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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8045 OF 2023

Brihan Mumbai Electric Supply and Transport
through its General Manager .. Petitioner

Versus

BEST Jagrut Kamgar Sanghatana through
Parivartan and Ors. .. Respondents

-
- Mr. Arsh Misra, Advocate for Petitioner.
 - Mr. Shailesh Pathak a/w. Jay Vora, Advocate for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 25, 2023.

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By the present Writ Petition filed under the provisions of Articles 226 and 227 of the Constitution of India the Petitioner has impugned the judgment and order dated 25.01.2023 passed by the learned Industrial Court in Revision Application No.69 of 2022 and order dated 04.10.2021 passed by the learned Labour Court while deciding and allowing Application for condonation of delay of 5 years and 11 months in favour of the Respondents.

3. Such of the relevant facts which are necessary for deciding the present Writ Petition are as under:-

3.1. Between 2006 to 2010 on different dates, Respondent Nos.2 to 8 were appointed by Petitioner – Undertaking on the post of casual worker for carrying out miscellaneous works in the establishment of the Petitioner – Undertaking.

3.2. By an oral termination order dated 20.03.2015 Respondent Nos.2 to 8's services were terminated and they were dismissed from service.

3.3. Respondent Nos.2 to 8 approached the Bombay Electric Workers Union to espouse their cause. On 21.04.2015, the Union addressed a letter to the Petitioner for redressal of the grievance of Respondent Nos.2 to 8, however the same was not replied by the Petitioner – Undertaking.

3.4. On 30.07.2015, Respondent Nos.2 to 8 sent a letter to the Petitioner – Undertaking requesting reinstatement, however this letter was also not replied by the Petitioner – Undertaking.

3.5. On 01.01.2021, Respondent No.1 filed a complaint before the Labour Court under Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "**MRTU & PULP Act**") against the Petitioner – Undertaking. Respondents filed Application for condonation of Delay being Application No.2 of 2021 seeking condonation of delay of 5 years and 11 months in filing the complaint.

3.6. By order dated 04.10.2021 passed by the learned Labour Court, Application for condonation of delay of 5 years and 11 months came to be allowed.

3.7. Being aggrieved by the order dated 04.10.2021, Petitioner filed Revision Application (ULP) No.69 of 2022 before the learned Industrial Tribunal at Mumbai to challenge the same.

3.8. By judgment and order dated 25.01.2023, the learned Industrial Tribunal partly allowed Revision Application (ULP) No.69 of 2022 and modified the judgment and order dated 04.10.2021 to the extent of directing Respondent Nos.2 to 8 to deposit costs of Rs.1050/- in total within 15 days from the receipt of the copy of the said judgment in the learned Labour Court, Mumbai while upholding the order of the learned Labour Court condoning the delay.

3.9. Petitioner – Undertaking is aggrieved by the above two concurrent orders condoning the delay and hence the present Writ Petition.

4. Mr. Misra, learned Advocate appearing for the Petitioner – Undertaking has made the following submissions:-

4.1. He would submit that as per the Departmental Circular dated 25.03.2015, Respondent Nos.2 to 8 were not to be re-engaged in the services of the Petitioner – Undertaking.

4.2. He would submit that the standing orders of the Petitioner – Undertaking would not apply to the case Respondent Nos.2 to 8 as they were casual workers. That Respondent Nos.2 to 8 could not have filed a common ULP Complaint as all of them had a distinct claim, thus authority to file such a common complaint under Section 28 read with Section 30 of the Maharashtra Industrial Relations Act, 1946 (for short “**MIR Act**”) ought to have been produced.

4.3. He would submit that no cogent reasons have been given in both the impugned judgments / orders for condoning the abnormal delay of 5 years and 11 months.

5. In support of his above submissions, Mr. Misra has referred to and relied upon the following decisions of the Supreme Court and this Court:-

- (i) *Shiv Das Vs. Union of India*¹;
- (ii) *State of Karnataka Vs. Uma Devi*² and
- (iii) *Miraj Medical Centre Vs. Vijaykant Nilkanth and Ors.*³

5.1. On the basis of the above decisions, he would submit that belated service claims need to be rejected on the ground of delay and laches as the same would affect rights of third parties and create chaos. He would also submit that casual workers cannot be made

1 2007 (9) SCC 274

2 2006 (4) SCC 1

3 2015 SCC Online Bom 4365

permanent as the same would amount to backdoor entry. He would further submit that complaint filed by Respondent Nos.2 to 8 under Section 28(2) of the MRTU & PULP Act is clearly barred by limitation and thus not maintainable. He would therefore pray for quashing and setting aside of both the judgments and orders passed by the learned Industrial Tribunal as well as learned Labour Court.

6. *PER CONTRA*, Mr. Pathak, learned Advocate appearing for the Respondents in reply has made the following submissions:-

6.1. He would submit that Petitioner - Undertaking never communicated the order of termination to Respondent Nos.2 to 8 and the Senior Personnel Manager vide his note dated 20.03.2015 (at page No.274 of the Petition) informed the Dy. Chief Engineer (Works) not to re-engage / continue with the services of Respondent Nos.2 to 8. That the Dy. Chief Engineer (Works) informed all concerned Departments of the Petitioner – Undertaking vide note dated 25.03.2015 (at page Nos.272 - 273 of the Petition) not to re-engage the services of Respondent Nos.2 to 8, but the same was never communicated to them.

6.2. He would submit that Petitioner – Undertaking refused to provide employment to Respondent Nos.2 to 8 as per its own guidelines dated 25.03.2015 and the names of Respondent Nos.2 to 8 were struck off from the list of casual labourers on 05.10.2015. He

would submit that Petitioner – Undertaking did not give any reply to the representations made by Respondent Nos.2 to 8 as well as through the recognized union and therefore an inference needs to be drawn that the Petitioner – Undertaking was considering the representations made by the Respondent Nos.2 to 8.

6.3. He would submit that Respondent Nos.2 to 8 in their complaint has placed on record the number of days which they have worked during the calendar years 2010, 2011, 2012 and 2013. He would submit that the order dated 25.03.2015 passed by the Petitioner – Undertaking is contrary to its own circular dated 15.02.1983 (at page No.104 of the Petition). He would submit that the Petitioner – Undertaking has therefore preferred to challenge the order of the learned Industrial Court with an intention to prolong the matter before the learned Labour Court. He would submit that Revision Application was filed by the Petitioner – Undertaking on 31.10.2022, after a period of approximately one year. He would submit that Revision Application was preferred only after the evidence of Respondent Nos.2 to 8 had commenced before the learned Labour Court.

6.4. He would submit that Petitioner – Undertaking has wrongly designated Respondent Nos.2 to 8 as casual workers as there is no such classification of employees as per the Standing Orders issued by the Petitioner – Undertaking. According to him as per the Standing

Orders, Respondent Nos.2 to 8 are to be classified either as permanent employees, probationers, temporary workers and/or apprentices.

6.5. He would submit that the terms 'casual' is defined under the Industrial Employment Standing Orders Act, 1946 and the same reads as under:-

“(e) ‘Casual Workman’ means a workman who is employed for any work which is not incidental to, or connected with the main work of manufacturing process carried on in the establishment and which is essentially of a casual nature.”

6.6. He would submit that Respondent Nos.2 to 8 were appointed and working as per the provisions of the Electricity Act, 2003 which provides for excavation and laying of cables and back filling and therefore the work of Respondent Nos.2 to 8 ought to have been classified as that done by temporary employees. Further as per order dated 30.10.2014 passed in Complaint (ULP) No.546 of 2007, Respondent Nos.2 to 8 were entitled for permanency status.

6.7. He would submit that the decision in the case of *State of Karnataka (2nd supra)* will not be applicable in the present case as the Supreme Court has already distinguished the said judgment in the case of *Maharashtra State Road Transport Corporation Vs. Casteribe Rajya P. Karmachari Sanghatana*⁴.

6.8. Lastly he would submit that both the impugned judgments / orders passed by the Industrial Tribunal as well as Labour Court are

⁴ 2009 III CLR 262

correct and well reasoned orders in the facts of the present case and deserve to be upheld in the interest of justice.

6.9. Hence he would submit that the present Writ Petition be dismissed and both the orders be upheld.

7. I have heard Mr. Misra, learned Advocate appearing for the Petitioner and Mr. Pathak, learned Advocate for Respondents and with their able assistance perused the record and pleadings of the case.

8. Before I advert to record my findings, it will be appropriate to consider the guidelines for Courts to follow for condoning delay as laid down by the Supreme Court in the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.*⁵ on the basis of the law laid down prior to the said decision and additional guidelines enumerated in paragraph Nos. 15 and 16 thereof which read thus:-

“15.

- (i) *There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
- (ii) *The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*
- (iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- (iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or*

5 (2013) 12 SCC 649

litigant is to be taken note of.

- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
 - (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
 - (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
 - (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.*
 - (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.*
 - (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.*
 - (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*
 - (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
 - (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*
- 16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -*
- (a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

- (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*
- (c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*
- (d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”*

9. In the facts of the present case justice needs to be done and a liberal approach on the Application for condonation of delay needs to be taken. This is so because in the present case Respondent Nos.2 to 8 have sufficiently explained the cause for delay in filing the complaint in their Application before the learned Labour Court.

10. That apart, admittedly Respondent Nos.2 to 8 were appointed as Casual Labourers on different dates between 2006 to 2010. They have served with the Petitioner – Undertaking until 2015. Reasons given by these workers for the delay has been considered by both the Courts. Therefore there has to be an adjudication of the complaint filed by these workers on merits. By objecting to the delay, rather reasons for the delay, these workers will be deprived of their legitimate right of getting their complaint adjudicated. Insistence by the Petitioner that delay has to be explained for each day of delay cannot be countenanced. Before both the Courts below, Petitioner – Undertaking has pleaded that Respondents have failed to explain delay

day-by-day which was caused. The same submission is made before me today. I am not inclined to accept the same in view of the fact that in the Application seeking condonation of delay, the Respondents have furnished reasons that initially they had approached the Recognized Union with their grievance and the said Union had addressed their grievance to the Petitioner – Undertaking. The Petitioner – Undertaking did not take any action. It is only thereafter in the year 2020, the Respondent Nos.2 to 8 approached Respondent No.1 – Sangh / Union (another Union) for redressal of their grievances. In view of the guidelines laid down by the Supreme Court, explanation for day-to-day delay is not necessarily to be given. Broadly the reasons for the delay are mentioned and they cannot be disbelieved. The learned Labour Court and the learned Industrial Court have both used their discretion and given cogent reasons for condoning the delay. The Industrial Court has rather levied monetary costs on each of the worker. The trial has already commenced in the complaint before the Labour Court. It needs to be taken to its fruition. Hence, I see no reason to interfere with the judgment and order dated 25.01.2023 passed by the learned Industrial Court. The said judgment and order is sustained. Considering the facts of the present case, I direct the learned Labour Court i.e. the Second Labour Court, Mumbai to hear and decide Complaint (ULP) No.166 of 2021 filed by the Respondents preferably within a period of one year from today. Needless to state

that, I have not opined on the merits of the case and the learned Labour Court shall decide the above complaint strictly on merits without being influenced by any observations in this order.

11. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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