

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9250 OF 2017

THE CHIEF EXECUTIVE OFFICER, ZILLA PARISHAD, NANDURBAR
AND ANOTHER
VERSUS
SMT. JAMUNA RULYA VASAVE

.....
Advocate for Petitioners : Mrs. Vaishali S. Chaudhari
Advocate for Respondent-sole : Mr. Shrikant S. Patil
.....

CORAM : V. K. JADHAV, J.
DATED : 13th FEBRUARY, 2018

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. Learned Judge of the Labour court has allowed the application seeking condonation of delay in filing the complaint of unfair labour practices by the respondent herein. Being aggrieved by the same, the petitioners have preferred Revision No. 2 of 2016 before the Industrial Court, Dhule and the learned Member of the Industrial Court has also confirmed the order passed by the Labour Court. Hence, this writ petition.
3. Learned counsel for the petitioners submit that the respondent-original complainant has not explained the delay satisfactorily. There is inordinate delay of 4 years, 3 months and 14 days in filing the complaint of unfair labour practices before the Labour Court. As per

the case of the respondent-original complainant, her services came to be terminated on 13.8.2009 and thereafter she had preferred an appeal to the Divisional Commissioner (Revenue), Nashik Division, Nashik against the said termination order and the Divisional Commissioner has dismissed the said appeal by order dated 8.6.2010. The respondent, however, kept mum for near about four years and on 7.1.2014, again preferred an application to the Divisional Commissioner and sought reinstatement in service. However, the learned Divisional Commissioner (Revenue), Nashik has directed the respondent-original complainant to file complaint before the Labour Court. Learned counsel submits that the respondent has not explained the delay and as such the Labour Court should have rejected the application seeking condonation of delay.

4. Learned counsel for the petitioners, in order to substantiate her contentions, placed reliance on the following judgments:

- i) ***Kamalbai w/o Narasaiyya Shrimal and another vs Ganpat s/o Vithalrao Gavare***, reported in ***2007 (1) Mh.L.J. 807*** and
- ii) ***Nandkumar Kashinath Deorukhkar vs Standard Mill Company Ltd.***, reported in ***2006 (5) Mh.L.J. 668***.

5. Learned counsel for the respondent submits that the Courts

below recorded the concurrent findings and concluded that the respondent-original complainant has well explained the delay in filing the complaint before the Labour Court. Learned counsel submits that there is no substance in the Writ Petition and the same is liable to be dismissed.

6. It appears that the respondent-original complainant was appointed as Aanganwadi Sevika. It is the case of the respondent-complainant that she was terminated illegally by adopting unfair labour practice. She has firstly approached the Divisional Commissioner (Revenue), Nashik. She has repeatedly approached the authorities for her reinstatement and finally in the year 2014, the Divisional Commissioner has directed her to approach the Labour Court for seeking redressal of her grievance. The Courts below have observed that the respondent-complainant belongs to tribal community and is a rustic villager residing in a remote tribal area viz. Ankushvihir, Tq. Akkalkuwa, District Nandurbar. The learned Judge of the Labour Court has recorded the evidence of both the parties. The respondent-complainant has deposed before the Labour court and after termination of her service, she had tried to ventilate her grievance by filing appeal before the Divisional Commissioner and after dismissal of the appeal, she had approached different authorities and the said authorities did not look into the grievance of

the respondent. Ultimately, she went to the office of the Divisional Commissioner on 7.1.2014 and she was directed to file proceeding before the Labour Court. So far as the evidence led by the present petitioners is concerned, the same is only on the point of misconduct committed by the appellant and same is not the requirement in the application seeking condonation of delay. Both the Courts below have recorded the concurrent findings of fact. The applicant has put forth sufficient evidence to condone the delay.

7. In the case of **Kamalbai** (supra), in paras 13 and 14 of the judgment, this Court has made the following observations:-

“13. What the petitioner is asking herein is extension of the time only on equitable ground. The Apex Court in Commissioner of Central Excise, Cochin v. Mathew Kurian Pro. South India Products, 1999 AIR SCW 3867 examined the similar question about condonation of delay. In N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123 the Apex Court has observed that object of fixing time limit under the Limitation Act is not with purpose to destroy right of the parties but it is founded on public policy. The Apex Court has observed:

"Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory."

14. Needless to say the question of delay condonation would depend upon peculiar fact situation of each case. There can not be a straight jacket formula in such a matter. The adequacy of reasons stated by the petitioner

was duly considered by the learned appellate court and as such the impugned interference regarding absence of sufficient cause as drawn by the appellate court is justified. In any case, it can not be held that the impugned order is perverse or mala fide."

8. This Court has referred the Supreme Court judgment wherein the Supreme court has observed that the length of delay is no matter and acceptability of the explanation is only criterion. Even this Court, in para 14, observed that there cannot be a straight jacket formula in such matter.

9. In the case of **Nandkumar Kashinath Deorukhkar** (supra), relied upon by the learned counsel for the petitioners, in para 10, this Court has observed as to what is the reasonable time if there is no period of limitation prescribed for filing revision. The cases cited are altogether on different point and the same cannot be made applicable to the facts of the case in hand.

10. In view of the above, I do not find perversity in the impugned order. There is no substance in the Writ Petition and the same is hereby dismissed accordingly. No costs.

(V. K. JADHAV, J.)

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