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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11392 OF 2014

Pandharinath Tatu Kirpan

.. Petitioner

Vs.

The Brihanmumbai Municipal Corporation and others .. Respondents

Ms.Pavitra Manesh i/b Mr.M.S.Topkar, Advocate for the Petitioner.

CORAM : R.G.KETKAR, J.

DATE : 18th February, 2015

P.C. :

. Heard Ms.Pavitra Manesh, learned Counsel for the petitioner at length.

2. By this petition under Articles 226 & 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 30/07/2014 passed by the learned Member, Industrial Court, Mumbai in Delay Condonation Application (ULP) No. 06 of 2013. By that order, the Industrial Court dismissed the application for condonation of delay in filing the complaint.

3. In support of this petition, Ms.Manesh submitted that the petitioner was employed as a badli worker with the respondent No.1-Corporation in October 1987. In the year 1995, respondent No.1 started process of making badli employees as permanent. Respondent

No.1 issued order of permanency to many badli workers, but did not make petitioner permanent. The petitioner had sent several letters and also met officials of respondent No.1. The petitioner was made permanent vide order dated 06/04/2005 while filling up the backlog of O.B.C. category. The petitioner repeatedly approached respondent No.1 for granting status of permanency with effect from 01/09/1995. On behalf of the petitioner, one Mr. Mangesh Sangle, MLA addressed letter dated 15/06/2010. However, no favourable response was given by the respondent No.1. It is in these circumstances, the petitioner filed complaint in the year 2013 under section 28 read with items 5, 9 & 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act'). Since there was delay in filing the complaint, the petitioner filed application for condonation of delay. By the impugned order, the Industrial Court dismissed the application.

4. In support of this petition, Ms.Manesh reiterated the submissions that were advanced before the Industrial Court. She submitted that the said badli employees were made permanent in the year 1995. The petitioner was, however, made permanent vide order dated 06/04/2005. The letter addressed by MLA – Mangesh Sangle was replied on 10/12/2010. The copy of the said letter was not forwarded to the petitioner. The Industrial Court, therefore, committed error in observing that the petitioner did not explain delay

of 3 years after 2010. As far as the delay in filing the complaint from 01/09/1995 is concerned, she submitted that this is a recurring cause of action and the petitioner was constantly addressing letters to the officers of the first respondent. The cause of action is of a continuous nature. In such circumstances, the Industrial Court ought to have condoned the delay and decided the complaint on merits rather than dismissing it on technical ground of delay. She submitted that delay was neither deliberate nor intentional.

5. I have considered the submissions advanced by Ms.Manesh. I have also perused the material on record. It is not in dispute that the petitioner was appointed as a badli worker in October 1987. The petitioner himself came with the case that first respondent started process of making badli workers as permanent in 1995. The petitioner was made permanent wide order dated 06/04/2005. The petitioner is now claiming status of permanency with effect from 01/09/1995. In the first place, the petitioner ought to have filed the complaint immediately after similarly situate badli employees were made permanent in the year 1995. Secondly, the petitioner ought to have filed complaint immediately after receipt of order dated 06/04/2005 for grievance of not making him permanent with effect from 01/09/1995. Thirdly, in any case, he should have filed complaint after the letter dated 10/12/2010 which was sent to the MLA. The petitioner cannot feign ignorance about receipt of that

letter of MLA as through him, he was persisting for giving the status of permanency with effect from 01/09/1995. Considering the case from any angle, it cannot be said that the complaint was filed within a reasonable time. If the period is reckoned from 01/09/1995 and the date of filing of the complaint i.e. on or about 15/02/2013, in that event, there is delay of about 17 years. If the date of permanency order i.e. 06/04/2005 is considered, there is delay of 8 years in filing the complaint. If the delay is computed from 10/12/2010, there is delay of 3 years. I, therefore, do not find that the Industrial Court committed any error in dismissing the application for condonation of delay. Hence, the petition fails and the same is dismissed.

(R.G.KETKAR, J.)