

2024:PHHC:110175-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(117)

LPA-1674-2024 (O&M)
Decided on: 27.08.2024

Babita Khichi

.....Appellant (s)

Versus

Indian Oil Corporation & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present:- Mr.Rajiv Kataria, Advocate
Ms.Sushmeet Kaur, Advocate for the appellant (s).

Mr.Ashish Kapoor, Advocate, for respondents No.1 & 2.

G.S. Sandhawalia, J. (Oral) :

CM-3961-LPA-2024

1. Application has been filed for condoning the delay of 3432 days in filing the appeal, filed against the judgment of the Learned Single Judge dated 25.03.2014, passed in CWP-18727-2010. It has been pleaded that since the case was decided in the absence of the counsel on that day and the application under Order 9 Rule 13 CPC came to be decided on a subsequent date on 11.08.2023, thus, the limitation is to be counted from the said date. Therefore, sufficient cause is made out to condone the delay since the application was filed in the year 2014 itself and only came to the decided in the year 2023 and for the same, the applicant cannot be

2. Accordingly, the application is allowed in view of the averments made, duly supported by affidavit of the appellant. Delay of 3432 days in filing the appeal is hereby condoned.

3. CM stands disposed of.

CM-3960-LPA-2024

4. Application for condoning the delay of 252 days in refiling the appeal is allowed, in view of the averments made in the application, duly supported by affidavit of Clerk of counsel for the appellant. Delay of 252 days in refiling the appeal is hereby condoned.

5. CM stands disposed of.

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6. Exemption application is allowed, as prayed for.

7. CM stands disposed of.

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8. The Learned Single Judge, vide judgment dated 25.03.2014, dismissed the writ petition, while coming to the conclusion that the salary statement had not been attached and therefore, the benefit of experience under column no.8 was not granted and the appellant was awarded 'zero marks' in the heading of 'experience'.

9. The application filed under Order 9 Rule 13 CPC was dismissed on 11.08.2023 by taking into account the affidavit attached dated 29.07.2022 which was of Mr.Sandeep Chawla, Divisional LPS Sales Head, Indane DO, Chandigarh. In the said affidavit, it had been averred that there was no attendance record with the distributorship for a management trainee-cum-office assistant and the present appellant had been working with irregular presence and without pay. Ultimately, the

Learned Single Judge came to the conclusion that there was no salary being paid and there was no salary certificate on the basis of which marks could be granted to the appellant. Resultantly, the application was dismissed without recalling the earlier order dismissing the writ petition.

10. Counsel for the appellant has tried to convince us by raising the argument that Clause 8 & 9 of the application form provided that she had the experience of working in the establishment and only in case she was an employee, then the salary certificate/slip issued by the employer was to be attached in support. It is thus submitted that the appellant had the experience of working and she was not getting salary and she was, thus, entitled for consideration.

11. Clause 8 reads as under:

“8. Do you have experience of running or working in any of the establishment dealing in the following for minimum one year?
YES

Direct Sale/ Home Delivered products (including LPG distributorship)	
Yes/No LPG DISTRIBUTORSHIP	
Other Petroleum products	Yes/No
Any other Trade	Yes/No

(If yes, give full details chronologically along with documentary evidence that establishes the experience. In case you are/were employee, then attach Experience certificate and salary certificate/ slips issued by the employer, in case of self-employed attach copy of Certificate from State Govt/Statutory Body/Trade Licence/Sale Tax Certificate/Shop & Establishment Certificate, etc. with details of business activity.”

12. The writ petition had been filed on account of raising the challenge that placing the appellant third in the selection list was bad in law and therefore, to deny marks to her on account of lack of experience

declared bad and the action of respondents No.1 & 2, was illegal. In such circumstances, denial of marks on account of experience gained was challenged with the prayer that she had to be placed at Sr.No.1 for the benefit of allotment for Indane (LPG) Distributorship in the State of Punjab. The work certificate dated 14.10.2006 (Annexure P-4) which was appended in support of the application would go on to show that the appellant was working as Management Trainee-cum-Office Assistant and also on a honorary basis. The said certificate reads as under:

“To whom it may concern

Certified that Ms.Babita Khichi D/o Sh. N.C.Khichi is working with us as Management Trainee-cum-Office Assistant since 1st April, 05. Being our family friend she is working on honorary basis. She is very hard working and exceptionally good at building customer relations.

She has a burning desire and very good business acumen to establish her own business. We wish her all success in life.

For Tongaria Indane Service

Sd/-

Prop.

(Roop Chand)”

13. Apparently, the respondent-Corporation sought to confirm the claim of working with the alleged employer and it was in such circumstances, they got a letter from M/s Tongaria Indane Service dated 06.05.2020. The said letter reads as under:

“It is kindly submitted that Ms Babita Khuchi d/o N C Khichi had been working at our distributorship as a management trainee cum office assistant since 1st April 2005 to 14th October 2006. There is no attendance record with us. She was working being with irregular presence and without payment.

Sd/-

Sandeep Chawla

Divisional LPG Head,
INDANE AREA OFFICE”

14. It is thus apparent, as pointed out by Mr.Kapoor from the brochure (Annexure P-3), wherein Clause 14.2 provided that marks had to be awarded on the basis of the documentary evidence that establishes experience of running or working in an establishment for minimum one year and the maximum marks provided is ‘4’. It is in such circumstances, the respondent-Corporation apparently, keeping in view the nature of work which was being attended and the responsibility given to the appellant, chose not to grant any marks, while rejecting the claim for marks for employment.

15. In our considered opinion since Clause 8 talks about: (i) the experience of running a distributorship which apparently, the appellant did not have as per Clause 8 reproduced above, (ii) wherein she is falling back on her experience of working in the establishment. The argument raised that only an employee would have to furnish a salary certificate/slips, is not acceptable and as a management trainee, it was not sufficient to get the experience of working without the payment of salary and the responsibility it would carry. Entrustment of the management trainee would be only to getting to know the method of how the system works while working with the agency but it cannot be treated as employment as neither she could have been dismissed from service or proceeded departmentally on account of negligence or wrong acts.

16. Thus, in our considered opinion, on account of working on a honorary basis for some period, the benefit of experience was rightly declined and the marks was not awarded. In such circumstances, we deem

respondent-Corporation for assessing the inter se merit cannot be sat on by way of judicial review as there is no illegality or irregularity in the procedure which had been followed.

17. Resultantly, in view of the above discussion, we find no ground to interfere in the well reasoned order passed by the Learned Single Judge, the present appeal is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

27.08.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No