

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9990 OF 2015

Magan R.Kalamkar and another

PETITIONERS

VERSUS

Dilip S/o Uttamrao Shinde

RESPONDENT

Mr.Suvidh S.Kulkarni, Advocate for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/10/2015

PER COURT :

1. The petitioners are aggrieved by the judgment and order dated 23/07/2015 delivered by the Industrial Court in Revision (ULP) NO.64/2014.

2. The petitioners submit that the respondent had filed a complaint alleging unfair labour practices under Item I of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971, which was admittedly filed belatedly on 03/10/2013. An application for condonation of delay of 2 years 9 months and 2 days was filed which was registered as Misc. (ULP) Delay Appl.No.2/2013.

3. The petitioners resisted the application by filing their detailed

SAY. Employer-employee relationship was denied. By the judgment and order dated 30/07/2014, the application was rejected by the Labour Court.

4. The respondent preferred Revision (ULP) No.64/2014 before the Industrial Court u/s 44. By its judgment and order dated 23/07/2015, the revision petition was allowed and the delay caused in preferring the complaint was condoned by the Industrial Court.

5. The petitioners submit that the reasons cited by the respondent in seeking condonation of delay can be termed as unreasonable and unacceptable. He has stated that he was unwell because of the oral order of termination dated 01/10/2010 at the hands of the petitioners. He took treatment and after recovering, he had issued a legal notice through an Advocate on 26/06/2012. Since there was no response from the petitioners, he preferred the complaint before the Labour Court alongwith the application for condonation of delay.

6. Mr.Kulkarni strenuously submits that unless the delay is properly explained, the application for condonation of delay cannot be allowed. The Industrial Court has condoned the delay on the ground

that the reasons cited are sufficient and the delay is not inordinate. He submits that these conclusions are erroneous since the evidence brought on record would indicate that the reasons cited cannot be termed as being a sufficient cause shown by the respondent.

7. Mr.Kulkarni further submits that neither the treating Doctor nor the Advocate, who issued the legal notice, was examined. He further submits that the respondent has taken treatment for his hypertension from a Doctor, who is neither a Psychiatrist nor could be said to be an expert to deal with the illness of the respondent. He, therefore, prays for setting aside of the impugned judgment.

8. I have considered the submissions of the learned Advocate.

9. Matter is of delay of 2 years 9 months and 2 days in preferring a complaint for challenging the termination allegedly at the hands of the petitioners dated 01/10/2010. I do not find that the delay could be termed as being inordinate.

10. 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,

" 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."

11. I find from the record that the respondent had approached the

Government Labour Officer by filing an application dated 28/06/2011. He had claimed to be in employment from 09/09/2006 till 01/10/2010. Since the petitioners did not respond to the demand raised by the respondent despite the notice issued by the Government Labour Officer, the respondent thereafter got a legal notice issued for pressing his demand.

12. It has also come on record that the respondent was unwell and had taken treatment from a Doctor, who according to the petitioners, was not a Psychiatrist. Grievance of the petitioners also is as regards non-examination of the Advocate who has issued a legal notice.

13. It needs to be considered that the respondent claims to have been orally terminated. In the event, the delay is not condoned, there is a possibility that he might be rendered remediless. Condonation of delay is to be considered liberally so as to ensure that on grounds of technicalities, the grievance of a litigant is not rendered unredressed.

14. Considering the ratio laid down in the case of Collector, Land Acquisition (supra) and in the light of the fact that neither would the respondent benefit from delaying his challenge to the termination,

nor can it be said that the delay was caused with oblique motives, I find that the Industrial Court has adopted a pragmatic approach rather than taking a pedantic view of the matter. The impugned judgment, therefore, cannot be termed as being perverse or erroneous.

15. Since the petitioners have the legal right to oppose the main complaint on every ground as they may deem it fit and proper, I do not find that grave injustice has been caused to the petitioners by the impugned judgment of the Industrial Court.

16. As such, this petition is dismissed.

(RAVINDRA V. GHUGE, J.)