

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104) LPA-667-2023 (O&M)
Decided on : 12.03.2024

State of Haryana and anotherAppellant(s)
Versus
Rajesh Kumar and anotherRespondent(s)

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

Present: Mr. Deepak Balyan, Addl. AG, Haryana.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-1746 & 1748-LPA-2023

Application has been filed for condonation of delay of 568 days in re-filing the present appeal, which is directed against the judgment of the learned Single Judge dated 29.01.2020 passed in **CWP-29973-2018** 'Rajesh Kumar Vs. State of Haryana and others' and for filing the appeal for which there is delay of 16 days.

An affidavit has been filed by the General Manager, Haryana Roadways, Rewari, explaining the reasons, keeping in view the directions issued by the Coordinate Bench that a better affidavit be filed, vide order dated 22.05.2023.

We have gone through the same, which would go on to show that the appeal was filed on 09.11.2020 and the same was returned with some objections on 20.09.2021. The paper-book was taken back by the office of the Advocate General, Haryana for removing objections. A letter was written to the department for removing the objections in the month of

LPA-667-2023 (O&M)

December, 2021 and concerned dealing Clerk, Legal Branch had retired and the letter got intermingled in some miscellaneous papers. On 06.03.2023, the department had written to the office of Advocate General to know the status of the file and the office of Advocate General had informed that the appeal could not be filed due to non-removing of the objections. Resultantly, steps were taken for removing the objections and the appeal was only re-filed on 11.05.2023 and, thus, delay has occurred.

Keeping in view the above, we are of the considered opinion that sufficient cause has been made out to condone the delay, as due to the retirement of the dealing hand as such, the appeal could not be re-filed within the time as prescribed in the High Court Rules and Orders. Resultantly, we allow the application and delay of 568 days in re-filing the appeal is condoned.

Similarly we condone the nominal delay of 16 days in filing, keeping mind the dictum of law laid down by the Apex Court in **‘Collector Land Acquisition, Anantnag and another Vs. Mst. Katiji and others’, (1987) 2 SCC 107** that each and every day’s delay is not to be explained.

CMs stand disposed of.

LPA-667-2023 (O&M)

Consideration in the present letters patent appeal is sought of the above mentioned judgment, whereby the Learned Single Judge had quashed the show cause notice dated 21.11.2018 (Annexure P-5) whereby the appellants had sought to dispense with the services of the employee, who was a driver appointed in the year 2008. The same was on the basis of a complaint moved by Deepak Kumar in the Chief Minister Complaints

Cell regarding the licence being verified. Resultantly, the employee as such approached this Court.

2. The Learned Single Judge has allowed the writ petition by noticing that the driving licence was issued on 31.12.2003 and respondents are not disputing the licence and the verification report dated 04.06.2009 (Annexure P-1) also shows that licence was valid from 31.12.2003 to 30.12.2006 and, therefore, having driven the vehicle for 10 years of the State Transport Department, was the reason which prevailed with the Learned Single Judge to quash the show cause notice itself. Reliance was also placed upon the judgment passed in **CWP-5406-2018 'Asha Ram Vs. State of Haryana and others'** by the same Learned Single Judge on 07.02.2019 regarding this aspect.

3. The only argument which could be raised by the State was that instead of relegating the writ petitioner to his remedy before the authorities to file appeal, the writ petition had been allowed, which was not justified and, therefore, the matter should be remanded to the concerned authorities to decide the issue.

4. The argument at the first blush seems to be attractive. However, a closer perusal of the file would go on to show that specific pleadings have been made by the writ petitioner that at the time of employment, the licence was duly verified by the authorities and a letter of communication (Annexure P-1) was sent to the authorities by the Licensing Authority, Mathura. A perusal of the same would go on to show that on 04.06.2009, the Office of the District Transport Officer, Administration Mathura, apparently wrote the letter to the General Manager, Haryana State Roadways, Rewari regarding the fact that licence had been issued on 31.12.1999 for MTV+LMV to Rajesh Yadav son of

Mahender Singh, the writ petitioner. The same had been endorsed on 31.12.2003 for HTV+HPV for a period of 3 years till 30.12.2006.

5. It is not disputed that the initial engagement as such was on contractual basis w.e.f. 25.06.2008, which was upgraded as Driver Gr.II w.e.f. 27.07.2011 subject to medical examination. The State Transport Commissioner, Haryana itself had issued circular dated 08.01.2002 that the licences, which have been issued from the other States, the same which could not be verified, new driving licences be issued. As per the communication dated 01.01.2018 (Annexure P-2), the General Manager, Haryana Roadways, Rewari had written the letter to the Additional DC and Secretary Transport, Rewari for granting sanction to issue new driving licence to the writ petitioner and to one Asha Ram, whose writ petition had already been allowed as noticed above. It was in such circumstances, the department itself had also written for issuing a new driving licence to the writ petitioner, since his driving licence was issued from authority beyond the State of Haryana.

6. We have also gone through the verification report dated 13.11.2018 (Annexure R-1) on the basis of which the show cause notice had been issued. The said report is silent on the fact of the endorsement made subsequently and only talks about the non-deposit of fee on 31.12.1999 when the initial licence was issued, but not about the subsequent endorsement made for issuance of Licence for Heavy Transport Vehicles. Thus, the basis as such for issuing the show cause notice apparently in the facts and circumstances does not seem to be justified. The same authority had replied to the communication received from the employer to verify at the initial stage regarding the licence on

04.06.2009 (Annexure P-1) whereby the same authority on account of the lack of record apparently on its own has given a contrary report.

7. In such circumstances, we are of the considered opinion that the Learned Single Judge was well justified in exercising the extraordinary powers under the writ jurisdiction while allowing the writ petition. Resultantly, there is no merit in the present appeal and the same is dismissed in limine.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

12.03.2024
Naveen

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No