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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.738 OF 2021

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Rajesh Tukaram More

..Petitioner

vs.

Bombay Municipal Corporation Greater
Mumbai and ors.

..Respondents

**WITH
WRIT PETITION NO.789 OF 2021**

Pradeep Pandurang Jadhav

..Petitioner

vs.

Bombay Municipal Corporation Greater
Mumbai and ors.

..Respondents

Ms. Nivedita Deshpande i/b. Mr. S. N. Deshpande for
petitioners.

Mrs. Shilpa Redkar for respondent-MCGM.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 15, 2022.

P.C. :

1. Heard learned counsel for the petitioners and learned
counsel for the Corporation.

2. A common order passed by the Industrial Court
dismissing the application for condonation of delay filed by
the petitioners is under challenge. The writ petitions are

therefore disposed of by a common order. The petitioners are the employees of the respondent-Corporation. The petitioners were working as labourers in 'A' ward of the insecticide department. It is contended that only with a view to harass the petitioners, orders transferring them from 'A' ward to the other ward were issued. It is the case of the petitioners that orders of transfer were not served on them. Thereafter, they approached an advocate for challenging the transfer orders before the Industrial Court.

3. It is the contention of learned counsel for the petitioners that along with the complaint of unfair labour practice filed before the Industrial Court, an application for condonation of delay was filed. In the said application, it is stated that after the orders of transfer were issued, they approached their seniors making a grievance when they were told that they should first report at the place of transfer and not approach the Court. It was further submitted that the petitioners approached their advocate who advised them to file a criminal case. Thereafter, they approached another advocate who sent a notice on

16.08.2019 to the Pest Control Officer, which was replied by the Pest Control Officer on 16.09.2019. There was some delay on the part of the advocate in filing the complaint before the Industrial Court as per the averments made in the application for condonation of delay which resulted in 5 months and 20 days delay in filing the application. It is contended by learned counsel for the petitioners that the Industrial Court was not justified in rejecting the application only on the ground of delay and should have adopted a liberal approach while deciding the application for condonation of delay.

4. On the other hand learned counsel for the Corporation opposed the petitions. It is her submission that the petitioners are permanent employees of the Corporation and it cannot be said that they are facing any financial difficulties. It is further submitted by her that the petitioners have been suspended as they failed to report to the transferred place of posting and therefore, it is now for the petitioners to challenge the suspension order and not the order of transfer. My attention is invited to the findings

of the Industrial Court in support of her submission that the petitioners have been very casual in pursuing their remedies. She submits that only with a view to harass the respondents a criminal case was filed by the petitioners.

5. In my opinion, the delay of 5 months and 20 days in filing the complaint of unfair labour practice before the Industrial Court challenging the order of transfer cannot be said to be gross. The petitioners are Class-IV employees working as labourers with the Corporation. Pursuant to their transfers they had approached their superiors, who advised them to join the transferred place of posting. Thereafter, a legal notice was sent by the petitioners which was replied by the Pest Control Officer. In the application for condonation of delay the petitioners have stated that they had approached their advocate who had advised them to file a criminal case. Later on, they went to another advocate who took some time to file the complaint because of his busy schedule. Having regard to the explanation, in my opinion, the Industrial Court was not justified in rejecting the application for condonation of delay. The delay is not

such that the same could be said to be unreasonable and gross. In view of the explanation in the application for condonation of delay which I find to be satisfactory, the delay deserves to be condoned.

6. The impugned order is set aside. The application for condonation of delay is allowed. The delay is condoned. The Industrial Court is directed to hear the complaint on its own merits.

7. The Writ Petitions are allowed. There shall be no order as to costs.

(M. S. KARNIK, J.)