

117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-30804-2024 (O/M)

Date of decision : 23.01.2025

Sandeep Kumar

..... Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Ms. Varsha Shamra, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Sandeep 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 31.03.2022 (Annexure P-3), passed by learned Collector, Fazilka, order dated 10.02.2023 (Annexure P-5), passed by learned Commissioner, Ferozepur Division, Ferozepur (in short 'Divisional Commissioner') and order dated 29.04.2024 (Annexure P-7), passed by learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner').

2. Briefly, on demise of Shri Jagan Lal, previous Lambardar of village Balluana, Tehsil Abohar, District Fazilka, proceedings were initiated for filling up the aforesaid vacancy. In pursuance to the aforesaid proclamation, 16 applications were received (including one submitted by petitioner and respondent No. 4-Varinder Kumar). The Tehsildar, Abohar as well as Sub Divisional Magistrate, Abohar, recommended the candidature of respondent No. 4 for appointment to the aforesaid vacancy and forwarded the matter to learned Collector.

2.1 Learned Collector, after considering the relative merits/demerits of the candidates, appointed respondent No. 4 (Varinder Kumar) as Lambardar (General Category) of village Balluana, vide order dated 31.03.2022 (Annexure P-3).

2.2 Feeling aggrieved against learned Collector's order dated 31.03.2022 (Annexure P-3), petitioner preferred an appeal before learned Divisional Commissioner. Some other candidates, namely, Om Parkash and Baldev Raj (proforma respondents No. 6 and 9 herein) also filed their independent appeals against learned Collector's order. All the aforesaid appeals came to be dismissed by learned Divisional Commissioner, vide common order dated 10.02.2023 (Annexure P-5).

2.3 Thereafter, the petitioner preferred a revision petition (ROR-97-2024) before learned Financial Commissioner, alongwith an application seeking condonation of delay of 249 days.

2.4 The learned Financial Commissioner, vide order dated 29.04.2024 (Annexure P-7), dismissed the petition (ROR-97-2024), filed by the petitioner on the ground of delay. Hence, the instant civil writ petition.

3. Heard.

4. Before considering the case in hand, it is apposite to refer to a few judicial pronouncements.

4.1 Hon'ble the Supreme Court in ***State of Madhya Pradesh Vs. Ramkumar Choudhary, 2025 (1) RCR (Civil) 199***; has observed as under :-

“5.1. In Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heir, wherein, one of us (J.B.Pardiwala, J) was a member, after referring to various

decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party.

7. There is one another aspect of the matter which we must not ignore or overlook. Over a period of time, we have noticed that whenever there is a plea for condonation of delay be it at the instance of a private litigant or State the delay is sought to be explained right from the time, the limitation starts and if there is a delay of say 2 years or 3 years or 4 years till the end of the same. For example if the period of limitation is 90 days then the party seeking condonation has to explain why it was unable to institute the proceedings within that period of limitation. What events occurred after the 91st day till the last is of no consequence. The court is required to consider what came in the way of the party that it was unable to file it between the 1st day and the 90th day. It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before the limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. (See: Ajit Singh Thakur Singh and Another v. State of Gujarat, AIR 1981 SC 733).

8. Accordingly, we dismiss this Special Leave Petition with costs of Rs.1,00,000/- to be deposited by the State within a period of two weeks from today with the Supreme

Court Mediation Centre and file proof thereof. If the said amount, as directed, is not deposited by the State, the Registry shall take necessary steps for recovery of the same, in accordance with law.

9. *We have deemed it necessary to impose costs to send a stern message that the States must not misuse the Supreme Court's time by filing appeals against the well-reasoned and conscious decisions rendered by the High Courts without proper grounds."*

4.2 Hon'ble the Supreme Court in ***H. Guruswamy and Ors. Vs. A. Krishnaiah since deceased by LRs, 2025 INSC 53***; has observed as under :-

"13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a

party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time.

18. For all the foregoing reasons this appeal succeeds and is hereby allowed.

19. The impugned order passed by the High Court is set aside and that of the Trial Court dated 05.08.2014 passed in Misc. No. 223 of 2006 is hereby restored."

4.3 In the case of **Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, 2014(2) JT 574**; Hon'ble Supreme Court observed 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 forgotten 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.”

4.4 Recently, in ***Rahul Mavai versus Union of India & Ors***; [W.P. (C) 17440/2024, decided on 18.12.2024]; a Division of Delhi High Court observed as under:-

“4. We also disapprove the unwholesome practice of seeking to explain away inordinate delay and laches on approaching the Court on the mere ground that the Counsel who had been dealing with, or entrusted, the matter, was tardy, negligent, or indolent. At times, this assertion is sought to be supported by an assertion that the litigant has approached the Bar Council concerned against the counsel.

5. We emphatically disapprove of this practice of shifting, to the shoulders of the Counsel, the negligence in approaching the Court. It is easy, in such circumstances, to file a complaint before the Bar Council and seek to explain away the delay. We deprecate this. A litigant does not abandon all responsibility to keep track of a matter, once it is entrusted to Counsel.

6. That said, if, in fact, the Counsel has been negligent, the litigant would have to place, on record, material to indicate that she, or he, has been in touch with the Counsel during the entire period of delay, and that the Counsel has been

misleading her, or him. This material must be acceptable, and convincing. The Court has to be satisfied that, in fact, the Counsel has been misleading the client, and that this explains the entire period of delay in approaching the Court. Of course, if the Court is so satisfied, and an innocent litigant has been led up the garden path by an unscrupulous Counsel, the court would not allow injustice to be done, and would, in an appropriate case, condone the delay... ”

5. Keeping in view the observations made in above referred judgments, I have perused the order dated 29.04.2024 (Annexure P-7), passed by learned Financial Commissioner and also considered the application filed by the petitioner seeking condonation of delay, wherein the following averments have been made in para-2 thereof :-

“2. That it is respectfully submitted that after the aforesaid decision of Ld. Commissioner, Ferozepur Division, Ferozepur, the petitioner has entrusted his case file to the present counsel for filing contempt petition before the Hon'ble Punjab and Haryana High Court and to Sandeep Kaur, Advocate, Punjab and Haryana High Court for filing present ROR before this Hon'ble Court. However, the said file was lost in the office of Sandeep Kaur Advocate and could not be traced despite best efforts. As such the petitioner again had to recollect the entire record and thereafter hand over the same to the present counsel for filing the present petition, which took some time. As such the present delay in filing the present petition has occurred due to said bonafide reason and is neither willful nor intentional.”

5.1 Apart from the reasoning mentioned in above extracted para-2, no other reasoning/explanation is forthcoming in the application.

5.2 In the above extracted para 2 of the application seeking condonation of delay, it is stated by the petitioner that he had engaged

two counsels i.e. one for filing a contempt petition in this court and other for filing petition before the court of learned Financial Commissioner.

5.3 The delay is sought to be explained by stating that file was lost in the office of Sandeep Kaur, Advocate and the same could not be traced despite best efforts.

6. In my considered view, the explanation offered is general and vague in nature. It is not forthcoming as to when the petitioner learnt that his file has been lost and when the entire record was recollected and handed over to the new counsel. Even the details/enrollment number with the Bar Council, of the so called counsel namely Sandeep Kaur, is not forthcoming.

6.1 In view of the above, I am not convinced that the delay of 249 days in filing the petition before the learned Financial Commissioner, has been satisfactorily explained by the petitioner. Accordingly, I find no reason to interfere with the order dated 29.04.2024 (Annexure P-7) passed by learned Financial Commissioner.

7. Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

23.01.2025
sjks

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No