

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4441 OF 2022

The Executive Engineer,
Maharashtra State Electricity Distribution
Company Ltd. Urban Division,
Old Power House, Sale Galle, Ganj Golai,
Latur, Tq. & Dist. Latur

.... Petitioner

Versus

Vishwambhar Hanumant Kalal

.... Respondents

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Mr. Anil S. Bajaj, Advocate for the Petitioner
Ms. Ranjita Barhate (Deshmukh), Advocate h/f Mr. Yuvraj
Barhate, Advocate for the Respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 03rd JULY, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by the learned Industrial Court, Latur in Appeal P.G.A. No.1 of 2020, thereby rejecting the delay condonation application filed by the petitioner.

2. Respondent filed application (PGA) No.51 of 2018, which was decided *ex parte* in his favour, and it is declared that respondent is entitled to receive gratuity amount of Rs.6,89,465/- together with interest at the rate of 6% per annum from 31/05/2006 till its realization.

3. The petitioner filed proceeding for delay condonation seeking condonation of 195 days delay in filing the appeal challenging the *ex parte* decision, contending that the notice of application filed by the respondent was served on the inward Clerk of the petitioner on 23/03/2018, the matter was thereafter, heard *ex parte* due to non appearance of the petitioner. The *ex parte* decision was communicated to the petitioner by the respondent on 07/12/2019, when he presented the photocopy of the *ex parte* judgment. The petitioner, immediately, applied for certified copy and after receipt of the same, the present appeal along with delay condonation application is filed.

4. The delay condonation application was strongly opposed by the respondent, and the Industrial Court has dismissed the application. Hence, the present petition.

5. Heard the learned advocate for the petitioner and the learned advocate for the respondent. Perused the writ petition memo, annexures thereto, and the impugned order.

6. Learned advocate for the petitioner strenuously submitted that the impugned *ex parte* decision is dated 12/04/2019. The respondent served photocopy of the said

decision on the petitioner on 07/12/2019. Immediately, on 11/12/2019, the petitioner applied for certified copy, which was received by the petitioner on 19/12/2019, and on the same day, appeal along with delay condonation application was filed. According to him, as per Section 7(7) of Payment of Gratuity Act, the said appeal is within limitation, however, by way of abundant precaution, the delay condonation application was filed, which ought to have been allowed by the Industrial Court. Apart from that, he submits that amount of gratuity of Rs.5,16,682/- is already credited in the Bank account of the respondent in the year 2016. This fact was suppressed by the respondent from the Industrial Court and on that ground also the *ex parte* order passed against the petitioner is unsustainable.

7. On the other hand, learned advocate for the respondent supported the impugned order. She submits that there was delay of more than 8 months and 17 days in filing the appeal and delay condonation application. Even if, the period of 60 days plus further 60 days in terms of Section 7(7) of the Gratuity Act, is deducted, still there is a delay of 4 months and 17 days in filing of appeal. Hence, the Industrial Court was right in dismissing the application for condonation of

delay filed by the petitioner. She further submits that an amount of Rs.5,16,682/-, which was deposited by the petitioner was towards leave encashment and other amounts payable to the respondent and it was not gratuity amount. She submits that the petitioner may be called upon to prove his contention that the said amount was paid toward gratuity amount. She, therefore, submitted that there is no substance in the writ petition, and the writ petition may be dismissed.

8. Admittedly, the petitioner failed to appear in Application (PGA) No.51 of 2018 in spite of service of notice. The petitioner has tried to explain in the delay condonation application that due to inadvertence and communication gap, the said notice was not brought to the knowledge of the officers, and therefore, the petitioner could not attend the said proceeding and *ex parte* order was passed. Be that as it may, the contention of the petitioner that the gratuity amount of Rs.5,16,682/-, was credited in the Bank account of respondent is liable to be considered on its own merit. From the order passed by the Industrial Court on 10/01/2022, it appears that the respondent has conceded the fact that he has received the amount, which was paid to him in June, 2016 i.e. before the judgment of the Labour Court. The petitioner,

therefore, needs to prove his contention by leading evidence and fair opportunity to contest the matter is required to be given to the petitioner.

9. The Industrial Court has adopted hypertechnical approach in rejecting the delay condonation application filed by the petitioner by ignoring the settled legal position that delay has to be condoned liberally. The impugned order, in the facts of the present case, is unsustainable and the same is liable to be quashed and set aside.

10. In the result, the writ petition is allowed.

11. The impugned order dated 01/12/2021 passed by the Member, Industrial Court, Latur is quashed and set aside.

12. The application Delay (PGA) No. 1 of 2020 is allowed subject to the petitioner paying costs of Rs.5,000/- to the respondent before the Industrial Court.

13. The Industrial Court shall decide the appeal on its own merits within a period of six months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane