

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.3469/2022

Mohammad Rafique Khan Ahmed Khan V District Civil Surgeon, Akola

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. Z.Z. Haq, Advocate for petitioner.

Mr. N.R. Patil, AGP for respondent.

CORAM : AVINASH G GHAROTE, J.

DATE : 10-08-2022

Heard Mr. Haq, learned Counsel for the petitioner and
Mr. Patil, learned AGP for the respondent.

2. This Petition challenges the judgment dated 17-09-2019, by which the application for condonation of delay in filing the restoration application has been dismissed by the learned Labour Court (pg 26), which has been confirmed by the learned Industrial Court by its judgment dated 13-01-2022 (pg 41).

3. It is contended by the learned Counsel for the petitioner that the delay of 6 years, 4 months and 5 days had occasioned for the reason that the petitioner was suffering from Cancer and was undergoing treatment and therefore, was not aware of dismissal of the complaint on 24-09-2012 as a result of

which the application for condonation of delay and for restoration came to be filed in the year 2018. He submits that considering the ailment suffered by the petitioner, a liberal view ought to have been taken by the Courts below, as the rights of the petitioner were yet to be determined specifically when the petitioner was illegally terminated from the employment.

4. Mr. Patil, learned AGP opposes the petition and submits that the reason given was not sufficient to the satisfaction of the Courts below and therefore the impugned judgments ought not be disturbed.

5. The learned Counsel for the petitioner had filed complaint on 28-04-2000, against his illegal termination from the post of Ward boy claiming that he had been working with the respondent since 07-01-1991 continuously. This complaint came to be dismissed on 24-09-2012 in default. In order to substantiate the plea that the petitioner was suffering from Cancer, Dr. Bhanudas Marotrao Onkar, the Medical Officer in Civil Hospital, Akola, has been examined before the learned Labour Court, who had since retired, who deposed that the petitioner was his patient and was examined by him. So also, he had examined the papers of the petitioner from the Tata Cancer Hospital, Bombay where he was taking treatment. The testimony of this witness would indicate that the petitioner was indeed suffering from Cancer. The fact that the petitioner was suffering from

Cancer has been admitted by the Courts below, however, the Courts below have gone into unnecessary details as to exactly when the petitioner had acquired the knowledge about the dismissal of his complaint.

6. In the case of *Esha Bhattacharya vs Managing Committee of Raghunathpur Nafar Academy*¹, the Hon'ble Apex Court has laid down the principles regarding the condonation of delay and also expressed that the approach of the Courts insofar as the delay ought to be liberal and not pedantic or hyper technical. Since, it is not in dispute that the petitioner was suffering from Cancer during the relevant time, the Courts below ought to have adopted a liberal approach in considering the issue of condonation of delay, which does not appear to be so in the impugned judgments.

7. A vital right of employment of the petitioner is involved and the petitioner has already given an undertaking that he will forego the claim for any backwages in case the claim is allowed for the duration/delay in grounds (D) (pg 5) of the petition accepting which, the petition is allowed. The impugned orders are hereby quashed and set aside and the application for condonation of delay is allowed. No costs.

JUDGE

Deshmukh