

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

103

2024:PHHC:039712-DB

**CM-1763-LPA-2024 in/and
LPA-952-2023 (O & M)
Date of Decision: 20.03.2024**

State of Haryana and others

.....Appellant(s)

Versus

Ramphal Dhanda

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Deepak Balyan, Addl. A.G., Haryana.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

CM-1763-LPA-2024

1. Application for pre-ponement of the main appeal from 16.05.2024 is allowed. Main case is pre-poned for hearing for today itself.

2. CM stands disposed of.

LPA-952-2023 (O & M)

3. The present appeal, which is barred by 398 days in filing the same, is directed against the order 02.05.2022 passed by the learned Single Judge in CWP-23649-2015 wherein, the charge sheet dated 28.01.2013 (Annexure P-20) was quashed on the ground that it was issued after almost 4 years of the alleged delinquency since the allegations were of irregularities for the years 2009-10 and the writ petitioner had retired on 30.06.2012. The learned Single Judge relied upon the law laid down by the Division Bench that the charge sheet was almost beyond a period of 4 years.

4. A perusal of the application for condonation of delay i.e. CM-2430-LPA-2023 would go on to show that after the case was decided on 02.05.2022, the

certified copy had been applied for on 09.05.2022 and the same was delivered on 25.05.2022. The matter was put up before the Law Officer and the Law Officer opined that it was not a fit case for filing the appeal on 29.05.2022 and the Advocate General also agreed to the said proposal on 04.06.2022. In spite of that, the advise of the Legal Remembrancer and Administrative Secretary to Government of Haryana was sought, who opined to the contrary on 13.09.2022. Resultantly, the appeal was filed on 20.07.2023.

5. The State has accordingly sought to justify that the delay is neither intentional nor deliberate and it has occurred while following the procedure prescribed while relying upon various judgments including the judgment rendered in ***Collector, Land Acquisition, Anantnag vs. Mst. Katji, 1987 (2) SCC 107***. The law is settled that in this regard. The delay, however, in the present case is unexplained to the extent that after 13.09.2022 when the advise as such was taken from the Administrative Secretary to the Government, no credible and settled explanation is made out as to what took so long to file the appeal in July i.e. almost after a period of 10 months. The Apex Court has time and again held that the State cannot be placed at a better pedestal than the private litigant and slight indulgence can be given but not to the level sought in the present application.

6. The Apex Court has time and again reiterated that the Government cannot be considered on a different footing for considering the issue of limitation. Reliance can be placed upon the judgment of the Apex Court passed in ***Office of the Chief Post Master General and others vs. Living Media India Ltd. and another, (2012) 3 SCC 563*** wherein, the following principles have been laid down:-

“12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the

matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

Accordingly, the appeals are liable to be dismissed on the ground of delay.”

7. Reliance can further be placed upon the principles laid down by the Apex Court in ***Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation & another, 2010 (5) SCC 459*** and ***Isha Bhattacharya vs. Managing Committee of Raghunathpur, Nafar Academy & others, 2014 (4) SCC (Crl.) 450*** wherein it has specifically been held that if the explanation is fanciful and there is lack of bona fide, then the delay is not to be condoned. Relevant portion of the judgment reads as under:

“15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining factsituation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause

public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some

more guidelines taking note of the present day scenario.

They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a nonserious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

8. In such circumstances, no case is made out for condoning the delay and accordingly the application for condonation of delay i.e. CM-2430-LPA-2023 stands dismissed.

9. Even otherwise on merits, it had also been specifically averred by the writ petitioner in Para no.32 of the writ petition that at the time of retirement, no departmental proceedings were pending against him and the charge sheet was issued after a period of six months of retirement. Though the State in its reply stated that the retirement was subject to the pending disciplinary proceedings but the said order of retirement was not placed on record to substantiate this claim.

10. Accordingly, we find no ground to interfere in the order dated 02.05.2022 passed by the learned Single Judge, specially keeping in view the fact that the amount of recovery which is involved is Rs.1,21,178/-.
11. Accordingly, the present appeal stands dismissed. Pending application, if any, also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

20.03.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No