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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

934 WRIT PETITION NO.12188 OF 2021

**RAJABHAU GOPINATH BHOSALE
VERSUS
THE DIRECTOR OF HEALTH SERVICES AND DIRECTOR
OF NRHM PROGRAMME AND OTHERS**

...
Mr M. D. Gitte, Advocate for petitioner;
Mr S. R. Yadav, A.G.P. for respondent No.1
Mr U. S. Malte, Advocate for respondent Nos.2 to 4

CORAM : RAVINDRA V. GHUGE, J

DATE : 16th March, 2022

PER COURT:

1. This is a classic case of the litigant having been made to approach this Court and litigate for the last six years on account of a grave and hyper technical approach adopted by the 1st Labour Court at Aurangabad as well as by the learned Member of the Industrial Court, Aurangabad.
2. I have considered the strenuous submissions of the learned Advocates for the respective sides.
3. Complaint (ULP) No.38/2015 was at the stage of recording evidence. On 10/11/2017, the matter was dismissed in default as the complainant could not appear before the Court for recording

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the evidence, purportedly on the ground of ill health. The Misc. (ULP) Restoration Application No.07/2017 was filed on 12/12/2017, which was delayed by only 3 days, the limitation being 30 days. The learned Judge, Labour Court-1, in a cryptic single paragraph order, has concluded that there is no evidence with regard to the ill health of the complainant and hence, sufficient or reasonable ground is not made out. The Industrial Court, Aurangabad, dismissed Revision (ULP) No.83/2019, filed by the petitioner on 16/10/2019, vide the impugned judgment dated 07/12/2020. The Industrial Court was exercising revisional jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

4. The Judgment of the Hon'ble Apex Court, in **Collector, Land Acquisition, Anantnag v/s Mst. Katiji, AIR 1987 SC 1353**, is squarely applicable to this case. The observations of the Hon'ble Apex Court are set out in paragraph 3, which read thus:

“3. The legislature has conferred the power to condone delay by enacting [Section 51](#) of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful

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manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

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

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technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

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5. The Hon'ble Apex Court has held that, when it comes to doing justice to the litigants, technicalities should not be pitted against substantial justice. In the instant case, I find that the learned Judge, Labour Court and the learned Member Industrial Court have given an unnecessary weightage to technicalities, contending that the 3 days delay was not explained properly, since the complainant did not produce evidence or proper pleadings about his ill health. It is well settled that the delay has to be considered liberally unless there are laches or oblique motives attributable to the conduct of a litigant.

6. I am astonished by the approach of the Labour Court as well as the Industrial Court, due to which, this petitioner had to litigate for more than 5 years.

7. In view of the above, the impugned orders of the Labour Court-1, dated 19/09/2019 and the Industrial Court, dated 07/12/2020, are quashed and set aside.

Revision (ULP) No.83/2019 stands disposed off and Misc. (ULP) Restoration Application No.7/2017 stands allowed.

Complaint (ULP) No.38/2015 shall stands restored to the file of the 1st Labour Court at Aurangabad.

8. All the litigating parties shall appear before the learned Labour Court on 04/04/2022. The learned Advocate for the petitioner submits that, the petitioner would step into the witness box and shall lead evidence, either oral or by filing an affidavit-in-reply in lieu of examination in chief and the verification would be done on 04/04/2022.

9. Since the Complaint is of the year 2015, the Labour Court is expected to decide the same, as expeditiously as possible and in any case, on or before 30/12/2022. The litigating parties shall extend their co-operation to the Labour Court.

(RAVINDRA V. GHUGE, J.)

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