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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4006 OF 2023

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| 1. The Deputy General Manager
Maharashtra State Road Transport
Corporation, Through its
Regional Office at Pune | PETITIONERS |
| 2. The Divisional Controller,
Maharashtra State Road Transport
Corporation Ltd.,
Divisional Office at Jalna | |
| 3. Divisional Traffic Officer
Maharashtra State Road Transport
Corporation Ltd.,
Divisional Office at Jalna
Taluka and District - Jalna | |

VERSUS

Ashok Wamanrao Ughade Age – 55 years, Occ – Service R/o Balanagar, Taluka – Ambad District – Jalna	RESPONDENT
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Mr. Swapnil S. Rathi, Advocate for the petitioners
Mr. Pradeep P. Shahane, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th JULY, 2023

ORDER :

1. By this petition, filed under Article 226 and 227 of the Constitution of India, the petitioners challenge the order passed by the learned Member, Industrial Court, Jalna in Condonation of

Delay (ULP) No. 14 of 2019, thereby condoning delay of 22 years, 7 months and 28 days in filing Complaint (ULP).

2. This matter was heard on merits at the time of admission on 9th June, 2023. The respondent was represented by Advocate Mr. Vinod Rathod, who effectively argued the matter on behalf of the respondent. When this Court was inclined to allow the writ petition and was about to dictate the order, learned advocate for the respondent sought adjournment. To accommodate him, the matter was adjourned to 27th June, 2023. On that day, though the matter appeared on board, appearance of Advocate Mr. Rathod was not shown. Therefore, the office was directed to show appearance of Advocate Rathod on the board. The matter was thereafter listed on 5th July, 2023, when advocate Mr. Shahane appeared for the respondent, by obtaining no objection from Advocate Mr. Rathod. On that day, happenings of 9th June, 2023 were brought to the notice of Mr. Shahane, and he submitted that he was not informed about the said happenings and Vakalatnama containing no objection of Advocate Mr. Rathod was handed over to him by the client. This Court, therefore, deprecated approach of the client – respondent.

3. Today, the matter is again heard on merits so as to give one more opportunity to the respondent. Learned advocate for

the petitioner assailed the impugned order, by relying on the judgment in "***Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and Others***" (2013) 12 SCC 649. He submits that inordinate and unexplained delay of more than 22 years, is erroneously condoned by the Industrial Court, by misinterpreting the said decision. Punishment order of the year 1996 is challenged by the respondent in the year 2019 and the only explanation given is the respondent was new in service at that point of time and he had apprehension that if he files any court proceeding, he will be victimized, therefore, he did not file proceedings earlier. He submits that the entire approach on the part of the Industrial Court is contrary to the settled legal position and the principles laid down in "***Esha Bhattacharjee***" (*supra*). The impugned order, therefore, is unsustainable.

4. Per contra, learned advocate for the respondent Mr. Shahane, opposed the petition by filing affidavit in reply and supported the impugned order. He submits that cause of action, for filing Complaint (ULP) is continuing one, as the punishment imposed on the respondent has cumulative effect and the respondent has good case on merits and, therefore, the Industrial Court is justified in condoning the delay. He further submits that, it has come in the Departmental Inquiry that the

respondent was not responsible for the accident, for which punishment is imposed on him. In support of his submissions, he placed reliance on following citations.

- i. ***"Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and Others" 2013 AIR SCW 6158***
- ii. ***"Anil Ramdas Pawar V/s Union of India" 2020 (4) Mh.L.J. 280***
- iii. ***"Ashok Balaji Ratan V/s Nagpur Improvement Trust" 2004 (6) Bom CR 861***
- iv. ***"N. Balakrishnan V/s M. Krishnamurthy" AIR 1998 SC 3222***

5. It is a matter of record that after holding departmental inquiry, first punishment order was passed against the respondent on 29th August, 1996. The respondent challenged the said order in first departmental appeal, which came to be dismissed on 28th February, 1997. Second departmental appeal preferred by the respondent was dismissed on 3rd April, 1997. Thereafter, the respondent filed Complaint (ULP) challenging the first punishment order dated 29th August, 1996 on 25th July, 2019. Admittedly, there is delay of 22 years, 7 months and 28 days.

6. The Industrial Court, while condoning the delay, has

repeatedly observed that admittedly there is delay of 22 years, 7 months and 28 days. Then by reproducing principles laid down in "**Esha Bhattacharjee**" (*supra*), the Industrial Court proceeded to observe that there has to be liberal approach while deciding delay condonation application. It is further observed that -

"11. but at the same time it has to be ensured that the reason for delay is just and proper and is not concocted or fanciful. Further there should not be gross negligence on the part of the applicant. In the present case, there is inordinate delay and, therefore prejudice is likely to be caused to the respondent and therefore the Court need to have strict approach while considering the grounds of delay. If the delay is not condoned then the applicant, who was working as a driver, will be remedy less. Whereas the respondent will get an opportunity to defend its findings".

7. The Industrial Court has erred in making following observations -

"The applicant was new to the service when the alleged incident occurred. Therefore, the apprehension that he may be victimized, if he approaches the Court, is well founded. No doubt there is a long delay but it cannot be said that there is gross negligence on part of the applicant. I do not find that there is lack of bonafides imputable to the applicant in the present case. The Court find that the substantial justice is paramount as the applicant cannot be left remedy less."

8. Non application of mind on the part of the Industrial Court in recording these findings is writ large on the face of record. It is not clear as to on what basis the Industrial Court has come to the conclusion that if the delay is not condoned then the

applicant, who is working as driver will be remediless. The ratio "***Esha Bhattacharjee***" (*supra*), is misread and misconstrued by the Industrial Court while recording these findings.

9. While condoning the inordinate delay the Industrial Court has ignored the principles set out in "***Esha Bhattacharjee***" (*supra*), in paragraph No.21 in 21.5 (v), 21.8(viii), 21.9 (ix), 21.10 (x) :

" 21. From the aforesaid authorities the principles that can broadly be culled out are:

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant

not to expose the other side unnecessarily to face such a litigation.”

10. The reason assigned by the respondent that he was a new entrant in service and he had apprehension that he will be victimized, had he approached the Court, is unacceptable in the facts of the present case. The Industrial Court has erred in condoning inordinate and unexplained delay of 22 years, 7 months and 28 days.

11. There is no merit in the submission of the learned advocate for the respondent that since punishment imposed has cumulative effect, the cause of action accrued to the respondent is a continuing cause of action. The cause of action accrued to the respondent firstly when the impugned punishment was imposed on the respondent on 29th August, 1996, then after dismissal of his second departmental appeal on 3rd April, 1997. From the punishment order, it cannot be said that due to the cumulative effect in the punishment order, the respondent has continuing cause of action. There is absolutely no substance in the said submission.

12. In "**Anil Ramdas Pawar**" (*supra*), the Division Bench of this Court has observed that -

“18. In service related claims, the Courts are bent upon to reject claims

on delay and latches contest to its repercussions. In most of the cases, administrative decisions, which relates to or affects several others, cannot be reopened after long time, like case of seniority or promotion. However, an exception can be carved out in cases where the delay would not affect the rights of a third party. Herein, in case of reversal of order of punishment it would not affect anybody's right, therefore, while considering the delay, this aspect also bears significance."

In that case, there was delay of 5 years in challenging the order and the Division Bench has made above quoted observations. The Division bench also relied upon the principles laid down in "**Esha Bhattacharjee**" (*supra*), in the said decision. This decision can be distinguished on facts.

13. In "**N. Balakrishnan**" (*supra*), the Apex Court was considering the condonation of delay in an application filed by the appellant therein for setting aside *ex parte* decree. The delay of 883 days in filing of the said application was condoned, as the same was caused due to failure of advocate to inform the appellant as well as his failure to take action. The said explanation was held to be satisfactory by the Trial Court and delay was condoned. High Court, in revision, set aside the said order, which was held to be not proper by the Apex Court.

14. In "**Brijesh Kumar and Others V/s State of Haryana and Others**" (2014) 11 SCC 351, it is held that sufficient cause for

delay must be satisfactorily and convincingly explained. Inordinate delay by inaction or negligence lacking *bona fides* would disentitle claimant from protection under section 5 of the Limitation Act. In this case, appeal filed by the claimant in the High Court seeking relief of higher compensation filed after inordinate delay of more than 10 years only on getting impetus that others, who had approached appellate court promptly succeeded in getting similar relief. In the circumstances, it is held that the delay is not condonable. It is observed :

“10. The courts should not adopt an injustice oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay. The Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.”

15. In ***“University of Delhi V/s Union of India and Others’ (2020) 13 SCC 745*** it is observed :

“By and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party, namely, the Government or the public bodies so as to apply a different yardstick but the ultimate

consideration should be to render even – handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating “sufficient cause” to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the courts based on the fact situation.”

16. The reasons assigned by the respondent, for belatedly approaching the Industrial Court are not convincing and they are far from spelling out ‘sufficient cause’ for belatedly approaching the court.

17. In the fact situation of the case in hand, the explanation given by the respondent for approaching the Court after inordinate and unexplained delay of 22 years, 7 months and 28 days, is wrongly condoned by the Industrial Court, by recording erroneous findings that it cannot be said that there is gross negligence on the part of the respondent and that the Court does not find that there is lack of *bona fides* imputable to the respondent. The reason assigned by the respondent that he was apprehending that in case he challenges the punishment in the Court, his punishment may be enhanced, is far from convincing and cannot be accepted in the facts of the present case. The negligence and lack of *bona fides* on the part of the respondent

are writ large on the face of the record and the Industrial Court has shown uncalled for and unwarranted sympathy to the respondent while condoning such inordinate delay, in absence of spelling out sufficient ground for condonation of the same. The impugned order is, therefore, unsustainable and is liable to be quashed and set aside as it reflects total non application of mind on the part of the learned Industrial Court, while passing the impugned order.

18. For the aforesaid reasons, the impugned order cannot be sustained, as it reflects total non application of mind on the part of the learned Industrial Court, in passing the impugned order. In the result, following order -

ORDER

- A. Writ petition is allowed.
- B. Impugned order dated 14th October, 2022 passed by learned Member, Industrial Court, Jalna in Condonation of Delay ULP No. 14 of 2019 is quashed and set aside.
- C. The respondent is at liberty to avail appropriate remedy, permissible in law.

[NITIN B. SURYAWANSHI]
JUDGE