

(2012) 03 P&H CK 0354

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4106 of 2004

Haryana Power General Corpn. Ltd. and Others

APPELLANT

Vs

Sudesh Mitter and Others

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 136, 14

Citation : (2012) 166 PLR 746

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Tewari, J.—This judgment shall dispose of RSA No. 4106 of 2004, RSA No. 20 of 2005, RSA No. 21 of 2005, RSA No. 2048 of 2005, RSA No. 2241 of 2005, RSA No. 3024 of 2005, RSA No. 3344 of 2005, RSA No. 3345 of 2005, RSA No. 3405 of 2005, RSA No. 3406 of 2005, RSA No. 3407 of 2005, RSA No. 3408 of 2005, RSA No. 4382 of 2005, RSA No. 2954 of 2006, RSA No. 2957 of 2006, RSA No. 3829 of 2008 and C.R No. 2087 of 2006, as common questions of law and facts are involved therein.

2. It is relevant to notice here that in RSA Nos.3344 and 3345 of 2005, there are applications for condonation of delay of 1341 and 2400 days respectively in filing the said appeals. Before embarking upon the merits of the case, it would be appropriate to decide these applications first.

3. Counsel for the respondents has argued that in the said cases, there is delay not of days and months but years.

4. Counsel for the appellants has relied upon State (NCT of Delhi) v. Ahmed Jaan (SC), 2008 (4) RCR (Criminal) 119 and has argued that in the said case, the Hon'ble Supreme Court had condoned delay of five years in filing the revision petition. Relevant portion of the aforesaid judgment reads thus :-

7. The proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. In *N. Balakrishnan Vs. M. Krishnamurthy*, it was held by this Court that Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go in the position of the person concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case is sufficient. Although no special indulgence can be shown to the Government which, in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels.

8. What constitutes sufficient cause cannot be laid down by hard and fast rules. In *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra*, Adult, this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In *Brij Indar Singh v. Kanshi Ram* (ILR (1918) 45 Cal 94 (PC) it was observed that true guide for a court to exercise the discretion u/s 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

11. In *O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others*, , a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, , a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. 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. 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. Judiciary is not respected on account of its power to legalise 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. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant. The delay was accordingly condoned.

5. In my opinion, in view of the ruling of the Hon"ble Supreme Court, it would be in the interest of justice to condone the delay. Consequently, C.M Nos. 8838-C in RSA No. 3344 of 2005 and 8841-C of 2005 in RSA No. 3345 of 2005 are allowed and delay of 1341 days in filing RSA No. 3344 of 2005 and of 2400 days in filing RSA No. 3345 of 2005 is condoned.

6. Briefly stated the facts are that the earlier two thermal plants at Faridabad and Panipat were independent entities with different qualifications and pay structure for their employees, with the employees at Panipat requiring to have higher qualifications and higher pay-scales. The erstwhile Haryana State Electricity Board took over both the units in the year 1985. The whole problem in these cases has arisen because of the completely slipshod and arbitrary manner in which the employees/pay structure were sought to be integrated. The said structure prior and after the integration is as follows :-

Thermal Power Station at Panipat

Thermal Power Station at Faridabad

Scale w.e.f .

Name of Post

Scale Name of Post

Scale w.e.f.

Name of Post

Scale Name of Post

1.4.79

Sr.Technician

700-1250

1.4.79

Sr.Technician (Instrumentation)

450/760

Technician

600-1100

Technician

400/700

1.1.86

Sr.Technician (Re-designated as ForemanGr-I as on15.1.86

600-2600

1.1.86

Sr.Technician (Instrumentation) (Re-designated)asTechnicianGr-I as on 15.1.86.

1200-2040

Technician (Re-designated as ForemanGr-II)

1400-2600

Technician (Re-designated as Technician Gr-II as on 15.1.86

950-1500

15.1.86

Foreman Gr.I

1640-2900

01.05.90

Foreman Gr.I

1800-3105

1.5.90

Technician Gr.I

1350-2200

Foreman Gr.II

1400-2600

Technician Gr.II

1200-2040

1.1.96

Foreman Gr.I

6000-9500

1.1.96

Technician Gr.I

4500-7000

Foreman Gr.II

5000-8000

Technician Gr.II

4000-6000

7. One Anil Kapoor and others who were working at the Faridabad Thermal Power Station in view of the discrepancies in the scale of pay of Senior Technicians and Technicians vis-a-vis the scale of pay payable to the holders of the same post at Panipat, filed a suit relying on or on the basis of the doctrine of "equal pay for equal work". Plaintiffs of the said suit had joined their respective services prior to 1.01.1986. One of the contentions raised in the said suit by the appellant - Board was that the educational qualification prescribed for the said posts at Panipat and Faridabad was different which having not been proved, the said suit was decreed. An appeal preferred there against was dismissed. Appellant filed a Second Appeal before the High Court which was marked as RSA No. 800 of 1992 and was also dismissed. After the passing of the decree in Anil Kapoor's suit, several other suits claiming similar reliefs were filed.

8. The present suits are of the similar nature and having been allowed by the Courts below, the appellants are before this Court.

9. The question of law which arises in the present appeals is whether the fact that similar relief has been granted to similarly situated employees by the Courts and which has been duly implemented is binding on the appellants ?

10. Learned counsel for the appellants have placed reliance primarily on a judgment of the Hon'ble Supreme Court in Haryana State Electricity Board & another v. Gulshan Lal & others, Civil Appeal No. 3336 of 2009, decided on 6.5.2009 which, as per him, would completely cover the facts of the present appeals since the said judgment also related to similar employees of Faridabad Thermal Plant. In Gulshan Lal & others" case (supra), the Hon'ble Supreme Court noticed as follows :-

13. With the aforementioned backdrop of events in mind, we may have a look at the contentions raised by Gulshan Lal and Others in their suit which was filed in 1999. They had been working as Technician Grade - II and not as Senior Technician. They were appointed during the period 15.01.1986 and 30.11.1988. All of them were, thus, appointed after 1.01.1986. They could not, thus, have

claimed parity with Anil Kapoor. Their scales of pay were also different.

They prayed for a decree for declaration for their entitlement to higher pay scales as also grant of a decree for mandatory injunction.

A bare perusal of the averments made in the plaint would clearly go to show that no foundational fact as regards basis of their entitlement was laid. The entire claim proceeded on the basis that they were senior to Anil Kapoor and Others.

11. It may be mentioned that even in the present suits, the same foundational facts have been mentioned. Ultimately, the Hon"ble Supreme Court held as follows :-

27. Appellant is a State within the meaning of Article 12 of the Constitution of India. For holding a public office, an employee must possess the requisite prescribed qualification, in absence whereof the additional reliefs could not have been granted to them relying on or on the basis of the judgment passed in the earlier cases. Conditions of service of the employees of the appellants are governed by the statutory rules. Violation thereof is impermissible in law. Whereas the appellants are bound by the doctrine of equality as envisaged under Article 14 of the Constitution of India, it is also well-settled that unequals cannot be treated as equals. Herein, equality doctrine has been invoked only on the basis of relief granted in the case of Anil Kapoor. In Anil Kapoor's case, a writ petition was also filed for the purpose of grant of designation. The same has rightly or wrongly been allowed. That would not mean that equality can be claimed on the basis thereof which would lead to a wholly anomalous situation. Decree granted by a competent court of law is no doubt binding on the employer. But, when in a subsequent litigation the absurd result emanating from the cascading effect thereof becomes apparent before another court and it is found that the said judgment is illegal, it is well-settled, that by application of Article 14 of the Constitution of India alone, similar relief should not be granted. Equality clause carries with it a positive effect. It signifies treating persons equally who are situated similarly. Those who had been occupying the position of Foreman Grade - I and/or Foreman Grade - II and other employees who were far below them either for the purpose of seniority or otherwise could not have been treated equally. The cascading effect thereof would be that for all intent and purport those who are in the joint seniority list being above Anil Kapoor and others in the seniority list would derive the same benefit irrespective of the fact as to whether they are qualified to hold the post of Foreman Grade - I and/or otherwise gained sufficient experience therefore for promotion to that post.

37. It may be true that this Court has dismissed the SLP on the ground of delay. The same, however, does not preclude us from considering the matter on merit. We would therefore assume that even no appeal was filed. Even in such a situation, this Court in State of Maharashtra Vs. Digambar, considered the following contention:

9. Shri Ashok Desai, in his reply to the submissions made on behalf of the

respondent and others who had obtained judgments in their favor from the High Court on the basis of the judgment impugned in this appeal, did not dispute the position that certain judgments of the High Court in similar matters had not been appealed against by the State in this Court. But, according to him such a thing had happened obviously under an impression that they were stray cases and not fit enough to be appealed against before this Court, having regard to smallness of the amounts involved. When the High Court allowed certain other writ petitions based on its earlier judgments in similar matters, the State, according to him, inevitably filed SLPs in this Court in respect of latter judgments, but, unfortunately those SLPs had come to be dismissed. But, when the High Court allowed the writ petition by the judgment under appeal and when that judgment was followed in allowing other 191 writ petitions and when innumerable persons were trying to take advantage of the said judgments of the High Court to file further writ petitions which was estimated to involve an expenditure of about 400 crores of rupees for the State of Maharashtra, there was no escape from filing the SLP out of which the present appeal has arisen and other SLP/SLPs to wriggle out of the unanticipated situation. It was his submission that in the peculiar facts and circumstances adverted to by him, the earlier non-questioning of certain judgments of the High Court in this Court and the dismissal of SLPs in limine by a Division Bench of this Court filed against a few judgments of the High Court, cannot be a bar against the State filing this appeal against the judgment concerned seeking a decision of this Court on merits, when the judgment impugned was wholly unsustainable and called for interference so that the State Government may be saved from the calamitous situation which it had to face otherwise on account of 191 judgments rendered by the High Court by following it and when innumerable persons were waiting to take advantage of the judgment by filing fresh writ petitions in the High Court?..

Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter's where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardise the interest of the State or public interest....

Therefore, the fact that the State has failed to file appeals in similar matters or this Court has rejected SLPs in similar matters, cannot be held to be a total bar or a fetter for this Court to entertain appeals under Article 136 of the Constitution against similar judgments of the High Court where need to entertain such appeals is found necessary to meet the ends of justice, in that, the ambit of power invested in this Court under Article 136 allows its exercise, wherever and whenever, justice of the matter demands it for redressal of manifest injustice.

39. We are not oblivious of the fact that anomalous situation would be created in the sense that juniors of the respondents may be getting a higher pay but things as they stand cannot be allowed to continue. It has a cascading effect, viz., those

employees who are junior to the respondents and/or even Anil Kapoor and others would be entitled to claim parity in the scale of pay as also in designation.

40. It is now a well-settled principle of law that nobody should suffer owing to the mistake on the part of the court in view of the maxim *actus curiae neminem gravabit*.

12. Learned counsel for the respondents have, on the other hand, sought to distinguish the judgment of the Hon''ble Supreme Court quoted above, by trying to argue that in the said case the employees were claiming not only the benefit of higher pay but also of higher status, whereas in the present case the claim of the appellants is that their pay should be stepped up to that of similarly situated employees of Panipat Thermal Plant and indeed their own colleagues who, though junior to them, have been granted the benefit by virtue of the earlier litigation.

13. I am afraid this argument, though attractive on the face of it, has to be rejected. Pay has always to be linked with the status and the responsibility of a post. The concept of stepping up would not be applicable where the comparable post has higher qualifications attached to it. As quoted above, the Hon''ble Supreme Court has itself envisaged the creation of anomalous situation and, thus, it has to be held that the dictum of the Hon''ble Supreme Court would apply squarely to these appeals.

14. Resultantly, these appeals are allowed and the judgments and decrees of the Courts below are set aside. Consequently, CR No. 2087 of 2006 is also allowed and the order releasing the attached amount's to the decree holders is set aside. No order as to costs.