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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12740 OF 2015

Netaji S. Powar

...Petitioner

V/s.

Inchnal Vividh Karyakari Sah (Vikas)

Seva Sanstha Maryadit

...Respondents

Mr.Umesh J. Desai for the Petitioner.

None for the Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 7TH MARCH, 2016.

P.C. :-

1. Learned counsel for the petitioner states that the respondents are served pursuant to the order passed by this Court on 3rd February, 2016 and tenders affidavit of service affirmed on 7th March, 2016. He submits that the respondents are served on 23rd February, 2016. Acknowledgment receipts are annexed to the affidavit of service. None appeared for the respondents, though served. No affidavit in reply has been filed.

2. By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has impugned the order passed by the Member, Industrial Court-2, Kolhapur allowing the revision

application filed by the respondents thereby setting aside the order passed by the Labour Court-2, Kolhapur by which the application of the petitioner herein for condonation of delay was allowed and the original complaint filed by the petitioner was directed to be registered according to law.

3. It is the case of the petitioner that on 1st December, 2010, the petitioner was asked to resign from the service by the Chairman and Vice Chairman of the respondents. The petitioner accordingly filed a Complaint (ULP) No.15 of 2011 before the Industrial Court, Kolhapur for appropriate reliefs. By an order dated 31st March, 2012, the Member, Industrial Court-2, Kolhapur rejected the application filed by the petitioner *inter-alia* praying for interim relief in the said complaint holding that the Member, Industrial Court-2, Kolhapur has no jurisdiction to deal with the complaint of unfair labour practice against the order of termination and held that it was within the jurisdiction of the Labour Court.

4. The petitioner thereafter immediately approached the Labour Court, Kolhapur by filing Complaint (ULP) No.9 of 2012 and applied for condonation of delay in filing separate miscellaneous application.

5. Learned counsel appearing for the petitioner states that the petitioner had thereafter subsequently withdrawn the original

complaint bearing Complaint (ULP) No.15 of 2011, which was filed before the Member, Industrial Court-2, Kolhapur in view of the Member, Industrial Court-2, Kolhapur rejecting the application for interim relief on the ground of jurisdiction by an order dated 31st March, 2012.

6. Learned counsel for the petitioner invited my attention to the order passed by the Member, Industrial Court-2, Kolhapur rejecting the application for interim relief on 31st March, 2012, the application made by the petitioner inter-alia praying for condonation of delay before the Labour Court, the order passed by the Labour Court-2, Kolhapur in Miscellaneous (Delay) ULP No.9 of 2012, allowing the application for condonation of delay by an order dated 24th December, 2014 and also the impugned order dated 2nd September, 2015 passed by the Member, Industrial Court-2, Maharashtra, in Revision Application (ULP) No. 5 of 2015 filed by the respondents herein. It is submitted that the Member, Industrial Court-2, Kolhapur has allowed the revision application filed by the respondent and has set aside the order passed by the Labour Court, allowing the application for condonation of delay and dismissing the complaint filed by the petitioner on the ground that the petitioner had not justified condonation of delay in filing the complaint and the petitioner was though aware of the remedy to approach the Labour

Court, had willfully filed the proceedings before the Industrial Court and had applied for condonation of delay by pretending that he had chosen to approach the wrong forum. He submits that the findings of the Industrial Court that the petitioner remained idle and inactive and no satisfactory explanation is furnished for not approaching the Labour Court within the time prescribed, is also *ex-facie* erroneous.

7. A perusal of the order passed by the Member, Industrial Court-2, Kolhapur on 31st March, 2012 indicates that though the Industrial Court came to the conclusion that he had no jurisdiction to unfair labour practice against the termination, the Industrial Court did not return the complaint along with application for interim relief for presentation before the Labour Court and dismissed the said application for interim relief. In my view, the Industrial Court once having held that it had no jurisdiction to entertain the said complaint, the Industrial Court could not have made any observations on the merits of the matter.

8. There is no dispute that the petitioner herein has subsequently withdrawn the said complaint filed before the Industrial Court and immediately within 90 days from the date of dismissal of the original complaint by the Industrial Court, filed a complaint before the Labour Court and simultaneously applied for condonation of delay.

9. A perusal of the application for condonation of delay filed by the petitioner clearly indicates that the petitioner had rendered sufficient reasons for not filing the complaint before the Labour Court and has demonstrated that the petitioner was prosecuting the said complaint before the Industrial Court in good faith and with due diligence. The Labour Court in my view, had considered these reasons rendered in the application for condonation of delay and had rightly condoned the delay in filing the complaint before the Labour Court.

10. A perusal of the order passed by the Industrial Court, indicates that the Industrial Court has however, totally over looked sufficient reasons recorded by the petitioner in the application for condonation of delay which were rightly considered by the Labour Court while allowing the application for condonation of delay.

11. In my view, the petitioner was not sitting idle or inactive, as erroneously held by the Industrial Court in the impugned order. The delay was sufficiently explained. Since the petitioner was prosecuting the earlier complaint before the wrong Court, which found that it had no jurisdiction and the said proceedings were prosecuted in good faith and with due diligence, the petitioner was entitled to exclusion of time under section 14 of the Limitation Act, 1963. Be that as it may, the Industrial Court ought not to have interfered with the

order passed by the Labour Court by which the application for condonation of delay was allowed. In my view, the order passed by the Member, Industrial Court-2, Kolhapur is patently erroneous and is harsh and thus deserves to be set aside.

12. I therefore, pass the following order :-

a). The impugned order dated 2nd September, 2015 passed by the Member, Industrial Court-2, Kolhapur in Revision Application (ULP) No.5 of 2015 is set aside. Revision Application (ULP) No.5 of 2015 filed by the respondents is dismissed. The order passed by the Labour Court-2, Kolhapur on 24th December, 2014 in Miscellaneous (Delay) ULP No.9 of 2012 allowing the application for condonation of delay is upheld.

b). It is made clear that this Court has not expressed any views on the merits of the matter. Labour Court-2, Kolhapur shall decide the matter in accordance with law and without being influenced by the observations made by the Member, Industrial Court-2, Kolhapur in the order dated 31st March, 2012 and in the impugned order dated 2nd September, 2015 passed in the revision application filed by the respondents. No order as to costs.

(R.D. DHANUKA, J.)