

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO.2506 OF 2020

SHIVANAND TRAMBAK UTGE
VERSUS
THE DIVISIONAL CONTROLLER MAHARASHTRA STATE ROAD
TRANSPORT CORPORATION LATUR

Mr.S.B. Madde, Advocate for the petitioner.
Mr.G.O. Wattamwar, AGP for respondent/State.

CORAM : N.J.JAMADAR, J.
DATED : 08.04.2021

PC :-

01. Heard Mr. Madde, learned Counsel for the petitioner.

02. The challenge in this petition is to an order passed by the learned Member, Industrial Court, in Misc. (ULP) No.19 of 2018 dated 29th November, 2019, whereby the learned Member was persuaded to reject the application for condonation of delay of 19 years 4 months and 7 days in challenging the order passed by the appellate authority on 20th April, 1999, whereby one annual increment of the petitioner was withheld permanently.

03. The petitioner was saddled with penalty of withholding two annual increments permanently by the competent disciplinary authority by order dated 30th June, 1998. The petitioner preferred an appeal before the first appellate authority. By an order dated 23rd December, 1998, the first appeal came to be dismissed by affirming the order passed by the disciplinary authority. The petitioner preferred an appeal before the second appellate authority. By order dated 20th April, 1999, the appeal was partly allowed and penalty was reduced to withholding of one increment permanently.

04. It is the claim of the petitioner that after the order passed by the second appellate authority, the petitioner continued to request the employer to set aside the said penalty of withholding of one increment permanently. The respondent assured to consider the same verbally. However, the respondent did not honour its commitment. The petitioner being in financial constraints and unaware of the legal provisions prescribing the time

within which the order passed by the second appellate authority was to be challenged, could not assail the said order within the stipulated period. Hence, there was delay.

05. The learned Member, Industrial Court was of the view that there was no sufficient cause to condone the delay of 19 years 4 months and 7 days. The learned Member recorded that the petitioner was indisputably aware of the fact that the second appeal was decided by second appellate authority in the year 1999 itself. The reasons assigned for the condonation of delay were thus not sustainable.

06. It is trite that an application for condonation of delay should receive liberal consideration. The Courts lean in favour of condonation of delay, so as to advance cause of substantive justice. The overriding consideration is that the procedure, which is handmaid of justice, should not be allowed to score a march over the substantive justice. In a case, where the Court finds

that there is no element of negligence, malafide or deliberate inaction, ordinarily, the discretion is exercised to condone the delay. Yet, the cause assigned in a given case assumes significance. Undoubtedly, the length of delay is not the sole determinative factor. However, inordinateness of the delay coupled with the fact that the same is not satisfactorily explained, warrants the Court to take a different view of the matter.

07. In the case at hand, the petitioner has made omnibus assertions regarding the cause for delay. The cause sought to be ascribed, which can be gathered from the application, is that the petitioner was verbally pursuing the respondent to undo the disciplinary action and set aside the penalty of withholding of one increment. It does not appeal to human credulity that the petitioner could have believed that, after decision in second appeal, the disciplinary authority could reverse the penalty on its own and, that too, for a

period of almost 20 years.

08. In the circumstances, the learned Member, Industrial Court was justified in not exercising the discretion to condone the delay, as no cause, much less, sufficient was made out.

09. Thus, the petition does not deserve to be entertained and accordingly stands dismissed.

[N . J . JAMADAR , J .]