



RSA-3482-2019 (O&M)

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

(234)

RSA-3482-2019 (O&M)

Date of decision:- 05.08.2024

Superintending Engineer, Water Supply and Sanitation Department,

Barnala Road, Sirsa and another**... Appellants**

Versus

Sukhwinder Singh**... Respondents**

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sharad Aggarwal, DAG, Haryana
for the appellants.

Mr. Umesh Pandey, Advocate and
Mr. M.M.Pandey, Advocate
for the respondent.

SUVIR SEHGAL, J. (ORAL)

1. Defendants-appellants are in second appeal before this Court challenging the concurrent finding recorded by both the Courts below.
2. Pleaded case of the plaintiff-respondent is that he was working as a Driver with the Water Supply and Sanitation Department and retired on 28.02.2015 on attaining the age of superannuation. It has been averred that the plaintiff joined the department on 30.12.1985 as a Diesel Pump Helper and his services were regularized on 01.04.1993. By order dated 25.09.2000, he was re-designated as a Truck Cleaner and by letter dated 12.04.2004, Ex.PW-2/A, he was assigned the duty of a Jeep Driver.

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Plaintiff claims that he was promoted as a Driver on 12.06.2009 and continued to discharge the duty as a Driver till his retirement. Besides claiming salary for the post of Driver from 12.04.2004 to 12.06.2009, he claimed pay parity with his junior, Partap Singh, who was working as a Driver, by filing a suit for declaration.

3. Upon notice, defendants contested the suit by filing a written statement, wherein various preliminary objections were taken. On merits, it was submitted that the plaintiff was never re-designated as a Jeep Driver and he never discharged the duty as such from 12.04.2004 to 12.06.2009. It was denied that he was getting lesser salary than his junior. Plaintiff did not file any replication and issues were framed on the basis of the pleadings of the parties. After the parties led evidence and were heard, Trial Court by judgment dated 10.07.2018, decreed the suit to the effect that plaintiff is entitled to the salary of the post of Truck Driver since 12.04.2004, however, the arrears were restricted to the period of 38 months prior to the filing of the suit. Defendants remained unsuccessful in the first appeal, which was dismissed by the learned District Judge, Sirsa vide judgment dated 18.02.2019, resulting in the institution of the present petition.

4. State counsel has urged that the Lower Appellate Court has erred in dismissing the appeal on the ground that it is barred by a period of 46 days. By making a reference to the application for condonation of delay filed before the First Appellate Court, he has submitted that the delay was infact 22 days and the First Appellate Court has not even looked into the reasons, which occasioned the delay.

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5. Counsel for the respondent has, however, opposed the appeal and submits that the salary, which has accrued under the impugned judgment and decree, has been disbursed to the plaintiff-respondent and the appeal has become infructuous.

6. I have heard counsel for the parties and considered their respective submissions.

7. Perusal of the application filed by the appellants under Section 5 of the Limitation Act, 1963 shows that the opinion for filing of the appeal was received from the office of the District Attorney on 01.08.2018 and sanction for filing of the appeal was issued on 13.08.2018. The sanction was received in the office of the Executive Engineer on 23.08.2018 and thereafter, the appeal was drafted and instituted before the Court of the learned District Judge, Sirsa. This had occasioned a delay of 22 days in the filing of the appeal.

8. In *State of Nagaland Versus Lipok AO and others, (2005) 3 SCC 752*, Supreme Court has held that considerable delay or procedural red tape in the decision making process is a common feature in Government decisions. State works through an impersonal machinery and some latitude deserves to be shown as the Government decisions are proverbially slow.

9. Keeping in view the dictum of the Supreme Court and explanation given in the application filed by the appellants, this Court is satisfied that sufficient cause has been made out for condonation of the delay and the State has made out a case for its condonation.

10. Accordingly, the delay in the filing of the First Appeal before the



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learned District Judge, Sirsa is condoned. Although, the learned District Judge while dismissing the appeal has discussed the merits of the appeal also, but it could not do so in view of the legal position as settled by the Supreme Court in *Pathapati Subba Reddy (died) by LR's and others Versus Special Deputy Collector (LA)*, 2024 SCC Online SC 513. For the aforegoing reasons, this Court is of the view that the matter deserves to be re-examined by the Lower Appellate Court.

11. Accordingly, the judgment passed by the Lower Appellate Court is reversed. Matter is remitted to it to decide it afresh, after hearing the parties, as expeditiously as possible.

12. Appeal is disposed of.

13. Parties are directed to appear before the learned District Judge, Sirsa on 03.10.2024, at 10:00 A.M., for further proceedings.

14. Pending application, if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

05.08.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No