

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

(109)

LPA-2033-2023 (O&M)

Decided on : 05.03.2024

Sujinder Singh @ Sajinder Singh

.....Appellant(s)

Versus

State of Punjab & others

.....Respondent(s)

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

Present:- Mr.Joginder Pal Devgan, Advocate for the appellant.

Mr.Salil Sablok, Sr.DAG, Punjab.

G.S. Sandhawalia, ACJ (Oral)

1. Consideration in the present appeal which is barred by 1737 days is an attempt to wriggle out of the undertaking given before this Court and with the employer and seek reconsideration.

2. Learned Single Judge, while dismissing the application on 03.11.2023 for recalling the earlier consent order dated 08.02.2019 noticed that writ petition bearing CWP-6043-2018 was dismissed as having been rendered infructuous. The same was on account of the fact that on 06.12.2018, the appellant along with his counsel had given consent in the Court to furnish an undertaking to the effect that he is willing to forego all his claims for the periods w.e.f the date of termination i.e. 24.12.1997 till the order of reinstatement while treating the interregnum period as dies non.

3. Apparently the appellant slept over the matter after being reinstated and then filed an application dated 10.10.2023 (Annexure A-6) wherein he started representing for the service benefits for the period he was out of service and to provide compensation of Rs.50 lakhs for the harassment. CM-18202-CWP-2023 was then filed on 16.10.2023 seeking revival of the writ petition to its original status and seeking all the claims which he had raised in the representation dated 10.10.2023 (Annexure A-6).

4. It is in such circumstances the order dated 03.11.2023 had been passed by the Learned Single Judge that after expiry of 5 years, an attempt had been made to ask the Court to recall its order which was a consent order. It is in such circumstances, we are of the considered opinion that the delay in filing the present appeal would relate back to the original order disposing of the writ petition on 06.12.2018 and the present appeal is thus barred by 1737 days. The law remains settled beyond an anvil of doubt in this regard and reference can be made to the judgments of the Apex Court in **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation & another, 2010 (5) SCC 459** and **Isha Bhattacharya Vs. Managing Committee of Raghunathpur, Nafar Academy & others, 2013 (12) SCC 649** wherein it has specifically been held that if the explanation is fanciful and there is lack of bona fide, then the delay is not to be condoned. Relevant portion of the judgment reads as under:

“15. From the aforesaid authorities the principles that can broadly be culled out are:

- i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining factsituation.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts

are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception. xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for

achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

5. Even otherwise, we are of the considered opinion that it is only an attempt to wriggle out of the undertaking which was given willingly in the presence of the counsel and the sanctity of the undertaking which had been given under the order of the Court now cannot be got marginalized on the ground of demand for the financial benefits for the period the appellant remained out of service. It is in such circumstances, we are neither inclined to condone the delay in filing the appeal or in allowing the appellant to reagitate for a lost cause.

6. Resultantly, in view of the above discussion, the present appeal is hereby dismissed. All pending application(s) also stands disposed of, accordingly.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

March 5th, 2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No