

LPA no.1637 of 2017 (O&M)

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

**LPA no.1637 of 2017 (O&M)**

**Date of Decision : 21.11.2018**

Haryana Institution of Civil Aviation and another

....Appellant(s)

Versus

Capt. Shailender Hooda and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER  
HON'BLE MR JUSTICE LALIT BATRA**

Present : Mr. B.D.Sharma, Advocate for the appellant(s)

**MAHESH GROVER, J.(ORAL)**

This appeal is directed against the judgment of the learned Single Judge dated 17.1.2017 and has been filed after a delay of 112 days.

Though the appeal is accompanied by an application for condonation of delay under Section 5 of the Limitation Act, the same did not offer any justifiable reasons and on 6.9.2017 learned counsel for the appellants prayed for some time to file an affidavit that would explain the delay. An affidavit was filed on 15.1.2018.

Since we were not satisfied with the contents of the said affidavit, we permitted the appellants to file another affidavit which they have done now on 19.11.2018. The cumulative effect of both these affidavits does not redeem the situation or explain the delay satisfactorily. It has been averred in the affidavit dated 15.1.2018 that the certified copy of the judgment of the learned Single Judge dated 17.1.2017 was received on

2.2.2017 which was forwarded to the appellants by the learned counsel representing them on 6.2.2017. The Advisor, Civil Aviation, Haryana also forwarded a copy of the order passed vide his letter dated 9.2.2017 and thereafter the judgment alongwith complete record was put up before the Executive Director, Haryana Institute of Civil Aviation by the dealing Clerk on 15.2.2017 and the said officer directed the dealing Clerk to put up the entire file for compliance of the order passed by the learned Single Judge which he did promptly on 16.2.2017. Thereafter the details of month-wise flying incentive was prepared for all the flying instructors which involved three flying clubs of Karnal, Pinjore and Hisar. The Executive Director also issued a reminder dated 20.3.2017 to all these clubs to supply the information. Compilation of record took some time and when the entire record was received it was forwarded to the Executive Director on 21.4.2017 who then forwarded it to the Advisor, Civil Aviation, Haryana on 24.4.2017 who vide his note dated 5.5.2017 opined that learned Advocate General office be consulted on a point of clarification. Accordingly, on 8.5.2017 the matter was referred to the Advocate General. On 9.5.2017 the Advisor, Civil Aviation, Haryana directed that the opinion of the learned Advocate General be obtained. Rather than seeking an opinion on point of clarification on 15.5.2017, the Executive Director sought further legal opinion though it is not clarified what the word 'further' would suggest. Learned Advocate General forwarded his opinion on 13.6.2017 whereafter the decision to file the appeal was taken.

The appeal, however, was filed on 23.6.2017.

An affidavit dated 19.1.2018 reveals the real reason for filing the appeal. It is not on point of principle or a grievance noticed from the

impugned judgment but what has prompted the appellants to come to this Court is the realization of the financial implications. Both the aforesaid affidavits state that endeavour was being made to collect the records from three flying clubs suggesting an intention to implement the order.

Evidently, the sole reason that has prompted the appellants to file the present appeal is the consequences of financial implications. Even if it is so, then also the appellants have to remain vigilant to take recourse to their remedies in law. We are of the opinion that no justifiable reason has been offered for delay to be condoned. Learned Single Judge has noticed that pay scale and incentives appended to the post of pilot instructor and set out in detail and against the post of Assistant Pilot Instructor it has been written same as pilot instructor. The pilot instructors as also several other categories of persons such as Chief Flying Instructor, Chief Air Craft Engineer (Quality Control Manager), Aircraft Engineers (Senior) (Deputy Quality Control Manager HICA) and Aircraft Engineer (Junior) (Deputy Quality Control Manager of the respective Centre HICA) are all getting incentives and if that be so then the Assistant Pilot Instructors against whose pay scales the incentives have been mentioned as the same as those of a pilot instructor, cannot be deprived of the benefits.

Learned Single Judge also noticed the information supplied under the RTI stating that due to financial crisis the institute is not in a position to give salary to the staff regularly what to talk of incentives to the pilots.

This to our minds would not concern the writ petitioners as it is entirely upto the employer how he manages his resources. As long as an employee continues to be in employment he would necessarily be entitled to

the emoluments that he has been promised at the time of employment. As noticed in the affidavits filed by the appellants, what has moved them to file the instant appeal is only the financial implication. We, therefore, do not find any reason to interfere with the impugned order, particularly when it is barred by an inordinate unexplained delay of 112 days.

Hence, dismissed.

(Mahesh Grover)  
Judge

21.11.2018  
rekha

(Lalit Batra)  
Judge

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |