

\$~60

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 618/2018**

BHARAT SANCHAR NIGAM LTD Appellant

Through: Mr. Deepak Anand, Advocate.

versus

SHASHI KANTA RISHI Respondent

Through: None.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

%

O R D E R
31.10.2018

CM APPL. 45703/2018 & CM APPL. 45706/2018 (exemption)

1. Exemption allowed, subject to all just exceptions.

CM APPL. 45705/2018 (condonation of delay)

2. There is a delay of 192 days in filing this appeal.

3. The only explanation offered is contained in para 3 of this application which reads as under:

“3. That following the collection of the said certified copy on 10.04.2018 the same was forwarded to the concerned department and that some time was taken to seek opinion from the Ld. Advocate. That after receiving the opinion from the Ld. Advocate the same was brought to the notice of the higher

authorities of the Appellant department before the said matter was allocated to the present Standing Counsel for the purpose of filing the present Letters Patent Appeal before this Hon'ble Court.”

4. There is virtually therefore no explanation at all for the delay of over six months in filing the appeal.
5. Consequently, the Court is not inclined to condone the delay.

LPA 618/2018 &C.M. No. 45704/2018 (stay)

6. Nevertheless, the Court also proposes to consider the appeal on merits.
7. The challenge in this appeal is to the judgment dated 8th March 2018 passed by the learned Single Judge in W.P.(C) 225/2005 whereby the challenge by the present Appellant to the impugned award dated 12th February 2004 of the Central Government Industrial Tribunal-cum-Labour Court ('the Tribunal') was disposed of with the following directions:

“53. As a result of the above analysis and discussion, the present writ petition is partly allowed, in the following terms:

(i) The finding, in the impugned Award dated 12th February, 2004, that the termination of the services of the respondent, by the petitioner, was illegal, is affirmed.

(ii) The direction, by the Tribunal, to reinstate the respondent in service, is also affirmed; however, as the respondent has crossed the age of superannuation, the Award is modified by directing the petitioner, to disburse, to the respondent, the minimum of the pay scale of regular typist, in the office of the petitioner, as revised from time to time, till 2nd August, 2016,

being the date when the respondent would have reached the age of superannuation. The amounts paid to the respondent, under Section 17-B of the Industrial Disputes Act, 1947, shall be adjusted therein. Payment, as directed, shall be made, by the petitioner to the respondent, within four weeks of receipt of a certified-copy of this judgment.

(iii) The direction, by the Tribunal, to regularise the respondent as typist, and grant her all benefits consequent upon such regularisation, is set aside.

(iv) No opinion is expressed, regarding the application of the respondent, under Section 25-C of the Industrial Disputes Act, stated to be pending before the Industrial Tribunal, which would proceed on its own merits.”

8. The judgment of the learned Single Judge sets out in considerable detail the facts of the case and about the Respondent trying to get implemented the orders passed in its favour at various stages.

9. The learned Single Judge had also considered her plea for being regularised in the post of typist and actually upheld the contention of the present Appellant that the direction of the Tribunal that she should be regularised at the post of the typist was not sustainable in law. That direction was, in fact, set aside by the learned Single Judge.

10. Learned Counsel for the Appellant sought to place reliance on the judgment of the Supreme Court in *State of Punjab v. Jagjit Singh (2017) 1 SCC 148* to contend that the plea for regularisation was unjustified and also that the Respondent would not be entitled to the minimum pay scale of a regular typist.

11. The Court finds that on account of the conduct of the Appellant in not implementing the orders passed by this Court from time to time, during the pendency of the writ petition, the Appellant virtually frustrated the attempts of the Respondent to secure justice. In other words, till she reached the age of superannuation on 2nd August 2016, she kept waiting for the implementation of the orders in her favour. Consequently, although on merits she succeeded before the learned Single Judge, she could not get reinstated as a typist.

12. Learned Single Judge has explained the reasoning behind the direction requiring the Respondent to be paid at regular pay scale as under:

“52. Having said that, given the fact that respondent was, apparently, discharging the duties of a typist, she ,would, in view of the law laid down in the decisions cited hereinbefore, be entitled to be paid the minimum of the regular pay scale of typist in the office of the petitioner (as revised from time to time), till the date of her superannuation, i.e. 2nd August, 2016. As I am not upholding the direction, of the Tribunal, to regularize the respondent in service, the grant, to the respondent, of the minimum of the regular pay scale of typist, till superannuation, would not entail, in its wake, proportionate retiral benefits.”

13. The learned Single Judge has discussed the legal position elaborately in a well reasoned order and has issued the directions which have been extracted hereinbefore. Considering that the learned Single Judge was exercising jurisdiction under Article 226 of the Constitution, this Court finds that the directions issued finely balances the equities. The impugned order

cannot be said to be suffering from any illegality of infirmity.

14. No grounds have been made out to interfere with the impugned order of the learned Single Judge on merits.

15. Consequently, the appeal is dismissed both on the grounds of delay as well as on merits.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

OCTOBER 31, 2018

sapna