

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 14935 OF 2015
IN
FAST/30533/2015
WITH
CA/14936/2015

THE STATE OF MAHARASHTRA AND ANOTHER .. Applicants
VERSUS
SUNDARBAI VENKATI KENDRE AND OTHERS .. Respondents

Mr. S.P.Sonpawale, AGP for applicants/State.

CORAM : A.M. BADAR, J.
DATED : 30.11.2015

P.C. :-

1. This is an application for condonation of delay of about 248 days in filing appeal under section 30 of the Employee's Compensation Act, 1923 by the applicants who were originally arrayed as respondent with an averment that they were employers of deceased.

2. Heard learned AGP appearing for applicants. He contended that deceased Venkati was not an employee of present applicants. He was an employee under Mahatma Gandhi National Rural Employment Guarantee Scheme (hereinafter referred to as "MGNREGA" for brevity) on the work of digging of well and he died.

3. Though question of merits of appeal cannot be

gone into while deciding application for condonation of delay, as learned AGP has contended that employer – employee relationship was not at all established and as such there are bright chances of success in the appeal, this Court was constrained to go through judgment and award passed by the learned Commissioner under Employee's Compensation Act, Nanded. Perusal of impugned judgment and award makes it clear that deceased Venkati was employee working under MGNREGA scheme for digging well as a labourer. Evidence on record established that it was State and its authority who were paying wages of deceased Venkati. Even after his death, during the course of his employment, employer-State had paid an amount of Rs.50,000/- to his dependent legal heirs as ex-gratia payment under the MGNREGA scheme according to provisions of Government resolution. In para 6 of its judgment, learned Commissioner has thoroughly examined this aspect and concluded that deceased Venkati was an employee of present applicants, as he was engaged at the instance of present applicants and he was receiving the payment from the Government under the Employment Guarantee Scheme. There was no contra evidence to show that deceased was not an employee. Thus, even there is no substantial question of law, which can be found after perusal of impugned judgment and award of the learned Commissioner under the Employee's Compensation Act. No doubt, this

aspect is not relevant at the stage of condonation of delay in filing appeal. However, it needs to be noted that non-applicants/claimants had opted for compensation resorting to provisions of the Employee's Compensation Act, 1923 and it is well settled that beneficial or welfare statute requires liberal and literal construction.

4. Now coming to reasons stated in the application for seeking condonation of delay, present applicants were represented before the learned Commissioner through Asstt. Govt. Pleader. As such impugned judgment and award passed was within their knowledge. Averments in the application show that though impugned judgment and award was passed on 29.11.2014, State has decided to challenge the same by filing appeal on 19.03.2015. As such, it cannot be said that present applicants were prevented by sufficient cause for not filing appeal within period of limitation. Rather they had allowed period of limitation to be passed without taking necessary steps for filing appeal and thereafter same is preferred. Intervening delay is not at all explained by applicants. Delay caused in scrutiny of proposal by Law and Judiciary Department of the State cannot be construed as sufficient cause. As such, application is devoid of merit and same is rejected.

5. In view of disposal of Civil Application for condonation of delay, connected Civil Application for stay does not survive and stands disposed of.

[A.M. BADAR, J.]