retired from service on 31.05.2023 on attaining the age of superannuation. It was pleaded that appellant served legal notice dated 25.06.2020 upon authorities seeking service benefits of General Provident Fund under Old Scheme claiming parity with petitioners in CWP-12020-2016. CWP-3451-2024 was ultimately filed by her on 14.02.2024, which was dismissed vide impugned order dated 16.02.2024.

3. Learned Single Bench on considering the facts and circumstances noted that appellant was appointed on compassionate grounds on 10.04.2006. Cut-off date for applicability of Pension Scheme in question was till 31.12.2003. Moreover, appellant contributed to the New Pension Scheme without raising any grievance and it is only after her retirement she filed the writ petition after a delay of 17 years. Aggrieved therefrom, present appeal has been filed.

4. Learned counsel for appellant argues that learned Single Bench has not considered the controversy in its correct perspective. Similarly situated persons have been afforded the benefit in question which is being wrongfully denied to the appellant. Learned counsel for appellant submits that application for compassionate appointment was submitted by appellant on 29.05.2003 after death of her husband on 02.02.2023. Recommendation for appointment was made on 17.02.2004. Delay in making recommendation is on the part of

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respondents, therefore, appellant should not be penalized for the same. As process for her appointment had started prior to 01.01.2004 she is entitled to benefit under the Old Pension Scheme. It is, thus, prayed that this appeal be allowed.

5. Learned counsel for State (on advance notice) has opposed this appeal while submitting that learned Single Bench has passed a well reasoned order, which deserves to be upheld. It is, thus, prayed that this appeal be dismissed.

6. We have heard learned counsel for parties and have gone through the file with their able assistance.

7. It is a matter of record that appointment of appellant to the post of Clerk was made on 10.04.2006. She was afforded appointment on compassionate basis. Merely because application was submitted by appellant on 29.05.2003 cannot in any manner vest her with a right to press her claim of being covered under Old Pension Scheme. Perusal of order dated 10.08.2016 passed in CWP-12020-2016 upon which reliance is placed, reveals that said writ petition was disposed of without expressing any opinion on the merits of the case with a direction to competent authority to consider legal notice served by petitioner therein in a timebound manner. It is rightly held by learned Single Bench to be of no avail to the present appellant. There is nothing on record to indicate that relief as claimed by appellant was afforded to the petitioner therein. Reliance by learned counsel for appellant on decision dated 15.07.2024 in CWP-9893-2019 is equally misplaced, as petitioner therein was selected to the post in question prior to 01.01.2004 with the said post having been advertised in the year 2001. Learned counsel for appellant is unable to

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point out as to how the case of appellant would be covered with the said decision. It is further not explained as to why appellant did not raise any grievance in respect to applicability of Old Pension Scheme from the date of her appointment in April, 2006 till her retirement in 2023. It is to be reiterated that the writ petition in question was filed in February 2024. She admittedly continued to contribute towards New Pension Scheme from her appointment till retirement.

8. It is to be noted at this stage that there is delay of 25 days in re-filing the appeal and 99 days in filing the same.

9. For the reasons mentioned in the application and arguments addressed, delay of 25 days in re-filing the appeal is condoned. However, perusal of application seeking condonation of delay of 99 days in filing the appeal does not reveal any reason whatsoever for condonation of delay. In the application seeking condonation of delay, it is stated, that after passing of impugned judgment, instructions were received by the counsel to challenge order dated 16.02.2024 passed in CWP-3451-2024. Thereafter certified copy of judgment was obtained and appeal filed. In the said process, delay of 99 days has occurred, which is neither intentional nor deliberate but due to the reason as above. Relevant paras of supporting affidavit dated 28.06.2024 of applicant-appellant, however, read as under:-

“2. That it is submitted before this Hon’ble Court that the after passing the initial judgment dated 19.10.2023 was passed by this Hon’ble Court, the instructions was received by the undersigned counsel to file the review application No. RA-CW No. 11 of 2024 in this Hon’ble Court, which was also dismissed vide order dated 23.01.2024.

3. That under these circumstances a delay of 99 days has occurred in filing the present appeal before this Hon’ble Court, which is neither intentional nor deliberate, but due to the reason mentioned above.”

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10. Perusal of application and affidavit reveal that though it is mentioned in the application that instructions were received by the counsel to challenge order dated 16.02.2024 passed in CWP-3451-2024, it is stated in the affidavit of applicant-appellant that instructions were to file review application No. RA-CW No. 11 of 2024 which was dismissed on 23.01.2024. Clearly incorrect facts have been stated in the affidavit in respect to RA-CW No. 11 of 2024 in CWP-17738-2023 titled 'Dilraj Kaur vs. State of Punjab and others' which has no concern with the controversy at hand. It is apparent that the application and affidavit have been filed in a casual and routine manner.

11. It is a settled position that it is not a length of delay but sufficiency of reasons seeking condonation thereof which are material. We do not find any ground leave alone reasonable ground for condonation of delay in question.

12. Learned counsel for appellant is unable to point out any infirmity or irregularity in impugned order dated 16.02.2024 which calls for interference or any ground for condonation of delay in filing the appeal.

13. No other argument has been raised.

14. Appeal is, accordingly, dismissed on merits and being time barred as well.

(LISA GILL)
JUDGE

(DEEPAK GUPTA)
JUDGE

November 11, 2024
Rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No