

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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CWP-18336-2021  
Date of decision: 20.02.2024

Satinder Kaur ...Petitioner

Vs.

State of Punjab and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. Kushagra Mahajan, Advocate  
for the petitioner.  
  
Mr. Amarpreet Singh Bains, AAG, Punjab.

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**AMAN CHAUDHARY. J.**

1. The prayer in the present Civil Writ Petition filed under Articles 226/227 of the Constitution of India, is for quashing order dated 05.04.2021, Annexure P-4, vide which the appeal of petitioner has been rejected.
2. Learned counsel contends that the order against which the petitioner filed appeal, was rejected on 05.04.2021, only on the ground of delay instead of deciding it on merits. Challenge laid therein was to an order of recovery of an amount of Rs.2,96,645/- from the 40% share of the employee. Even otherwise, due justification was given for the delay, most part of it was due to the Covid-19 pandemic, the period of which should have been excluded, as was also done in cases to be filed before the Courts.
3. Learned State counsel on the other hand, submits that the order passed, dismissing the appeal is legal and valid.
4. Heard learned counsel on either side.
5. A worthwhile reference can be made to **Postmaster General vs.**

**Living Media India Ltd.**, (2012) 3 SCC 563, wherein Hon'ble the Supreme

condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice...”

6. In **Mahadeo Vithoba Nikam vs. Gajanan Pandurang Kulkarni**, (1998) 9 SCC 716, the appeal was allowed setting aside all the orders of the appellate and revisional authority as also the High Court and the matter was remanded for fresh decision on merits after hearing the parties and observed that even though the appellant was not present before the Additional Tehsildar and filed the appeal against the order after a significant delay, the Appellate Authority was to consider the same on merits but it had been dismissed solely on the basis of delay.

7. The Appellate Authority in the case of **Arvind Gupta vs. Assistant Commissioner of Revenue State Taxes** WPA-2904-2023 dated 04.01.2024, had rejected the appeal on the ground of there being no provision under the GST Act for condoning the delay beyond four months, which was set aside by the High Court and it was directed to decide the same on merits.

8. Notably, filing of an appeal is a substantive right vested in an employee. It was imperative upon the Appellate Authority to have decided the same on merits, instead of axing it merely on the ground of delay. Even for this Court to have a holistic view, it would have been better that there was an application of mind by an authority higher than the one which was appealed against, reflected through an order. There is found to be sufficient explanation projected for the delay in preferring the appeal, which primarily was on account of the onslaught of Covid-19 Pandemic. Moreso, the petitioner would stand to gain nothing by delaying filing it.

9. It is trite that the cause of justice deserves to be preferred, when pitted against technical considerations. As such, a pragmatic approach instead of pedantic must be adopted.
10. Keeping in view the peculiar facts and circumstances of the case, the impugned order dated 05.04.2021 is set aside. The matter is remitted to the Appellate Authority, for rendering a decision on merits, in accordance with law, within a period of four months.
11. The present petition is disposed of accordingly.

(AMAN CHAUDHARY)  
JUDGE

20.02.2024  
G Arora

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