

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2893 OF 1992

Dattatray Vithoba Ambre
Aged 38 years, Occ. Daptari,
(Class IV Servant), R/o Ganore
Tq. Akole, Dist. Ahmednagar.

..Petitioner

Versus

1. The Executive Engineer,
Ahmednagar Irrigation Division,
Nagar Aurangabad Road,
Ahmednagar.

2. The Superintending Engineer,
Ahmednagar Irrigation Circle,
Ahmednagar.

3. The Member,
Industrial Court, Ahmednagar.

..Respondents

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Advocate for Petitioner : Shri U.S.Malte
AGP for Respondents 1 & 2 : Shri S.P.Sonpawale
Advocate for Respondent 3 : Deleted

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 17, 2016

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ORAL JUDGMENT :-

1. Respondent No.3 is the Industrial Court and hence stands deleted from the proceedings.

2. The petitioner is aggrieved by the order dated 8.9.1989 delivered by the Industrial Court, Ahmednagar, by which, the Misc.

Application No. 4 of 1987, seeking condonation of delay in filing a Complaint under items 5, 7, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act”), has been rejected.

3. This Court by its order dated 18.11.1992 has admitted this petition and granted relief in terms of prayer clause (D), which reads as under:-

“(D) During pendency and final disposal of this petition, the petitioner be absorbed as a Junior Clerk with Irrigation Department - respondent Nos.1 and 2, and be paid salary and allowances accordingly.”

Pursuant to the above relief, the petitioner has been absorbed as a Junior Clerk.

4. I have considered the submissions of Shri Malte, learned Advocate on behalf of the petitioner and the learned AGP on behalf of the respondent.

5. The petitioner had approached the Industrial Court with the grievance that he has been superseded when alleged junior candidates were promoted in October 1982, 23.5.1983 and 10.6.1986. The complaint was filed on 23.3.1987 and the limitation period under

the Industrial Court Regulations, 1975 is of 90 days. The complaint was, therefore, delayed by six months.

6. It has come on record through the oral and documentary evidence in support of the application for condonation of delay that the last representation made by the petitioner expressing his grievance against supersession was dated 13.2.1987. Even if the evidence reveals that the petitioner does not have the documentary evidence to prove that his representations were served on the respondents, yet the delay of six months cannot be termed as being deliberate or inordinate.

7. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has observed while dealing with the application for condonation of delay, as under:-

" 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."*

8. Despite the strenuous contentions of the learned AGP that the delay of six months is not properly explained, I find that laches are not attributable to the conduct of the petitioner, inasmuch as, the delay of six months cannot be said to be fatal to the proceedings.

9. In the light of the above, this petition is allowed. The impugned order dated 8.9.1989 is quashed and set aside. Misc. Application No.4 of 1987 stands allowed. The Industrial Court shall

proceed to register the complaint filed by the petitioner on 23.3.1987. The litigating sides shall appear before the Industrial Court on 3.12.2016 and formal notices need not be issued by the Industrial Court.

10. Needless to state, the Industrial Court shall decide the Complaint as has been filed on 23.3.1987, within a period of one year from today, on its own merits. As the petitioner has reached the age of superannuation, the Industrial Court shall frame the issues after the pleadings are complete and shall proceed to decide the complaint accordingly. The Industrial Court shall take into consideration the effect of any benefit, which the petitioner has acquired during the pendency of this petition and the same shall then be considered while deciding the claim of the petitioner, as has been set out in the complaint dated 23.3.1987. There shall be no introduction of any new cause of action in the complaint.

11. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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akl/d