

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
Neutral Citation No. 2024:PHHC:045178-DB

(101) LPA-1035-2021 (O&M)
Decided on : 04.04.2024

Bhoop Singh and othersAppellant(s)

Versus

State of Haryana and anotherRespondent(s)

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

Present:- Mr. Bhisham Kumar, Advocate for the appellants.

Mr. Deepak Balyan, Addl. AG, Haryana.

G.S. Sandhawalia, Acting Chief Justice (Oral)

By way of present letters patent appeal which is barred by 417 days in re-filing, consideration is sought of the judgment dated 08.10.2018 passed by the Learned Single Judge, whereby **CWP-24238-2016** filed by the appellants was dismissed. Though the explanation which has been sought to be given in the application for condoning the delay does not suffice to entertain the case on merits, since apparently no interest has been taken by the appellants after the decision on 08.10.2018 to pursue the matter.

2. The law has been settled on this account. In **Darshan Singh Vs. Surjit Singh, 2008 (2) PLR 336**, this Court while dealing with the appeal which was presented within limitation after removal of defects, it was held that in the absence of any valid reason, re-filing which was done after a period of 1 year and 5 months, of delay was not liable to be condoned. The earlier Division Bench judgment of this Court in **Prithvi Raj Vs. Smt. Kamal Kanta, 1980 PLR 155** was considered wherein even the delay of 3 months in

re-filing had been held not to be condonable. Relevant portion of the judgment passed in **Darshan Singh (supra)** reads as under:-

“3..... Period of limitation has been prescribed under Rule 5 of the Rules and Orders of Punjab and Haryana High Court, Volume V Chapter I, Part A which deals with judicial business. This Chapter deals with "the Presentation and Reception of Appeals, Petitions and Applications for Review and Revision". Rule 5 deals with the re-filing of the appeals and reads as under:

“5. Amendment.- (1) The Deputy Registrar may return for amendment and re-filing within a time not exceeding 10 days at a time, and 40 days in the aggregate, to be fixed by him any memorandum of appeal for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

(2) If the memorandum of appeal is not amended within the time allowed by the Deputy Registrar under Sub-Rule (1), it shall be listed for orders before the Court.”

4. From the reading of the aforesaid Rules, it appears that the maximum period of limitation prescribed under the Rules is 40 days. Therefore, whenever an appeal is returned to a party for re-filing, it must be re-filed within 10 days and 40 days in aggregate meaning thereby that the maximum period for re-filing of appeal is 40 days. In the present case from the report of the Registry, it appears that though appeal was presented within limitation, but it was returned on 27.5.2005 asking the appellant to page mark the paper-book and also file the fair typed copy of the judgment. Appellant should have removed this defect and re-filed the appeal within 10 days and in any case not beyond 40 days. Otherwise also, the defect pointed out did not require much time. This appeal was re-filed after lapse of one year four months and 22 days i.e. 509 days. Main ground urged in the application is unfortunate death of brother-in-law of the applicant/appellant who died on 21.1.2006, according to the averments made in the application. Even if the period upto his death and further moratorium of one or two months is given, still there is absolutely no explanation for not re-filing the appeal within reasonable time. Appeal has been preferred after about nine months after the death of applicants brother-in-law. Thereafter even if the entire period for rectification of further objections is allowed, appeal was again returned to the applicant

on 22.3.2007. It has been re-filed 16.4.2007. There is absolutely no valid reason for retaining the file for a period of one year and about five months initially. Limitation has been prescribed under the Rules and Orders of Punjab and Haryana High Court, Volume V Chapter I, Part A which is in the nature of statutory provisions. Rule 5(1) of the said Rules prescribes maximum period of 40 days for re-filing the appeal. Sub Rules (2) of Rule 5 further provides that if the appeal is not amended within time, it be listed before the court for orders. The question arises whether the period of limitation prescribed under Rule 5 of the Rules and Orders of Punjab and Haryana High Court, Volume V Chapter I, Part A should be strictly construed meaning thereby whether it is mandatory or directory. Section 3 of the Limitation Act makes it obligatory for the Court to consider the question of limitation, notwithstanding any defence by the other side. Sub Section (1) of Section 3 of the Limitation Act reads as under:

“3(1) Bar of Limitation.- (1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.”

5. The rigor of Sub-section (1) of Section 3 of the Limitation Act has to operate, if the appeal is not filed within the prescribed period of limitation. Contention can only be allowed to be raised within the purview of Section 5 of the Limitation Act which inter-alia requires that sufficient cause should be shown for not preferring the appeal within the prescribed period of limitation. Rule 5 of the Punjab and Haryana High Court Rules and Orders, Volume V Chapter I-A, Part A also came up for consideration before the learned Single Judge of this Court in the case of Gurbachan Singh v. Shri Mastan Singh etc. (1984) P.L.R. 438 wherein following observations have been made:

“6. It was urged by Shri R.S. Bindra, Senior Advocate that once the appeal is filed, it has to be taken to remain on the record of the Court even if the memorandum of appeal is returned by the High Court to the party for removing certain defects. In his view, unduly long time spent by the petitioner, which has been considered as unexplained in the order dated March 7, 1980, requires to be ignored. Prithvi Raj v. Smt. Kamal Kanta (1980) 82 P.L.R. 155 is a Division Bench decision of this Court which covers this point also. This judgment was relied upon by me in the order dated March 7, 1980 for dismissing the appeal of the

petitioner, being barred by time. Prithvi Raj's case (supra) has been followed in F.A.O. No. 117-M of 1981 Smt. Kusum Lata v. Rakesh Mohan Pathak decided on 10th November, 1983. Mr. R.S. Bindra, Senior Advocate, urged that the Rules framed by the High Court, providing a limitation of 40 days for the removal of defects pointed out by the Registry of this Court, should be taken to be of a directory nature. Since once, according to him, a memorandum of appeal is filed under Order 41 Rule 1, Code of Civil Procedure, it cannot be rejected on any other ground than the one contained in Order 41 Rule 3 of the same Code. These rules have been made by the High Court to further the ends of justice. A party cannot be given undue latitude in complying with the orders of the Registry to remove the defects pointed out in appeal. The appellant cannot be permitted to move at leisure. If great latitude is given to the litigants, then they might not only take months but years for complying with the orders. The appellant in this case took 85 days to refile the appeal after removing the defects pointed out by the Registry. Such misuses require to be checked."

6. In view of the ratio of the aforesaid judgment wherein a Division Bench judgment of this Court has been relied upon, I find that in the present case, delay in re-filing the appeal has not been explained at all what to say satisfactorily explained. As a matter of fact, there is no explanation for condoning the delay of such a long period in re-filing the appeal. Rigor of Section 3(1) of the Limitation Act will operate. There is no sufficient cause for condoning the delay. This application is accordingly dismissed and consequently the Regular Second Appeal."

3. However, we still want to examine whether there is any merit in the present appeal or not. We are of the considered opinion that there is none, for which reasons are as under:

4. Challenge in the writ petition was raised to the order dated 27.07.2016 (Annexure P-4), whereby the representations of the writ petitioners by a speaking order had been rejected. The General Manager, Haryana Roadways, Gurgaon had rejected the regularization from a prior point of time

of the appellants for re-fixing the seniority, who were conductors/drivers. The authority found that the claim as such had been made by representation dated 15.05.2015 and the cause of action had only been revived by filing CWP-27450-2015, wherein directions had been issued to decide the representation in accordance with law. Thus, the cause of action which had died to its natural death was got revived by invoking the dispose of representation *mantra*, which had been dealt with by the Apex Court in **Government of India and another Vs. P. Venkatesh, (2019) 15 SCC 613** and deprecated in strong word.

5. The claim had been rejected on the ground that regularization had already been done between 1986 to 1991, as per the chart given in the impugned order, which is subject matter of challenge. The claim as such was for regularization on the basis of having completed continuous service of 240 days, as per instructions dated 19.02.1979. A finding was recorded that none of the applicants completed 240 days as on 19.02.1979. The relevant part of the findings recorded by the authority read as under:-

“As per letter No. 6774/A1/HAR dated 16.6.1977 of transport Commissioner Haryana, the official (drivers) appointed through the Commissioner considered as regular appointments and in rest of cases, it should be treated as on adhoc basis. None of employees qualified 240 days services as on 19.02.1979. Hence not regularized as per instructor dated 19.02.1979. The petitioner No. 1,2,7,13,15 did not complete two years of service on prescribed date 15.9.82 as required in notification dated 19.1.84 and thus not entitled to service regularized w.e.f. 1.11.86 in compliance of notification dated 16.2.87 petitioners No. 4,10,11,14,16,18 to 22 complete 2 years of service on prescribed date i.e. 1.11.86 as required in notification dated 16.2.87 and thus have already been regularized w.e.f. 1.11.86 in compliance of this notification Petitioners No. 5,6,8,9,12,17 complete 2 years of service on prescribed date i.e. 30.9.88 as required in notification

dated 28.4.87 and thus have already been regularized w.e.f. 30.9.88 in compliance of this notification. Petitioners No. 23 to 25 did not complete 2 years of service on prescribed date 30.9.88 as required in notification dated 28.4.87 and therefore have been regularized dated 1.6.93 applicable to them.”

6. The appellants, thus, never agitated for the regularization from an earlier point of time and had only for the first time raised the issue by filing a representation dated 15.05.2015 and got revived the cause of action by the order passed in CWP-27450-2015, which was strictly not permissible. The respondents being duty bound, passed the necessary order, which had been duly upheld by the Learned Single Judge by noticing the factual aspect. It was noticed that the initial regularization orders had been passed in favour of the writ petitioners, in view of the instructions dated 28.04.1987 and 28.02.1991 and the same had never been changed and, therefore, reliance upon order passed qua other employees was rejected.

7. Counsel for the State has also rightly placed reliance upon the judgment of the Apex Court in **State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others, (2015) 1 SCC 347**, wherein it has been held that fence-sitters cannot be given any benefit and the normal rule is that the persons should approach the Court at the earliest and long delay as such would prejudice not only the similarly situated persons but also to the department. The said view has been followed in **Rushibhai Jagdishchandra Pathak Vs. Bhavnagar Municipal Corporation, 2022 (8) Scale 345**, wherein it has been held that the doctrine of delay and laches are to be considered to be statutes of repose and statutes of peace and dormant claim have to be given rest.

8. Resultantly, we do not find any ground to interfere in the order of the Learned Single Judge both on merits and for condonation of delay. Accordingly, the present letters patent appeal alongwith application for condonation of delay in re-filing is dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

04.04.2024
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No