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

Date of decision: 16.05.2024

+ LPA 391/2024

SANJAY SINGH YADAV Appellant

Through: Ms. Pooja Dhari and Mr. Pratul
Pratap Singh, Advs.

versus

AIRPORT AUTHORITY OF INDIA & ANR. Respondents

Through: Mr. Digvijay Rai and Mr. Archit
Mishra, Advs. for R-1
Ms. Anjana Gosain and Ms. Nipun
Sharma, Advs. for R-2

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

CM APPL. 29267/2024 -Ex.

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 29266/2024 -Delay 60 days.

3. This is an application filed by the petitioner seeking condonation of 60 days delay in filing the appeal.
4. The application is, for the reasons stated therein, allowed. Consequently, the delay of 60 days in filing the letters patent appeal stands condoned.
5. The application stands disposed of.



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6. The present appeal under Clause X of the Letters Patent seeks to assail order dated 12.02.2024 passed by the learned Single Judge in W.P. (C) No. 7429/2018, whereby the learned Single Judge has dismissed the writ petition preferred by the appellant/writ petitioner wherein the appellant had sought a direction to the respondents to consider his candidature for physical measurement and endurance test for the post of Junior Executive (Fire Services) qua the 25% Departmental Examination Quota Seats, written examination qua which was conducted on 26.03.2018.

7. While rejecting the writ petition, the learned Single Judge in the impugned order has observed that it was an admitted case of the appellant that though he was an employee of the respondent no.1 and that he had, in order to join an organization in Qatar on a contractual appointment of three years, tendered his technical resignation which was accepted on 13.11.2017 w.e.f. from 02.11.2017. Consequently, even though when the written examination for the said post of Junior Executive (Fire Services) was held, the appellant was actually serving with an organization in Qatar, however, taking into account that his lien was still continuing with the respondent no.1, he was permitted to appear in the written examination. However, his request for appearing in the physical measurement and endurance test was subsequently rejected.

8. Being aggrieved the appellant preferred the aforesaid writ petition, which was listed before the learned Single Judge for the first time on 23.07.2018. On the same date only notice was issued therein and as no stay was granted in his favour, no post was reserved for him. In fact, as noted in the said order dated 23.07.2018, though the appellant's counsel herself



stated that the appellant was “... ..ready and willing to join the respondent department”, and had therefore sought time to seek instructions from them. However, when the matter was thereafter listed before the learned Single Judge on 02.08.2018 and 09.08.2018, adjournment was sought on behalf of the appellant. On 27.09.2018 when the matter was again listed the learned counsel for the appellant simply sought time for filing rejoinder.

9. From the impugned order we find that the learned Single Judge has specifically noted that the appellant had neither apprised his counsel about joining the respondent nor expressed his willingness to join back the respondent. On the contrary, he had filed an affidavit stating that as he was on a contractual appointment with an organization in Qatar, he had to give at least 60 days notice before rejoining the services with respondent no.1.

10. It is in these circumstances that the learned Single Judge observed that the appellant was not serious about joining the service of the respondent no.1 at the post of Junior Executive (Fire Services) at the relevant time and has consequently dismissed the writ petition.

11. Before us, learned counsel for the appellant has vehemently urged that once it is an admitted position that the appellant’s lien for respondent no.1 continued, the appellant was a departmental candidate and to which the learned Single Judge has also agreed, his request for appearing in the physical measurement and endurance test could not have been rejected. She therefore prays that the appeal be allowed.

12. On the other hand, Mr. Digvijay Rai, learned counsel for the respondent no.1 supports the impugned order and submits that even if the appellant was accepted as a departmental candidate as his lien was continuing with the respondent no.1, the fact remains that he was not



available to join services with the respondent no.1 at the relevant time. Further, it is only after having completed his three year's tenure of contractual employment with the organization in Qatar that the appellant now wants to join the post for which he was not at all inclined at the relevant time, which is evident from the fact that he had refused to join service with respondent no.1 within one week, as noted by the learned Single Judge on 23.07.2018. On the other hand, the bona fide of the respondent no.1 was apparent from the fact that one post was kept vacant for the appellant till 05.09.2019, however, for obvious reason the appellant did not want to join at that stage and therefore the said vacancy was allocated to the next waitlisted candidate as the wait list panel was to expire shortly. He, therefore prays that the appeal be dismissed.

13. This Court, after hearing learned counsels appearing for both parties as also upon going through the documents on records, finds that the appellant, despite being given repeated chances by the learned Single Judge for joining back the respondent no.1, failed to do so. This is rather more intriguing as the respondent no.1, without there being any direction of any kind, had kept one post vacant for the appellant till as late as on 05.09.2019. Under these circumstances, with this lackadaisical attitude the appellant could not presume that respondent no.1 will permit to join back as per his whims and fancies.

14. No doubt, the contention of the appellant of his being a "*Departmental Candidate*" under Regulation 2(j) of the Airports Authority of India (Recruitment and Promotions) Guidelines, 2005 has been accepted by the learned Single Judge, but that in itself, particularly in view of the aforesaid circumstances wherein the appellant for reasons best known to him



failed to join back his services with the respondent no.1 at the relevant time, is in the opinion of this Court, not a ground for this Court to grant any relief to appellant at this belated stage.

15. In the light of the aforesaid factual matrix the appellant cannot take benefit of having qualified as a “*Departmental Candidate*”. We therefore concur with the findings of the learned Single Judge, especially, wherein he has identified the facts involved herein appearing “... .. *to be a classic case of what one would call “operation successful, patient dead”*”, leaving hardly any scope of interference by us. For the aforesaid reasonings, this Court, does not find any reason to interfere with the impugned order passed by the learned Single Judge under challenge by way of this appeal.

16. Accordingly, the present appeal, alongwith the applications, if any, are hereby dismissed with no order as to costs.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 16, 2024/rr