



CR-8226-2017

-1-

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

(230)

CR-8226-2017

Date of decision: - 15.01.2025

Union of India and others

....Petitioners

Versus

Tarun Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Anil Chawla, Advocate,
for the petitioners.

Mr. Sanjay Mittal, Advocate,
for the respondent.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 05.07.2017 passed by the Additional District Judge, Narnaul whereby the application under Section 5 of the Limitation Act filed by the petitioners alongwith the appeal has been dismissed.

2. Learned counsel for the petitioners has submitted that in the present case, the respondent-plaintiff had filed a suit for declaration to the effect that the impugned orders of dismissal/termination from service dated 25.07.2011 and 29.11.2011 were illegal, null and void and the said



CR-8226-2017

-2-

suit was decreed vide judgment and decree dated 23.09.2014. It is submitted that the petitioners had filed an appeal against the same on 02.01.2015 and that there was a delay of 67 days in filing the said appeal but the 1st Appellate Court had dismissed the appeal being time barred. It is submitted that alongwith the said appeal, an application for condonation of delay was filed, in which, it was stated that the appeal could not be filed in time on account of reasons beyond the control of the appellants and had further stated that the copy of the judgment of the trial Court was forwarded to the Law Directorate for further guidelines and after the higher authorities had taken a conscious decision to file an appeal, the same was filed after engaging the counsel and it was in the said process a delay of 67 days had occurred. It is further submitted that there are substantial issues involved in the main case and in case, the appeal is not heard on merits, then, great prejudice would be caused to the present petitioners. It is prayed that the impugned order be set aside and the case be remanded to the 1st Appellate Court for deciding the case on merits.

3. Learned counsel for the respondent has submitted that an order against the respondent-plaintiff was passed on 29.11.2011 vide which his services were illegally terminated and after full contest, the suit of the respondent-plaintiff was decreed vide judgment dated 23.09.2014. It is further submitted that the respondent-plaintiff has also incurred litigation expenses to defend the present petition and he has also been harassed on account of the delay caused. It is stated that in case, the



CR-8226-2017

-3-

impugned order is to be set aside and the case is to be heard on merits, the petitioners should be burdened with heavy cost so as to compensate the respondent-plaintiff.

4. This Court has heard learned counsel for the parties and has perused the paper-book.

5. A perusal of the paper-book would show that the respondent-plaintiff had filed a suit for declaration to the effect that the impugned orders of dismissal/termination from service dated 25.07.2011 and 29.11.2011 were illegal, null and void and against the principles of natural justice. In the said case, substantial issues were involved and after due contest, the suit of the respondent/plaintiff was decreed. The relevant portion of the relief granted to the plaintiff is reproduced as under:-

“xxx xxx xxx

20. *On the basis of finding of the issues, defendants are directed to hold a fresh enquiry against the plaintiff after serving him with a show cause notice as per law. The fresh enquiry against the plaintiff, if held should be completed within 6 months from the date of order. Further needless to say that in case no fresh enquiry is held, the plaintiff should be entitled to reinstatement in his services alongwith consequential benefits and interest @ 9% per annum on it. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.*

Pronounced in Open Court

*(Garima Yadav)
Civil Judge (Jr. Division)
Narnaul. 23.09.2014”*

6. As has been recorded in the impugned order, the present petitioners had applied for the certified copy of the judgment dated 23.09.2014 on 24.09.2014 and the same was prepared on 26.09.2014. It is



CR-8226-2017

-4-

further the case of the petitioners, as has been stated in the application under Section 5 of the Limitation Act for condonation of delay in filing the appeal, that the appeal was filed after the judgment was forwarded to the Law Directorate for further guidelines and after taking necessary permission from the higher authorities. It is also their case that after the approval was granted, the counsel was engaged and then, the appeal was filed. The delay admittedly is of 67 days and in the said circumstances, it cannot be stated that there was no sufficient ground to condone the delay. Moreover, for the inconvenience caused to the respondent-plaintiff, he can be adequately compensated.

7. It is a matter of settled law that every endeavour should be made by the Courts to decide the case on merits instead of technicalities. In the said regard, reference can be made to the judgment of the Honb'le Supreme Court in case titled as "**Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others reported as (1987) 2 Supreme Court Cases 107**", the relevant portion of which is as under: -

"xxx xxx xxx And such a liberal approach is adopted on principle as it is realized that:

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. "Every day's delay must be explained" does not mean that a*



pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.”

8. Keeping in view the above-said facts and circumstances and also in view of the law laid down in **Mst. Katiji's case (supra)**, the present revision petition is partly allowed and the impugned order dated 05.07.2017 (Annexure P-3) is set aside and the case is remanded to the 1st Appellate Court to decide the appeal on merits, subject to the petitioners paying the cost of Rs.40,000/- to the respondent-plaintiff.

9. The parties are directed to appear before the 1st Appellate Court on 24.02.2025, on which date, the petitioners would give a demand draft of an amount of Rs.40,000/-, prepared in the name of the respondent, to the respondent and on their doing so, the case would be fixed for arguments on merits.

10. It is made clear that in case, a demand draft of the said

CR-8226-2017

-6-

amount is not paid on or before 24.02.2025, then, the present revision
petition would be deemed to have been dismissed.

January 15, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes