

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WP(C).No.26601 of 2006 (P)

PETITIONER :

A.M.MADHAVI DEVI, (EMPLOYED AS SALES GIRL),
Ayyappath House, Kumbalangad PO.,
Kanjirakkode, Thalappilly Taluk, Thrissur.

BY ADVS.SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENTS :

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, LABOUR DEPARTMENT,
SECRETARIAT, TRIVANDRUM.
2. COMMISSIONER FOR WORKMEN'S COMPENSATION
AND AUTHORITY UNDER SECTION 20(2) OF THE
MINIMUM WAGES ACT, 1948, (DEPUTY LABOUR
COMMISSIONER, THRISSUR).
3. PRESIDENT/SECRETARY,
SRI VYASA N.S.S.COLLEGE,
CO-OPERATIVE SOCIETY LIMITED, NO.R779, P.O.VYASAGIRI,
WADAKKANCHERRY.

R3 BY SRI.P.G.PARAMESWARA PANICKER (SR.)
R3 BY SRI.P.GOPAL
BY SR.GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

- EXT.P1 : COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD.26.3.1994.
- EXT.P2 : COPY OF THE APPLICATION TO CONDONE DELAY FILED BY THE PETITIONER DTD.29.3.1996 BEFORE THE 2ND RESPONDENT.
- EXT.P3 : COPY OF THE OBJECTION FILED BY THE 3RD RESPONDENT TO EXT.P2 DTD.25.8.95.
- EXT.P4 : COPY OF THE OBJECTION FILED BY THE 3RD RESPONDENT TO EXT.P3 DTD.2.9.94.
- EXT.P5 : COPY OF THE ORDER DTD.4.5.2006 IN M.W.A.4 OF 1994.

RESPONDENTS' EXHIBITS : NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C).No.26601 of 2006

Dated this the 09th day of June, 2015

JUDGMENT

The petitioner is the applicant in M.W.A.No.4 of 1994 before the Commissioner for Workmen's Compensation and Authority under the Minimum Wages Act, 1948. The said application was filed under Sub-section (2) of Section 20 of the said Act, claiming arrears of wages from the 3rd respondent for the period from 17.7.1991 to 7.7.1993, on the allegation that she was not paid minimum wages while working as sales girl in the showroom of the 3rd respondent. Ext.P1 is the application filed by the petitioner before the 2nd respondent. Along with Ext.P1 application the petitioner filed Ext.P2 application for condonation of delay, as provided under the second proviso to Sub-section (2) of Section 20 of the Act.

2. On receipt of notice, the 3rd respondent entered appearance and filed Ext.P3 objection to Ext.P2 interlocutory application for condonation of delay and also Ext.P4 objection to Ext.P1 application. Both the petitioner and the 3rd respondent were represented before the 2nd respondent authority by their respective counsel. After considering the materials on record, the 2nd respondent by Ext.P5 order rejected Ext.P2 application for condonation of delay and consequentially dismissed Ext.P1

application as well. It is aggrieved by Ext.P5 order passed by the 2nd respondent, the petitioner is before this Court in this Writ Petition, seeking an order to quash Ext.P5 order and seeking a direction to the 2nd respondent to consider Ext.P1 application on merits and pass appropriate orders thereon.

3. A counter affidavit has been filed on behalf of the 2nd respondent justifying its stand in Ext.P5 order.

4. The 3rd respondent has also filed a counter affidavit, contending that, Ext.P1 application filed by the petitioner as well as Ext.P2 application for condonation of delay are legally unsustainable. According to the 3rd respondent, the delay in filing Ext.P1 application has occurred only due to negligence and laches on the part of the petitioner and as such Ext.P5 order rejecting Ext.P2 application for condonation of delay and consequently dismissing Ext.P1 application warrant no interference at the hands of this Court.

5. Heard the arguments of the learned counsel for the petitioner, the learned Government Pleader appearing for respondents 1 and 2 and also the learned counsel for the 3rd respondent.

6. The only issue that arises for consideration in this Writ Petition is to the legality or otherwise of Ext.P5 order passed by the 2nd respondent by which the request made by the petitioner in Ext.P2 application for

condonation of delay in filing Ext.P1 application stands rejected, resulting in consequential rejection of Ext.P1 application as well.

7. Section 20 of the Minimum Wages Act, 1948 (herein after referred to as the 'Act') deals with claims. Going by Sub-section (2) of Section 20, where an employee has any claim of the nature referred to in Sub-section (1), the employee himself or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector, or any person acting with the permission of the authority appointed under Sub-section (1) may apply to such authority for a direction under Sub-section (3). The first proviso to Sub-section (2) of Section 20 makes it abundantly clear that, every application under Sub-section (2) shall be presented within six months from the date on which the minimum wages or other amounts become payable. The second proviso to Sub-section (2) of Section 20 provides further that, any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

8. In the case on hand the petitioner is claiming arrears of wages for the period from 17.7.1991 to 7.7.1993 on the allegation that she was not paid minimum wages while working as sales girl in the showroom run by the 3rd respondent. This is evident from the pleadings in Ext.P1

application. Since Ext.P1 application was filed much after the time limit prescribed under the first proviso to Sub-section (2) of Section 20 of the Act, she filed Ext.P2 application for condonation of delay, in terms of the second proviso to Sub-section (2) of Section 20. A reading of Ext.P2 application for condonation of delay would show that, the only reason stated by the petitioner in the aforesaid application for condonation of delay is that, she could not file the application in time as she believed the assurance made by the 3rd respondent that minimum wages payable shall be disbursed without further delay. But a reading of Ext.P3 objection filed by the 3rd respondent to Ext.P2 application would show that, while the petitioner was working as sales girl in the showroom run by the 3rd respondent, she was issued with a show cause notice on 27.8.1993 alleging misappropriation of funds and thereafter she was terminated from service on 24.10.1994. It was after the issuance of charge memo and during the pendency of the disciplinary proceedings, she had approached the 2nd respondent with Ext.P1 application accompanied by Ext.P2 application for condonation of delay.

9. In **West Coast Motors v. District Magistrate, Ernakulam and others (1962 KLT 618)**, a Division Bench of this Court held that the second proviso to Sub-section (2) of Section 20 of the Act enable the authority to entertain an application filed beyond the time limit prescribed

under the first proviso to that Sub-section only when the applicant satisfies the authority that he has sufficient cause for not making the application within the prescribed time limit.

10. In **Sarpanch, Lonand Gramapanchayat Vs. Ramgiri Gosavi and another (AIR 1968 SC 222)** the Apex Court held that, the authority has a discretion to condone the delay in presenting the application provided sufficient cause for the entire delay is shown to its satisfaction and that, this discretion like other judicial discretion must be exercised with vigilance and circumspection according to justice, commonsense and sound judgment.

11. In the case on hand, the petitioner as well as the 3rd respondent were represented before the Tribunal through their counsel. A reading of Ext.P2 application submitted by the petitioner, in terms of the second proviso to Sub-section (2) of Section 20 of the Act would show that, no satisfactory explanation has been stated for condonation of the delay in filing Ext.P1 application. It was in such circumstances, the 2nd respondent by Ext.P5 order rejected Ext.P2 application and consequently dismissed Ext.P1 application as well. The reasoning of the 2nd respondent in Ext.P5 order is neither perverse nor patently illegal, warranting any interference of this Court under Article 226 of the Constitution of India.

In the result, I find absolutely no ground to interfere with Ext.P5 order passed by the 2nd respondent.

The Writ Petition fails and the same is dismissed. No order as to costs.

ANIL K.NARENDRAN, JUDGE

skj