

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25206-2024 (O/M)

Date of decision : 30.09.2024

Rajinder Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vikram Singh, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Rajinder Kumar) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 30.05.2024 (Annexure P-6), passed by learned Financial Commissioner, Haryana (in short 'Financial Commissioner'), whereby an application (CM-112-2023), seeking restoration of another Misc. Application No. 34 of 2003-2004, was dismissed on account of delay.

2. Briefly, the predecessor-in-interest of the petitioner, namely, Zile Singh alongwith others filed a revision petition (ROR-162/2000-01) before learned Financial Commissioner, challenging an order dated 30.05.1995, passed by Prescribed Authority, Panipat under the Haryana Ceiling on Land Holdings Act; an order dated 21.01.1997, passed by learned Collector, Panipat and order dated 27.12.2000, passed by learned Commissioner, Rohtak Division, Rohtak.

2.1 It transpires that the aforesaid revision petition came to be dismissed in default, vide order dated 27.07.2004 (Annexure P-2).

2.2 The revision petitioners before learned Financial Commissioner, filed an application (Misc. Appl. No. 34 of 2003-04) seeking restoration of revision petition, however, the same was also dismissed in default, vide order dated 05.05.2009 (Annexure P-3).

2.3 Thereafter, the aforesaid revision petitioners filed another application (CM-112-2023) seeking restoration of Misc. Application No. 34 of 2003-04. It transpires that during the pendency of aforesaid application, a writ petition (CWP-9596-2024) was filed by the present petitioner with the prayer that an appropriate direction be issued to respondents to decide the revision petition i.e. ROR-162/2000-01, wherein the following order dated 07.05.2024 was passed by this Court :-

“ Petitioner has approached this Court praying for issuance of direction to the respondent to decide ROR-162 of 2000-2011(Annexure P-1) and CM-112-2023 (Annexure P-2) filed therein titled as ‘Smt.Kalawati deceased through her LRs Vs State of Haryana and others’ pending in the Court of respondent in a time bound manner as the same is pending since long and due to pendency, the petitioner and others are suffering a lot.

Learned State counsel, on instructions from Karambeer, Assistant to Financial Commissioner (respondent), has apprised the Court that application for restoration filed by the petitioner is fixed for hearing on 23.05.2024.

After hearing learned counsel for the parties and in view of the statement made by learned State counsel, the present petition is disposed of with a direction to the respondent-Financial Commissioner and Principal Secretary to Government of Haryana, to decide the

application filed by the petitioner on the date fixed itself, i.e. 23.05.2024, in accordance with law, after hearing all the concerned parties.”

2.4 However, the above referred application (CM-112-2023) has been dismissed by the Bench of Financial Commissioners, vide order dated 30.05.2024 (Annexure P-6) by observing as under :-

“ The present CM No. 112 of 2023 has been filed for restoration of another Misc. Application No. 34 of 2003-04.

In fact, earlier the ROR No. 162 was dismissed in default on 27.07.2004. An application No. 34 of 2003-04 was filed for restoration of the petition. However, the said application No. 34 of 2003-04 was dismissed in default on 05.05.2009. Thereafter, the petitioners filed the present application after a lapse of more than 13 years.

The petitioner's Counsel was heard but the Counsel failed to explain the inordinate delay of 13 years. Finding no merit in it the CM No. 112 of 2023 is dismissed for being highly time barred.”

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

4. Learned counsel for petitioner submits that the impugned order dated 30.05.2024 (Annexure P-6) is a non speaking order, therefore, the same is liable to be set aside. It is submitted that the main revision petition (ROR-162 of 2000-01) was dismissed in default on 27.07.2004 and an application bearing Misc. Application No. 34 of 2003-04, seeking restoration of main revision petition, was also dismissed in default on 05.05.2009. It is stated that the petitioner was told that the Division Bench of Financial Commissioners was not constituted and as and when the Division Bench would be constituted, he would be informed,

however, no such information/notice was sent to the petitioner or his counsel. It is further submitted that the subsequent application for restoration of earlier application bearing Misc. Application No. 34 of 2003-04 has been dismissed for delay of 13 years. It is contended that the petitioner had shown sufficient cause for non appearance on 05.05.2009 and also for condonation of delay in filing the restoration application, which has not been considered by learned Financial Commissioner(s). Accordingly, it is prayed that the impugned order (Annexure P-6) be set aside and the restoration application (CM-112-2023) be allowed.

5. Heard.

6. Apparently, the revision petition (ROR-162/2000-01) came to be dismissed in default, vide order dated 27.07.2004 (Annexure P-2) and the application (Misc. Appl. No. 34 of 2003-04) filed for seeking restoration of revision petition was also dismissed in default on 05.05.2009 (Annexure P-3). Thereafter, no further action/steps were taken by the petitioner as against the above referred orders dated 27.07.2004 (Annexure P-2) and order dated 05.05.2009 (Annexure P-3) until filing of application (CM-112-2023) wherein prayer was made for restoration of earlier Misc. Application No. 34 of 2003-04. Concededly, the application (CM-112-2023) was filed after a delay of more than 13 years. It has not been shown as to whether any application for condonation of delay in filing the aforesaid restoration application (CM-112-2023) was filed or not. Be that as it may, the restoration application (CM-112-2023) reads as under :-

“1. That the petitioners have filed the above mentioned petition before the Hon'ble court which was listed on 05.05.2009 before this Hon'ble Court.

2. That the above said Misc. Application for restoration of revision petition was listed before this Hon'ble Court on 05.05.2009 and it was ordered to dismiss the same as dismissed in default. The abovesaid Misc. Application was filed by the counsel for the petitioner in the year 2004 for restoration of main revision petition which was ordered to dismiss in default vide order dated 25.07.2004. Thereafter it was told that the notice will be sent to the counsel and the parties for listing the same. The clerk for the counsel for the petitioners and petitioners many time verified regarding listing of the case. But every time it was informed that the case will be listed as and when the Division Bench will be constituted. But no notice was received. The petitioners many time asked from their counsel regarding next date of hearing but always it was told that no notice has been received. He assured that he will appear as and when he will receive any summons. At last the petitioner got verified from another counsel regarding listing of their case and he after verification told that their case has already been dismissed in default vide order dated 05.05.2009 and the application for restoration has already been dismissed in default. The petitioners could not appear before the Hon'ble Court on 05.05.2009. The non appearance of the petitioners is neither intentional nor willful but due to the reason mentioned above.

3. That due to above mentioned reason the counsel could not appear in the present case at time when it was taken up and the above mentioned case was dismissed in default. The non appearance of the counsel for the petitioners was not intentional but due to above mentioned bonafide reason.

4. *That in case the above mentioned case is not restored then the petitioners will suffer an irreparable loss and injury.*

It is, therefore, respectfully prayed that this application may kindly be allowed and the order dated 05.05.2009 may kindly be recalled and the above mentioned misc. application and revision petition may kindly be restored on its original number and decided on merits, in the interest of justice."

6.1 A perusal of the contents of the aforesaid restoration application (CM-112-2023) clearly reveals that neither any reasoning has been rendered therein for filing the restoration application after delay of more than 13 years nor any prayer was made therein for condonation of delay in filing the said application. Since no explanation has been offered by the petitioner in filing the restoration application (CM-112-2023) after an inordinate delay of 13 years, no fault can be found with the impugned order dated 30.05.2024 (Annexure P-6), whereby the restoration application (CM-112-2023) has been dismissed being time barred.

7. In case of ***Chennai Metropolitan Water Supply and Sewerage Board v. T. T. Murali Babu, 2014 (4) SCC 108***, the Hon'ble Supreme Court has clearly held as under :-

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ Court is required to weigh the explanation offered and the acceptability of the same. The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional Court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal

obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has fore gotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years delay in approaching the court, yet the writ Court chose not to address the same. It is the duty of the Court to scrutinise whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A Court is not expected to give indulgence to such indolent persons - who compete with Kumbhakama or for that matter Rip Van Winkle. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ Court should have thrown the petition overboard at the very threshold."

8. Considering the totality of circumstances, I find no merit in the present writ petition and the same is accordingly dismissed.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

30.09.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No