

2024:PHHC:172553



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

**RSA-3152-2015 (O&M)
DECIDED ON:25.11.2024**

STATE OF PUNJAB & ANOTHER

.....APPELLANTS

VERSUS

BIMLA DEVI

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Jaspal Singh Guru, AAG, Punjab
for the appellants.

Mr. Anupam Singla, Advocate for
Mr. Lalit Goyal, Advocate
for the respondent.

SANDEEP MOUDGIL, J

C.M. No.7560-C of 2015

This is an application filed by the applicant/appellants – State of Punjab, under Section 5 of the Limitation Act read with Section 151 of the Code of Civil Procedure praying for condonation of delay of 486 days in filing the appeal.

Before proceeding with the order considering the prayer to condone delay of 468 days in filing the appeal, made in the application, this Court deems it appropriate to refer to the dispute in the main appeal:

RSA-3152-2014 (O&M)

1. This appeal has been directed against the judgment dated 02.12.2013 of the learned District Judge, Bathinda, whereby the appeal

preferred, by the State, against the judgement and decree dated 30.10.2012 passed by the learned Civil Judge (Senior Division) Bathinda, decreeing the suit filed by the respondent-plaintiff for declaration and mandatory injunction stands, has been dismissed, with a prayer to set aside the judgments of both the Courts below and dismiss the suit of the plaintiff and to allow the appeal filed by the State.

2. The brief facts of the present case are that the Plaintiff – Bimla Devi filed a suit for declaration alleging that she being the legal heir and natural heir of deceased Om Parkash son of Chhotu Ram, r/o Dhibar Colony, Bathinda, who was working as Safai Sewak, with the defendants from the year 1973 and remained posted at Ferozepur, Zira, Bathinda and other places, has died on 22.7.2009, is entitled to receive all the service benefits such as pension, G.P.Fund, Gratuity, Leave encashment, group insurance and other service benefits attached to the said post and also entitled to interest @ 18% p.a. till payment in full, and also sought mandatory injunction for issuance of a mandate/direction to the defendant to make the payment of all the service benefits to the plaintiff on account of the services rendered by the deceased Om Parkash and to make the payment of service benefits mentioned above with interest @ 18 p.a. from the date of retirement of the deceased Om Parkash till payment in full.

3. It is contended by the learned State Counsel that the delay has been caused on account of procedural processes and according necessary approval to file the appeal, which is neither intentional nor deliberate but for the said reason only. The appeal was filed on 03.07.2015, immediately after the necessary approval was accorded by the competent Authority vide letter No.454142/1, which was received in the office of the applicants/appellants on

06.04.2015, as such, the delay may kindly be condoned, which has occurred in according departmental approval to file the appeal.

4. Notice in the application and the main appeal was issued vide order dated 07.07.2015 and short reply has been filed to the application for condonation of delay, on behalf of the respondent which is on record.

5. It is contended on behalf of the respondent by relying upon the judgment of the Hon'ble Supreme Court of India in **"Office of the Chief Post Master General and others Versus Living Media India Limited and another"** **reported as 2012(2) SCT 269**, that the Government Departments are under a special obligation to ensure that they perform their duties with diligence and commitment and that the condonation of delay is an exception and should not be used as an anticipated benefit for Government Departments. It was also held by the Hon'ble Apex Court that usual explanation given by the Government Bodies for seeking condonation of delay on the ground that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process cannot be accepted. Accordingly, the Hon'ble Supreme Court refused to condone the delay of 427 days. However, in the present case also, the delay has been sought to be condoned on the similar ground that the file remained shifting from one office to another whereas it can be seen from the application itself that two/three months' time was consumed in moving the file from one office to another. Therefore, the application seeking condonation of delay of 468 is liable to be dismissed.

6. Heard learned counsel both the sides and case file also perused.

7. After having remained unsuccessful before the learned trial Court and before the first Appellate Court, the defendants have approached this Court by way of this second appeal to challenge the judgments of both the Courts

below.

8. By way of the application CM-7560-C-2015, which is supported with the affidavit of Executive Engineer, Water Supply and Sanitation Division, Ferozepur, defendants/appellants have prayed for condition of delay of 468 days in filing the present appeal on the ground that the copy of certified copy of the judgment of the judgment of the first appellant Court, dated 02.12.2013, was applied on 02.01.2014 and received on 06.1.2014 whereafter the case was forwarded by the Sub Divisional Engineer to the Executive Engineer from where it was forwarded to the concerned Superintending Engineer on 18.03.2015 and then it was forwarded to the Chief Engineer Water Supply and Sanitation Department, Punjab, Chandigarh and then to the Prosecution of Department for opinion and necessary sanction. District Attorney gave its opinion vide letter dated 20.01.2014 that it is fit case to file appeal and also opined that in case department wants to file the appeal, then sanction be sent to the office of Advocate General, Punjab, Chandigarh, for pursuing the case. Thereafter, case was forwarded to the office of Chief Engineer and then to the Executive Engineer, through the office of Superintending Engineer, to file the appeal, vide letter dated 20.03.2015. However, vide letter dated 18.03.2015, the Executive Engineer requested the Superintending Engineer to accord necessary sanction to file the appeal and the sanction was received on 06.04.2015 vide letter No.454142/1 and thereafter, office of Advocate General was approached by the officials of the applicants/appellants on 28.05.2015 and accordingly, the present appeal came to be filed before this Court, through the office of Advocate General, Punjab.

9. Needless to mention here that there is certainly some typographical mistake in the dates because the opinion of the District Attorney

cannot be in the year 2014 when said office was moved in 2015. Furthermore, a bare perusal of the entire story put-forth to seek condonation of delay of 468 days in filing the appeal, goes to show that the defendants/appellants have acted with a very casual approach in dealing with the matter with regard to filing the present appeal. Further only dates are mentioned but appellants did not bother to attach a copy of the letter(s) mentioned in their application, with their application which is another example of their causal approach.

10. This Court has gone through the judgment of the Hon'ble Supreme Court, dated 24.2.2012, passed in Civil Appeal No.2474-2475 of 2012 (arising out of SLP(C) Nos.7595-96 of 2011 titled as **“Office of the Chief Post Master General and others Versus Living Media India Limited and another”** reported as 2012(2) SCT 269, dealing with the question of delay of 427 days, a copy of which has been produced by the learned counsel for the respondent in Court and vide which Hon'ble Apex Court has turned down the request of the appellant to condone the delay by observing as under in para 13 of the judgment:

“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 bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to the considerable degree of procedural red-tape in the process. The Government departments are under the 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 every one 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.”

11. With the above observation, the Hon’ble Supreme Court dismissed the appeal without going into the merits and dismissed the appeals on the ground of delay.

12. In the present case also, the defendants/appellants have not given any reasonable and justifiable ground from which it can be derived that the delay caused in filing the appeal was natural. There is no evidence to the effect that the file remained pending with an office for any reasonable ground. The judgment of the learned Appellate Court is dated 02.12.2013, however, a copy of the judgment is applied on 02.01.2014, i.e., after one month. Then, after obtaining certified copy of the judgement of the learned Appellate Court on 06.01.2014, the Sub Divisional Engineer forwarded the case to the Executive Engineer who forwarded it to the Superintending Engineer concerned on 18.03.2015, i.e., after more than one year.

13. It is incumbent on the part of the appellants, with much more responsibility to explain each and every day’s delay by giving the details of procedure followed from day one till the date of filing of the present Regular Second Appeal, which is not at all coming-forth in the application seeking condition of huge delay of 468 days. The application has been filed with a casual approach with a guaranteed view that this Court is bound to condone the delay whereas the view of the Hon’ble Supreme Court in the above judgment is very clear that the condonation of delay may not be taken as an anticipated benefit for Government Departments.

14. However, it needs to be mentioned here that the learned State Counsel has relied upon a decision of the Co-ordinate Bench of this Court dated 26.02.2024 rendered in CWP Nos.3009-2019 and 3013-2019 wherein the petitions filed by the petitioners named Joginder Singh and Phuman Singh, who had challenged the orders of their dismissal from service and sought pensionary benefits after their conviction in NDPS case, were dismissed by this Court, to challenge the judgements of the learned Courts below.

15. The judgement dated 26.02.2024 is of no help to the appellants because at this stage, this Court is dealing with the application for condonation of delay of 468 days in filing the appeal and not the main appeal on merits. The above judgment will be applicable if the delay is condoned by this Court.

16. Accordingly, in view of the above quoted decision of the Hon’ble Supreme Court, this Court does not find any reason to condone the huge delay of 468 days in filing the present Regular Second Appeal by the appellants. Resultantly, the present application seeking condonation of delay is hereby dismissed. With the dismissal of application for condonation of delay, the main appeal also stands dismissed on the ground of delay.

17. Pending application, if any, also stands disposed off, accordingly.

(SANDEEP MOUDGIL)
JUDGE

25.11.2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>