

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 870 OF 2017

Mustan Subhan Malik	...Petitioner
Versus	
The Union of India & Anr.	...Respondents

Mr. Vicky Nagrani for Petitioner.
Mr. T. J. Pandian for Respondents.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.
DATE : 25 JULY 2018**

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.
- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgments and orders dated 12th June 2015 and 9th October 2015 made by the Central Administrative Tribunal (CAT) dismissing petitioner's Original Application No. 394 of 2009 and Review Petition, *inter alia* on the ground that the same was barred by law of limitation and that no sufficient cause was shown to condone the delay of almost 10 years in institution of the

Original Application.

4] Mr. Nagrani, the learned counsel for the petitioner submits that CAT in its judgment and order dated 9th June 2010 disposing of Original Application Nos. 442 of 2004 and 50 other matters, had granted relief to the employees who were almost identically placed. He points out that in said matters also objection on the basis of bar of limitation were raised, but the same were rejected by the CAT by holding that there was sufficient cause made out. Mr. Nagrani submits that the case of the petitioner is no different and therefore the CAT erred in refusing to condone the delay and granting the relief of regularization of the petitioner.

5] Mr. Nagrani submits that the CAT in the impugned judgments and orders has incorrectly held that the cause of action for the petitioner to institute the Original Application arose in the year 1999. By circular dated 21st May 1999, applications were invited for regularization of the employees who had worked for 120 days as casual labourers. He points out that the list of regularized casual labourers was published in June 2003. He submits that though the petitioner had applied for regularization in the

year 1999 since, his name did not appear in the list of regularized casual labourers published in June 2003, at the highest, the cause of action arose in the year June 2003. He submits that the CAT itself has taken its view in its judgment and order dated 9th June 2010 whilst disposing of Original Application No. 442 of 2004 and 50 connected matters. He therefore submits that the CAT erred in holding that cause of action arose in the year 1999 and therefore there was over 10 years delay in instituting the Original Applications. For these, reasons, Mr. Nagrani submits that the impugned judgments and orders are liable to be set aside, the delay, in institution of the Original Application be condoned and the matter be remanded to the CAT for adjudication on merits.

6] On the other hand, Mr. Pandian, the learned counsel for the respondents submits that the CAT, in its judgment and order dated 9th June 2010 was mostly dealing with the Original Applications instituted in the years 2004-2005. The observations are also in relation to such Original Applications. Mr. Pandian submits that each petitioner has to show sufficient cause which prevented him from approaching the CAT within the prescribed period of

limitation. He submits that merely because delay may have been condoned in one case, there is no warrant for condonation of delay in another case particularly, when, no sufficient cause whatsoever has been indicated. Mr. Pandian submits that even assuming that cause of action arose in June 2003, the petitioner, instituted his Original Application only in the year 2009 i.e. after a delay of 5-6 years for which again, there is no proper explanation. Mr. Pandian relies upon ruling of the Hon'ble Supreme Court in the case of ***State of Karnataka & Ors. vs. S. M. Kotrayya & Ors. (1996) 6 SCC 26*** and upon decision of this Court in ***Writ Petition No. 14545 of 2017 (Sunil Nathu Zope vs. The Union of India & Anr. decided on 27th February 2018) and connected matters***, to submit that in identical situation, delay has not been condoned by this Court. For all these reasons, Mr. Pandian submits that this petition may be dismissed.

7] Rival contentions now falls for our determination.

8] In matters of condonation of delay, no doubt, a liberal approach is warranted. However, in the absence of any

proper cause shown, it will not be proper to condone delay of over 5-6 years in institution of the Original Application.

9] The judgment and order dated 9th June 2010 in Original Application No. 442 of 2004 and connected matters, cannot be treated as a precedent when it comes to condonation of delay. The delay has to be condoned on the basis of the cause shown by a particular applicant / petitioner. Therefore, unless it is established that the cause shown in the judgment and order dated 9th June 2010 was identical or at least similar to the cause shown by the petitioner herein, there is no question of seeking condonation, relying entirely on the judgment and order dated 9th June 2010.

10] From the perusal of paragraphs 8 and 8.1 of the judgment and order dated 9th June 2010, it is seen that the CAT, has accepted that cause of action arose in June 2003 when list of regularized casual labourers came to be published and the applicants found that their names were not included in such list. However, the CAT has noted that applications were filed in 2004 to 2005 i.e. within a period

of 1 to 2 years from the date of publication of the list of regularized casual labourers in June 2003. In the present case, the petitioner filed Original Application only in the year 2009 i.e. after a period of almost 6 years from the publication of the list of regularized casual labourers in June 2003. Therefore, there is no question of any comparison.

11] Mr. Nagrani however points out that in the connected matters, there were some Original Applications instituted in the years 2007 or even 2008. Even assuming that this is the position, from the perusal of paragraphs 8 and 8.1, it is quite clear that the delay which was condoned in the judgment and order dated 9th June 2010 was on the basis that the Original Applications had been filed within 1 to 2 years from the date of publication of list of regularized casual labourers in June 2003. Therefore, the petitioner, cannot take any undue advantage of the fact that some of the connected matters may have been instituted much later, but the facts and circumstances in the said cases were not independently assessed or examined by the CAT in making the judgment and order dated 9th June 2010.

12] In the present case, we agree with the CAT that there is no explanation to explain delay in institution of the Original Application. Even if we hold that the cause of action arose in June 2003, still, there is no explanation as to what prevented the petitioner from instituting the Original Application until the year 2009. Delay is of at least 5 years and there is no cause shown to explain such inordinate delay.

13] The CAT has noted that there is actually no proper evidence that the petitioner had applied for regularization in the year 1999. However, even assuming that such an application was made by the petitioner in the year 1999, it was the duty of the petitioner to institute Original Application within a reasonable period, once it was clear that in pursuance of any alleged application made by him, no orders for regularization were made. In any case, in June 2003, admittedly, the list of regularized casual labourers was published. Since, the petitioner's name was not included in said list, the least that was expected from the petitioner was that he institutes his Original Application within a period of 1 year from June 2003 or at least within

some reasonable time thereafter. But merely pleading that the petitioner was not aware of what was happening does not amount to showing of sufficient cause. Thus construed, there is no good ground to interfere with the impugned judgments and orders made by the CAT.

14] In similar matters, this Court, declined to interfere with the orders of the CAT refusing to condone the delay on the part of casual labourers in instituting Original Applications seeking benefit of regularization. Reference can be made to orders dated 27th February 2018 and 3rd April 2018 in Writ Petition No. 14545 of 2017 and other connected matters.

15] For all the aforesaid reasons, we see no good ground to interfere with the impugned judgment and order. This petition is dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

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