

RESERVED ON: 05-03-2015
DELIVERED ON: 17.03.2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-03-2015

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.Nos.1574 and 1575 of 2014

Rambal Limited
rep by its Head-HR-Admin
No.115, Edayankuppam Village,
Thandalam, Panchayath,
Thiruporur, Kanchipuram District - 603 110

.... Petitioner in both the writ petitions

vs

1. The Deputy Commissioner of Labour-II
cum Authority under the Minimum Wages Act,
DMS Compound, Commissioner of Labour Office,
Teynampet, Chennai - 600 006
2. Engineering Electronics & General Workers Union,
V.P.C Illam, Plot No.291,
Burma Colony, 1st Street, Perungudi,
Chennai-600 096 rep by its General Secretary

... Respondents in both the writ petitions

W.P.No.1574 of 2014 filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari to call for the records relating to the Order dated 5.11.2013 in MW.CIA No.3 of 2012 passed by the first respondent and quash the same.

W.P.No.1575 of 2014 filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari to call for the records relating to the Order dated 5.11.2013 in MW.CIA No.2 of 2012 passed by the first respondent and quash the same.

For petitioner : Mr.C.K. Chandrasekar
For 1st respondent: Mr.R. Lakshminarayanan
For 2nd respondent: Mr.N.G.R. Prasad for
M/s Row & Reddy

COMMON ORDER

W.P.No.1574 of 2015 has been filed by the petitioner/Management to issue a Writ of Certiorari to quash the order dated 5.11.2013 passed by the first respondent in allowing MW.CIA No.3 of 2012 filed by the second respondent, condoning the delay of 1585 to 3150 days in filing the claim petition by the Union.

W.P.No.1575 of 2014 has been filed by the petitioner/Management to issue a Writ of Certiorari to quash the order dated 5.11.2013 passed by the first respondent allowing MW.CIA No.2 of 2012 filed by the second respondent to condone the delay of 614 to 3531 days in filing the claim petition by the Union.

2. Since the issue involved in both the writ petitions are one and the same, they are disposed of by this common order.

According to the petitioner, the second respondent Union entered into negotiated settlements with the petitioner/Management regarding the service conditions of the workers, including their wages. The settlements were entered into before the first respondent and were made under Sec. 12(3) of the Industrial Disputes Act, 1947. The Union filed petitions on 5.4.2012 and 30.4.2012 alleging non payment of minimum wages to 57 and 102 workers resulting in huge delay.

3. According to the petitioner, under the second proviso to Sec.20(2) of the Minimum Wages Act, 1948, "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."

4. According to the petitioner/Management, since the delay is from two to nine years, the second respondent should have given sufficient cause and justifiable reasons for condoning the long delay. The petitioner also disputed the maintainability of the claim stating that the employees have been paid the wages, due to them, at the appropriate time and in accordance with Sec. 12(3) Settlements. In the absence of any reason for condoning the long delay, the petitioner contended that the impugned order passed by the first respondent in the applications is liable to be set aside.

5. According to the second respondent/Union, the Management did not pay the minimum wages, notified under Section 3(1) (b) and 5(2) of the Minimum Wages Act, 1948. Therefore, the second respondent Union filed minimum wage applications for 57 and 102 workers. There was a delay in filing the applications before the first respondent.

However, according to the second respondent, the delay is neither wilful nor wanton. The second respondent contended that the moment the workers have joined the second respondent Union, they requested the Management to pay the minimum wages, which, they are entitled to under the statute. As per Sec.25 of Minimum Wages Act, 1948, no settlement can take away the right accrued to the workers under the Minimum Wages Act, 1948. It is the responsibility of the Management to implement the notification and provide the minimum wage, which is the least that is expected of them. The Management cannot take advantage of the delay which was on account of the employees not being aware of the notification. In these circumstances, the second respondent prays for dismissal of the writ petitions.

6. The first respondent, by order dated 5.11.2013, condoned the delay and allowed MW CIA Nos.2 and 3 of 2012 filed by the second respondent Union. Aggrieved over the same, the Management has filed the above writ petitions.

7. Heard Mr.C.K. Chandrasekar, the learned counsel for the petitioner Management and Mr.N.G.R. Prasad, learned counsel for the second respondent Union.

8. Mr.C.K. Chandrasekar, learned counsel appearing for the petitioner/Management submitted that the second respondent Union has not put forth any reason for condoning the inordinate delay of about 2 years to 9 years. In spite of the same, the first respondent has erroneously condoned the delay. The learned counsel further submitted that under Sec.20(2) of the Minimum Wages Act, the employee must give acceptable reason for condoning the delay, if it is more than six months and in the absence of any reason given by the second respondent Union, the first respondent should have dismissed the applications.

9. In support of his contention, the learned counsel for the petitioner relied upon the following judgment:

(i) AIR 1968 SC 222 (Sarpanch, Lonand Grampanchayat vs Ramgiri Gosavi and another), wherein 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. This discretion like other judicial discretion must be exercised with vigilance and circumspection, according to justice, commonsense and sound judgment. Further the Apex Court held that "sufficient cause receiving a liberal construction so as to advance substantial justice when no negligence or inaction for want of bonafides is imputable to the petitioner".

(ii) An unreported judgment dated 5.2.2008 in W.P.No.18035 of 2007, wherein this Court has held that "sufficient cause must receive

a liberal construction so as to advance substantial justice when no negligence or inaction or want a bonafide is imputable to the applicant".

(iii) An unreported judgment dated 23.7.2008 in WP No.24640 of 2006, wherein this Court held that " if the applicant has given acceptable and convincing reason to condone the delay, a petition filed under Sec.20(2) can be allowed.

(iv) 2014(1) LLN 559 (Chennai Metropolitan Water Supply and Sewerage Board and Others vs T.T. Murali Babu), wherein, in paragraph 16, the Apex Court held as follows:

" 16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant- alitigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind

of ill health. We repeat at the cost of repetition that remaining innocuously obvious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation in which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with "Kumbhakarna" or for that matter "Rip Van Winkle". In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

10. Countering the submissions made by the learned counsel for the petitioner, Mr.N.G.R. Prasad, learned counsel appearing for the second respondent Union submitted that the Minimum Wages Act is a benevolent legislation, meant for the welfare of the employees and therefore, the order passed by the first respondent, condoning the delay, is just and proper. Further, the learned counsel submitted that the reasoning given by the second respondent Union is sufficient to condone the delay.

11. In support of his contention, the learned Senior counsel relied upon the following judgments:

(i) Unreported judgment dated 23.7.2008 in WP No.24640 of 2006, wherein this Court accepted the reason given by the employees stating that they came to know about the Minimum Wages to be paid to them as per the Act only after joining the Union and condoned the delay. This Court condoned the delay finding that the delay was not enormous.

(ii) Unreported Judgment dated 25.10.2007 in WP No.33738 of 2007, wherein this Court held as follows:

" 7. It must be noted that apart from the claim under Section 20 of the Minimum Wages Act, 1948, the workmen can also lay a similar claim before the Forum under Sec.33(c)(2) of the Industrial Disputes Act, 1947. If workman makes the claim under Sec.33(c)(2), there is no limitation prescribed. Further, it is not as if the petitioner is paying the minimum wages. On the contrary, their argument is that they are not liable to pay any wage and the claim made by the workman against them are not valid. If ultimately, it is held that the notification applies then the

petitioner Management is obliged to pay the amount and hence it is a question of continuing cause of action.

8. Therefore, in the order of condoning delay, court will have to take care liberal view both in the context of continuing cause of action as well due to the fact that a similar remedy is available under the Industrial Disputes Act, without any limitation. Further, the Supreme Court has held that non-payment of minimum wages will amount to forced labour, which is prohibited under Article 23 of the Constitution of India.

(iii) 1992 1 SCC 290 (Workmen represented by Secretary vs Reptakos Brett & Co Ltd and another), wherein the Apex Court held as follows:

13. The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry."

(iv) Unreported judgment dated 10.12.2008 in WP No.16970 and 16971 of 2008, wherein this Court held as follows:

" 17. Minimum Wages Authority observed that the reasons stated by the workmen for not making the claim for minimum wages was found acceptable. The authority under M.W.Act in its discretion to condone the delay in presentation of the claim. When the M.W authority had exercised its discretion in condoning the delay, High Court will not interfere with the exercise of discretion unless shown to be perverse. Whether the minimum wages is payable to the workmen or not could be determined upon hearing the parties. In the facts and circumstances of the case, it cannot be said that there is improper exercise of discretion by the M.W authorities."

(v) 2013 (12) SCC 649 (Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and Others), wherein the Apex Court held as follows:

21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of

delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

12. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the second respondent Union, in both the writ petitions, have filed applications in MW.CIA Nos.2 and 3 of 2012 on the file of the first respondent to condone the delay of 2 years to 9 years in filing the claim petition under the Minimum Wages Act.

13. The main contention raised by the petitioner/Management was that the second respondent Union has not given any reason for condoning the inordinate delay of 2 years to 9 years. Under the second proviso to Sec.20(2) of the Minimum Wages Act, 1948, "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."

14. On a perusal of the petitions, filed before the first respondent to condone the delay, it could be seen that the second respondent Union has not given any reason for condoning the delay. However, the learned counsel for the second respondent Union contended that since Minimum Wages Act is a benevolent legislation, meant for the welfare of the employees, the order passed by the first respondent, condoning the delay, is just and proper.

15. But, as already stated above, the proviso 2 to Section 20(2) of the Act stipulates "sufficient cause" should be given by the employee for making the application beyond the period of six months. When the Act provides that "sufficient cause" should be given by the employees for condoning the delay beyond the period of six months, giving no reason at all in the petition, cannot be accepted. In the petition filed before the first respondent, the second respondent

Union has not given even a single reason for filing the petitions beyond the period of six months.

16. In the judgment reported in AIR 1968 SC 222 (Sarpanch, Lonand Grampanchayat vs Ramgiri Gosavi and another) cited supra, the Apex Court, dealing with Sec.20(2) of the Minimum Wages Act 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. Further, the Apex Court held that this discretion like other judicial discretion must be exercised with vigilance and circumspection, according to justice, commonsense and sound judgment. Further the Apex Court held that sufficient cause receiving a liberal construction so as to advance substantial justice when no negligence not inaction for want of bonafides is imputable to the petitioner.

17. In the judgment reported in 2014(1) LLN 559 (Chennai Metropolitan Water Supply and Sewerage Board and Others vs T.T. Murali Babu) cited supra, the Apex Court held that a writ court is required to weigh the explanation offered and the acceptability of the same. Further, the Apex Court has held that the Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not.

18. It is not disputed that the employees are entitled to the Minimum Wages on all times and under all circumstances. In the judgment reported in 1992 1 SCC 290 (Workmen represented by Secretary vs Reptakos Brett & Co Ltd and another), the Apex Court held that "An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry."

19. In the judgment reported in 2013 (12) SCC 649 (Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and Others), wherein the Apex Court held that "The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation" .

20. In the case on hand, the Management entered into Sec.12(3) settlements with the second respondent Union. Sec.12(3) settlements were filed by the petitioner/Management dated 2.1.2003, 24.3.2006,

24.9.2009 as Exs.M.1 to M.5 to prove that the Minimum Wages were paid and the second respondent Union is a party to the settlement signed before the first respondent.

21. When the second respondent Union itself had signed the 12(3) settlement, the members of the Union cannot now take a stand that they were not aware about the procedure for claiming minimum wages. Further, the second respondent Union cannot take a stand that it is unaware of 12(3) settlement. The second respondent is affiliated to CITU.

22. If a litigant has chosen to come to Court after considerable delay, for which, he has no explanation, he has to blame himself for his matter being thrown out without the merits being considered. He cannot make a complaint that the cause of justice has been defeated because of his own delay. No litigant can take advantage of his own fault and demand a premium therefor.

23. The question of limitation is not merely a technical consideration. Limitations are based on principles of sound public policy and principles of equity. If there is no limitation, the litigant liable to have any delay hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent.

24. The contention put forth by the learned counsel for the second respondent Union that it is a case where it has got to be looked into liberally, cannot be accepted for the reason that for such an inordinate delay to be condoned, substantial justice or technical consideration should not be the criteria and the question of condoning the delay would be nothing but making the claim to have vested interest; for injustice being done to set aside the order, which also should not be done.

25. The ratio laid down in the judgment reported in AIR 1968 SC 222 (Sarpanch, Lonand Grampanchayat vs Ramgiri Gosavi and another squarely applies to the facts and circumstances of the present case. Therefore, the order of the first respondent, in condoning the delay, cannot be justified. However, even if the delay is not condoned, the entire claim for Minimum Wages, cannot be rejected. Therefore, in the interest of justice and for the benefit of the workers. I am of the considered view that it would be just and proper to condone the delay of three years. It would be fit to condone the delay of upto three years and entertain the Claim Petitions as it stands before the first respondent.

26. Taking into consideration the Payment of Minimum Wages to

the members of the second respondent Union, the first respondent is directed to independently decide the claim petitions of the members of the second respondent Union, where the delay in filing the claim petition is upto three years. The first respondent is directed to consider the said claim petitions and pass orders on merits and in accordance with law, within a period of three months from the date of receipt of copy of this order.

27. With the above observation, the writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr
To

1. The Deputy Commissioner of Labour-II
cum Authority under the Minimum Wages Act,
DMS Compound, Commissioner of Labour Office,
Teynampet, Chennai - 600 006
2. The General Secretary,
Engineering Electronics & General Workers Union,
V.P.C Illam, Plot No.291,
Burma Colony, 1st Street, Perungudi,
Chennai-600 096

- 1 cc to M/s Row & Reddy, Advocate, SR.No.14679
2 cc to Mr.C.K. Chandrasekar ,Advocate, SR.No.14714

W.P.Nos.1574 & 1575 of
2014

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