

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(209)

RSA-72-2015 (O&M)

Date of Decision : April 23, 2024

Market Committee New Grain Market Charkhi Dadri and another

.. Appellants

Versus

Baljit Singh Rana

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Parveen Chauhan, Advocate, for
Mr. G.D.S. Wasu, Advocate, for the appellants.

Mr. Vikrant Rana, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-217-C-2015

As prayed for, the application is allowed.

CM-218-C-2015

As prayed for, the application is allowed.

Copy of order dated 06.01.2015 as Annexure A-1 is taken on
record.

CM-2685-C-2018

Present application has been filed for impleading legal
representatives of respondent Baljit Singh Rana, who unfortunately died on
26.05.2017, during the pendency of the appeal.

Notice of the application has already been issued to the non-
applicant/appellants.

Learned counsel for the non-applicant/appellants raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, present application is allowed. Legal heirs of the respondent Baljit Singh Rana, the details of whom are given in para 2 of the application, are allowed to be impleaded in the present appeal and the amended memo of parties attached with the present application is taken on record.

RSA-72-2015 (O&M)

1. Present appeal has been filed challenging the judgments and decrees of the Courts below by which, the claim of the respondent-plaintiff for confirming him in service on the post of Peon w.e.f. 01.08.1994 along with all the consequential benefits, has been allowed.

2. Learned counsel for the appellants submits that the said claim has wrongly been allowed to the respondent-plaintiff by the trial Court vide order dated 29.03.2012 without considering the fact that the post against which, the services of respondent-plaintiff were regularized, only became available in the year 1989 and from which date, his services had already been regularized hence, the regularization date could not have been ante-dated to 01.08.1984 i.e. when the respondent-plaintiff was appointed initially on the said post. Hence, the judgments and decrees of the Courts below are liable to be set aside.

3. Learned counsel for the respondent-plaintiff submits that the judgment and decree of the trial Court dated 29.03.2012 was challenged by the appellants by filing an appeal which appeal was dismissed by the lower Appellate Court vide order dated 11.12.2014 as time barred and once, the said appeal was dismissed as time barred as the same was filed after a delay

of 559 days, the appellants cannot argue on merits as judgment and decree of the trial Court has already attained finality even before filing of the appeal before the lower Appellate Court.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. The lower Appellate Court while dismissing the appeal being time barred has recorded a finding that the appeal was preferred after a delay of 559 days and nothing has come on record to show that the said delay was beyond the control of the appellants and further that rights in favour of the respondent-plaintiff has already been crystallized hence, the application seeking condonation of delay was dismissed by the lower Appellate Court and accordingly, the appeal was also dismissed.

6. Nothing has been shown that the findings recorded by the lower Appellate Court dismissing the application seeking condonation of delay of 559 days is perverse in any manner.

7. As per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No. 2474-2475 of 2012 titled as Office of the Chief Post Master General and others Vs. Living Media India Ltd. and another, decided on 24.02.2012***, each day's delay has to be counted so as to arrive whether delay in filing the appeal is bona fide or the same was due to the laxity on the part of the litigant and in the present case, the delay has not been explained and on the basis of the judgment of the Hon'ble Supreme Court of India cited hereinbefore, the same has rightly been declined. The relevant paragraphs of the said judgment are as under:-

“2. The following issues arise for consideration:

a) Whether the Office of the Chief Post Master General has shown sufficient cause for condoning the delay of 427 days in filing SLPs before this Court. Depending on the outcome of

the above issue, other issues to be considered are:

b) Whether the impugned advertisement inserted in the Reader's Digest issue of December, 2005 is in conformity with the requirement of law.

c) Whether the Department has made out a case for interference under Article 136 of the Constitution of India to reopen concurrent findings of fact rendered by the High Court.

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 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.

14. In view of our conclusion on issue (a), there is no need to go into the merits of the issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs.”

8. In the present case, the delay in filing the appeal which is approximately of more than one and half years, has not at all been explained by the respondent-plaintiff in a manner required. Once it is clear that the Market Committee knew about the final order merely that the file was kept

by the employee of the Market Committee, the Market Committee cannot claim that the delay in filing the appeal was bona fide. Each day delay has to be explained by the respondent-plaintiff. When the rights between the parties have crystallized, the plea to condone the delay is to be appreciated with the strict view whether the said delay in filing of the appeal was beyond the control of the appellants or not.

9. In the facts and circumstances of the present case, no valid justification came before the lower Appellate Court which dismissed the appeal vide order dated 11.12.2014 hence, the said order needs no interference at the hands of this Court as no perversity in the order passed by the lower Appellate Court dated 11.12.2014 could be pointed out.

10. Keeping in view the above, in the present case, no ground is made out for any interference by this Court and as the appeal by the lower Appellate Court is time barred and the said order dated 11.12.2014 of the lower Appellate Court has been upheld, the judgment and decree of the trial Court dated 29.03.2012 cannot be gone into on merits as being claimed by the learned counsel for the appellants.

11. The present appeal is dismissed in above terms.

12. Any civil miscellaneous application pending if any, also stands disposed of.

April 23, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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