
(2006) 08 P&H CK 0271
In the Punjab And Haryana At Chandigarh
Case No : CR No. 119 of 2004

State of Punjab and Others	Vs	APPELLANT
Banarsi Dass		RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2006) 08 P&H CK 0271

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Sushant Maini, DAG, for the Appellant; R.S. Manhas, for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The defendants are in revision petition aggrieved against the order passed by the learned first Appellate Court, whereby delay of 2 years and 8 months in filing of appeal, was not condoned. The plaintiff-respondent filed a suit for declaration claiming running grade of salary payable to teachers w.e.f. 6.1.1954 upto 3.6.1956. The suit was filed in the year 1995 i.e. almost after 40 years of the cause of action in respect of which the plaintiff claimed the benefit. The said suit was decreed on 22.8.1998. The appeal against the said judgment and decree was accompanied by an application u/s 5 of the Limitation Act, seeking condonation of delay of about 2 years and 8 months. The learned first Appellate Court found that the delay in filing of appeal is deliberate and that the Department was laxed and did not awake out of its slumber till filing of second application on 20.4.2001 for obtaining certified copy of the judgment.

2. After going through the order passed by the learned first Appellate Court and keeping in view the decree granted by the learned trial Court, I am of the opinion that it will be in the interest of justice if delay in filing of appeal is condoned. The Hon'ble Supreme Court in N. Balakrishnan v. Krishnamurthy 1999(1) CCC 12 (SC), has held that unless it can be inferred that there was giving up of rights in

filing of appeal, the Court should adopt a liberal approach in condoning the delay. In the instant case, one cannot lose sight of the fact that it was the stand of the petitioners that the file was lost. The loss of file is sufficient cause which entitles the petitioners to seek condonation of delay.

3. Consequently, the present revision petition is allowed. Delay of 2 years and 8 months in filing the appeal is condoned. The appeal is restored to its original number. The learned first Appellate Court is directed to decide the same on merits in accordance with law. Parties through their counsel are directed to appear before the learned first Appellate Court on 11.9.2006, for further proceedings, in accordance with law.