

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 1535 OF 2022

Ashish Bhimrao Gajbhiye
Aged 37 years, Occupation Nil,
R/o Koradi-Mahadula, Tahsil Kamptee,
Dist. Nagpur

...Petitioner

// VERSUS //

1. Chief Engineer, 3x660 M.W.
MAHAGENCO Expansion Project,
Koradi, Nagpur
2. Larsen & Toubro Limited
(TPPCP Power Project, Koradi, District
Nagpur)
3. Central Detective & Security Services,
8, Rahate Colony Chowk, Wardha
Road, Nagpur

... Respondents

Shri Vishikh V. Dhande, Advocate for the petitioner.
Shri R.E.Moharir, Advocate for the respondent no.1.
Shri A.J.Pathak, Advocate for the respondent no.2.
Shri R.N.Sen, Advocate for the respondent no.3.

CORAM : ANIL S. KILOR, J.

DATED : 3rd MAY, 2023.

ORAL JUDGMENT :

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

2. In this writ petition, the challenge is raised to the order dated 15th December, 2021 passed by the Assistant Labour Commissioner, Nagpur in MWA No. 20 of 2015 under the Minimum Wages Act, 1948

(hereinafter referred was 'MW Act, 1948') rejecting the claim filed by the petitioner under Section 20(2) of MW Act, 1948 for payment of difference of wages etc to the tune of Rs.1,36,445/- for the period between 5th August, 2013 to 25th December, 2014. The said claim came to be rejected on the ground that it was not filed within six months.

4. I have heard learned counsel for the respective parties.

5. Undisputedly, the claim of the petitioner was not entertained by the Assistant Commissioner of Labour for the reason that it was filed beyond the period of six months as provide in the first proviso to Sub-Section 2 of Section 20 of the Act, 1948.

6. However, the learned Assistant Commissioner of Labour failed to consider that second proviso permits the competent authority to entertain the claim even beyond six months, if the applicant satisfy the authority that he had sufficient cause for not making the application within such period.

7. The petitioner in this case is security guard and considering his status in social life and his ignorance about the law, the Assistant Commissioner Labour ought to have granted an opportunity to the petitioner for making an application for condonation of delay explaining the delay and giving sufficient cause for such delay.

8. The Co-ordinate Bench of this Court in the case of *Madhao S/o Somaji Sarode Vs. Jotiba Dhyan Upasak Shikshan Sanstha, Dudhala and others*¹ has held thus:

9. It is also necessary to refer to Sub-section (2) and Sub-section (3) of Section 9 of the Maharashtra Employees, of Private Schools (Conditions of Service) Regulation Act, 1977 which read thus :--

"(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be :

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in Sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period."

10. It can thus be seen that the aforesaid provisions do not prescribe for rejection of memorandum of appeal in the case where the appeal is not accompanied by the application for condoning the delay. On the contrary, it can be seen from the Sub-section (3) of Section 9 that the power is given to the Tribunal and that the Tribunal may entertain an appeal made to it after the expiry of period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period. It can thus be seen that a formal application for condonation of delay is also not necessary. The learned School Tribunal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period may condone the delay and entertain the appeal. I, therefore, see no reason as to why the law laid down by the Apex Court in the

1 1078 Mh.L.J 2004(4)

case of State of M. P. and Anr. v. Pradeep Kumar and Anr. (cited supra) would not be applicable to the facts of the present case. The Division Bench of this Court in the case of Anusayabai Ramchandra Lande and Ors. v. Union of India and Anr. (cited supra) also holds that the law of limitation, which is procedural in nature, would not prevent a party from agitating its grievance, if it is found that for sufficient reason the applicant/appellant was prevented from preferring the appeal within the period.

11. I am also in agreement with the law laid down by the M. P. High Court in the case of Suresh Kumar and Ors. v. Firm Kurban Hussain Taiyab Ali and Ors. (cited supra) that if the Tribunal comes to a conclusion that the appeal was not filed within limitation then it should give an opportunity to the party to make an application for condonation of delay. In the present case, from the order itself, it can be seen that though the Tribunal had on earlier occasion entertained the appeal on merits, in its final order has come to a finding that the appeal or the petitioner was filed beyond the prescribed period of limitation. In my view, before dismissing the appeal of the petitioner on the ground of delay, the learned Tribunal ought to have given an opportunity to the appellant to make an application for condonation of delay. I find support in the view I have taken from the aforesaid judgments of the Supreme Court in the case of State of M. P. and Anr. v. Pradeep Kumar and Anr. (cited supra) and M. P. High Court in the case of Suresh Kumar and Ors. v. Firm Kurban Hussain Taiyab AH and Ors. (cited supra).

9. Section 9(3) of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 is *pari materia* to second proviso to Sub-section (2) of Section 20 of the MW Act, 1948. Therefore, the findings recorded on the above referred judgment is equally applicable to the present case.

10. There is no dispute that in this case no such opportunity to make application for condonation of delay, was granted to the petitioner

by the Assistant Commissioner of Labour despite the specific provision for condonation of delay. Therefore, according to me, the ends of justice could be served by remanding back the matter to the Assistant Commissioner of Labour to decide the same afresh with liberty to the petitioner to file an application for condonation of delay giving sufficient cause for not filing or making application under Section 20(2) of the Act, 1948, within the period of six months. Accordingly, I pass the following order.

- i. Writ petition is partly allowed;
- ii. The order dated 15th December, 2021 passed by the Assistant Labour Commissioner, Nagpur in MWA No. 20 of 2015 is hereby quashed and set aside.
- iii. The matter is remanded back to the Assistant Commissioner of Labour, Nagpur with liberty to the petitioner to apply for condonation of delay under Sub-Section 2 of Section 20 of MW Act, 1948 by giving sufficient cause for not filing the application within six months;
- iii. The Assistant Labour Commissioner, Nagpur shall decide the application on its own merit in accordance with law.
- iv. Considering the fact that the petitioner is fighting for his claim for difference of wages since, 2015, the Assistant Commissioner of Labour is directed to decide the application for condonation of delay within two months from the date of appearance of the parties.

v. The petitioner and the respondents are directed to attend the office of Assistant Labour Commissioner, Nagpur on **11th May, 2023** at 12 noon.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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by
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K NAIR
Date: 2023.05.04
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