

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7706 OF 2015

Ankush Maruti Poul,
Age-45 years, Occu-Nil,
R/o Kharat Aadgaon,
Tq.Majalgaon, Dist.Beed

PETITIONER

VERSUS

1. The Divisional Controller,
Maharashtra State Road Transport
Corporation, S.T. Divisional Office,
Beed, At Post. Tq. and Dist. Beed

2. The Divisional Traffic Superintendent
(D.T.S. Default) (Competent Authority)
Maharashtra State Road Transport
Corporation, S.T. Divisional Office,
Beed, At Post. Tq. and Dist. Beed

RESPONDENTS

Mr.Parag Shahane, Advocate for the petitioner.
Mr.D.S.Bagul, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/08/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner assails the judgment and order dated 05/09/2012 delivered by the Labour Court, Aurangabad in Misc.Delay (ULP) No.4/2011 thereby refusing to condone the delay in

preferring the ULP complaint for challenging the dismissal dated 26/02/2009 inflicted by the respondents on the petitioner. The petitioner also challenges the judgment and order dated 20/04/2015 delivered by the Industrial Court thereby rejecting Revision (ULP) No.52/2012.

3. The petitioner was an employee of the respondent as a Bus Conductor, having joined on casual basis in 1996. In 1997, he was taken on regular time scale and the basic salary was fixed at Rs.2,500/- per month. The petitioner submits that he was thereafter granted regularization by the respondent.

4. He states that on 07/12/2008, while on duty as a Conductor on Ashti-Majalgaon Road, the bus was checked by the Squad of the MSRTC, which allegedly noticed irregularity. Charge sheet dated 26/12/2008 was served upon the petitioner. He replied on 06/01/2009 and the domestic enquiry was initiated on 07/01/2009. He submitted his final defence on 13/01/2009.

5. He states that the respondent issued a show cause notice proposing the punishment of dismissal, dated 27/01/2009. The petitioner replied on 05/02/2009, denying all the charges and

praying for discarding of the report and exoneration. Order of dismissal dated 26/02/2009 was issued thereby dismissing the petitioner w.e.f. 02/03/2009.

6. The petitioner preferred a First Appeal on 26/03/2009 before respondent No.1 / Appellate Authority, which was registered as First Appeal No.8/2009. Respondent No.1, by order dated 06/07/2010, after hearing the petitioner personally on 05/07/2010, rejected the appeal.

7. The petitioner approached the Labour Court for challenging the order of dismissal dated 26/02/2009 by preferring a Complaint u/s 28(1) invoking Item 1 of Schedule IV of the MRTU and PULP Act, 1971 and prayed for setting aside of the order of dismissal. Since there was a delay, he preferred Misc.Appl.No.4/2011.

8. By the impugned judgment and order dated 05/09/2012, the Labour Court rejected the Misc.Appl. concluding that sufficient reasons have not been put forth by the petitioner and the delay caused does not deserve to be condoned.

9. The petitioner preferred Revision (ULP) No.52/2012 before the

Industrial Court u/s 44. By judgment and order dated 20/04/2015. the Revision Petition was dismissed.

10. Mr.Shahane, learned Advocate for the petitioner, therefore, submits that if the fact situation recorded as above is considered, it indicates that the delay is neither inordinate nor deliberate. The petitioner does not benefit from causing any delay. He has suffered civil death. Laches are not attributed and are not attributable to the conduct of the petitioner.

11. Mr.Bagul, learned Advocate on behalf of the respondent / Corporation has strenuously opposed the petition. He submits that the explanation put forth by the petitioner is un-acceptable. If he contends that he has suffered civil death owing to his dismissal, he should have promptly approached the Labour Court. Even after the appeal was rejected by the Appellate Authority on 06/07/2010, he has not approached the Labour Court with promptitude. There is no satisfactory explanation for the said delay.

12. He further submits that one month was consumed by the petitioner post order of dismissal in filing the first appeal. After it was rejected on 06/07/2010, he has wasted 7 months in approaching

the Labour Court. The petitioner has to initially explain the circumstances which prevented him from filing his complaint within limitation and thereafter is legally required to explain the delay. He has done neither. Hence this petition be dismissed with costs.

13. I have considered the rival submissions of both the sides. It is not in dispute that the petitioner has lost employment and the only source of earning owing to the order of dismissal dated 26/02/2009 on account of which he has been removed from employment w.e.f. 02/03/2009. He preferred an appeal on 26/03/2009 which is in accordance with the Discipline and Appeal Rules of the respondent / Corporation. It is undisputed that his appeal was rejected on 06/07/2010 and he approached the Labour Court on 17/02/2011.

14. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107, has laid down guidelines while dealing with the application for condonation of delay, which are as follows :-

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being

defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. 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.

5. 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.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

15. It is not the case of the respondent that laches are attributable to the conduct of the petitioner. It also cannot be disputed that the petitioner, who has lost his permanent employment and regular source of income, does not benefit from causing delay. Rule 60 of the Labour Court (Practice and Procedure) Rules, 1975, mandates

filing of a complaint regarding unfair labour practice in Form No.16 and the material constituting the ULP. Rule 61 of the said rules mandates that the complaint should be filed within 90 days from the date of the cause of action. In the event, there is any delay, the same is required to be explained by an application seeking condonation of delay and the said application ought to be supported by an affidavit. It is not disputed that the petitioner supported his application with an affidavit.

16. It needs to be scrutinized as to whether the petitioner benefits from causing any delay. It needs to be scrutinized as to whether delay is caused on account of any vexatious act and whether it could be termed to be with oblique motives. The test of condoning delay is primarily based upon whether the concerned litigant could have derived any advantage by delaying the institution of his complaint before the Labour Court. It needs to be considered whether he has any remedy available, whether he would be rendered remediless in the event the delay is not condoned and whether the delay could be branded as inordinate and does not deserve to be condoned. It also needs scrutiny as to whether laches are attributable to the litigant seeking condonation of delay.

17. I do not find that the petitioner can be said to have deliberately caused the delay. After receiving the order of dismissal and suffering dismissal on 02/03/2009, he prepared his appeal dated 26/03/2009, which was rejected after 16 months on 06/07/2010. If that date is to be taken as a date of reference as the Appellate Authority rejected the appeal, 90 days would be the limitation period, which would end on 06/10/2010. In these circumstances, the petitioner has approached the Labour Court after a delay of 4 months and 11 days. I do not find that the said delay could be termed as being inordinate.

18. The Apex Court has concluded in the case of Collector, Land Acquisition (supra) that a pedantic approach should not be adopted by the Courts in such circumstances. If the delay is not condoned, the petitioner would be rendered remediless and as such, would be precluded from challenging the order of dismissal.

19. I have considered the conclusions of the Labour Court, Aurangabad and the Industrial Court, Aurangabad, set out in the impugned orders. I find that both the Courts have taken an unreasonable and pedantic approach. Every day's delay is not to be explained. The Courts are required to appreciate as to whether there

is some explanation put forth by the applicant, which would indicate causes of the delay. The delay of 4 months therefore not such which could be rejected thereby rendering the petitioner remediless.

20. The Apex Court, in its two judgments delivered in the case of Syed Yakoob Vs.K.S.Radhakrishnan and others, reported at AIR 1964 SC 477 and Surya Dev Rai Vs. Ram Chander Rai, reported at 2003(6) SCC 682, has held that this Court, while exercising its writ or supervisory jurisdiction, should consider whether the impugned orders amount to causing grave injustice to the petitioner.

21. In the present case, I find that both the impugned orders are perverse and erroneous and cause grave injustice to the petitioner by virtually rendering him remediless.

22. In the light of the above, the impugned orders of the Labour Court and Industrial Court dated 05/09/2012 and 20/04/2015 are quashed and set aside. Misc.Appl.(ULP) No.4/2011 filed by the petitioner is allowed by imposing costs of Rs.2000/- (Rs.Two Thousand only) which the petitioner shall deposit before the Labour Court within 4 (four) weeks from today. Respondent/Corporation may withdraw the said amount without any conditions or donate it to the

High Court Legal Aid Sub-Committee, Aurangabad.

23. The Labour Court shall register the complaint filed by the petitioner and issue notices to the respondents.

24. This petition is allowed and Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)