

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

WRIT PETITION NO.5923 OF 2018

(THE EXECUTIVE DIRECTOR (LPG) & DISCIPLINARY AUTHORITY HINDUSTAN PETROLEUM CORPORATION LTD. & ANR..VS..VITTHAL GOVIND PAUNIKAR & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.W.Almelkar, Advocate for Petitioners.
Shri R.N.Sen, Advocate for Respondent No.1.
None for Respondent Nos. 2 and 3.

CORAM : ANIL S. KILOR, J.
DATED : JUNE 12, 2023.

1. Heard.
2. The present petition arises out of the order condoning delay of about three years in filing appeal, passed by the Controlling Authority on 07/06/2017.
3. The petitioner No.1 is a Disciplinary Authority of Hindustan Petroleum Corporation Ltd., whereas, petitioner No.2 is Hindustan Petroleum Corporation Ltd. LPG Bottling Plant ("Corporation" for short).
4. The respondent No.1 was working as Senior Administrative Assistant in Khapri LPG Plant under the respondent No.2. He was served with chargesheet for certain acts and omissions constituting misconduct alleged to have committed by him during the course of his duties which includes threat, fraud or dishonesty.

5. Thereafter, reply was filed and inquiry was conducted and on submission of the report the Disciplinary Authority found the respondent No.1 guilty of each charge levelled against him and thereupon dismissed him on 07/10/2013.

6. The respondent No.1 thereafter preferred an appeal against the dismissal. However, in the meantime, a show cause notice was served upon him as to why the amount of gratuity payable to him should not be forfeited under Section 4 (6)(b)(2) of the Gratuity Act, 1972.

7. Thereupon, the order of forfeiture of the gratuity amount was passed on 13/11/2013. Then an appeal preferred by the petitioner was dismissed, against which he preferred writ petition which also came to be dismissed for want of jurisdiction.

8. Thereafter, the respondent No.1 preferred an appeal before the appellate Authority-respondent No.3 along with application for condonation of delay, which came to be allowed. The same is the subject matter of the present writ petition.

9. The grounds mentioned in the application for justifying the delay of three years, are that, after dismissal of the respondent No.1 he preferred an appeal challenging

the dismissal which came to be decided on 28/08/2014. Thereafter, he preferred Writ Petition No.1835 of 2015 against the dismissal of the departmental appeal. The said writ petition was disposed of on 19/08/2015 on the ground that the respondent No.1 is having alternate remedy. The learned Controlling Authority considered both the grounds as sufficient grounds for condonation of delay and accordingly, the application for condonation of delay was allowed.

10. Shri Almelkar, learned counsel for the petitioner submits that there is an inordinate delay and sufficient cause has not been shown by the respondent No.1 for such a huge delay in filing the appeal before the Controlling Authority. He, therefore, submits that the Controlling Authority has committed error in condoning the delay.

11. On the other hand, Shri Sen, learned counsel for the respondent No.1 submits that, as the departmental appeal was pending against dismissal, the respondent No.1 was hopeful in succeeding in the said matter. Therefore, he did not pursue the matter as regards gratuity.

12. He submits that even after dismissal of the departmental appeal, the writ petition was preferred and

the same was disposed of on the ground of lack of jurisdiction. He, accordingly, submits that as the respondent No.1 failed in both the proceedings, belatedly he approached the Controlling Authority by filing appeal along with the application for condonation of delay. He, therefore, submits that sufficient cause has been shown by the respondent No.1 for condonation of delay.

13. In light of the rival contentions of the parties, I have perused the record and the impugned order.

14. From the record, it is evident that the respondent No.1 was dismissed after the charges were proved against him and thereon he preferred departmental appeal. In the meantime, though show cause notice was served upon him about forfeiture of his gratuity, in reply, he has pointed out to the petitioners that, as his appeal is pending, the show cause notice is premature.

15. It appears from the language of the reply that the respondent No.1 was hopeful that his appeal may be allowed in his favour and in that case there would be no order of forfeiture of gratuity. However, the order of appeal went against him and therefore the writ petition was filed by him in which he failed as well. Thus, he left with no option than to fight out the case of gratuity and accordingly, he filed proceedings along with the

application for condonation of delay.

16. It is well settled law that the Court shall adopt a liberal approach while considering the prayer for condonation of delay.

17. In the present matter, I am of the view that the Controlling Authority has rightly condoned the delay as the respondent No.1 has explained the delay satisfactorily. Thus, I do not find any reason to interfere with the impugned order.

Accordingly, the Writ Petition is **dismissed**.
No order as to costs.

18. At this stage, the learned counsel for the petitioner points out that despite the stay to the proceedings, the Controlling Authority proceeded with the matter and now the matter is fixed for final decision. He submits that as the present writ petition is dismissed the Controlling Authority may be directed to decide the matter after hearing both the parties.

19. From the record, it is clear that on 11/09/2018 this Court granted *ad-interim* relief in favour of the petitioner staying the effect, implementation and operation of the impugned order i.e. the order condoning delay. Despite the said fact, the Controlling Authority proceeded with the matter and closed the matter for

orders.

20. The Controlling Authority is therefore, directed to hear both the parties before deciding the appeal preferred by the respondent No.1.

JUDGE

RRaut..