



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 293 OF 2023

(Shri Ratan s/o Kunjilal Sandekar – Brother of Late Ramlal Kunjilal Sandekar Vs. Dy. Chief Labour Commissioner, Nagpur & Ors.)

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

Court's or Judge's orders.

Shri S.W. Sambre, Counsel for the petitioner.
Shri S.B. Bissa, A.G.P. for respondent no.1.
None for respondent nos. 2 and 3.

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CORAM : ANIL L. PANSARE, J.
OCTOBER 3, 2024

Heard Shri S.W. Sambre, learned Counsel for the petitioner and Shri S.B. Bissa, learned A.G.P. for respondent no.1. None appears for respondent nos. 2 and 3, though served.

2] The petitioner is brother of one Ramanlal Sandekar, who expired pending service/employment with respondent no.2. He was working as Sweeper. According to the petitioner, Ramanlal did not marry any person. As against, respondent no.3 – Indubai claims herself to be Ramanlal's wife.

3] Respondent no.3 approached the controlling authority under the provisions of the Payment of Gratuity Act, 1972 (the said Act), to claim amount of gratuity. The petitioner objected the application/claim, so made. The controlling authority vide order dated 24/3/2022 allowed the application filed by respondent no.3 on the count that she being the nominee recorded by Ramanlal is entitled for the amount of gratuity. The order was sent to the

parties through registered post acknowledgment due. The petitioner received the order on 9/4/2022.

4] The petitioner then filed appeal under Section 7(7) of the said Act. As such, in terms of first proviso to sub-section (7) of Section 7, the appeal ought to be filed within 60 days. In that sense, the petitioner ought to have filed appeal on or about 8/6/2022. However, the appeal has been filed on 1/7/2022. Thus, there occurred delay of about 22 days in filing appeal.

5] The appellate authority dismissed the appeal as not maintainable on the count that the appeal has been filed after a lapse of 82 days. He has assigned two reasons. One is that the petitioner had not filed application seeking condonation of delay and secondly that no specific reason has been given in the appeal memo.

6] The learned Counsel for the petitioner, by referring to the judgment passed by a Co-ordinate Bench of this Court in the case of *Sunderlal Laxman Mahyavanshi Vs. N.T.C. (MN) Ltd. & Anr. [2008 SCC OnLine Bom. 182]* argued that there is no necessity to file application seeking condonation of delay. The relevant finding finds place in paragraph 7.

“7. On plain language of section 7, in particular, section 7(5) or 7(7) and for that matter Rule 18 of the Rules, it is obvious that the legislature has not expressly provided for the requirement of filing an application for condonation of delay alongwith the appeal in cases where such appeal is filed beyond the period of limitation. Significantly, the express provision such as second proviso below section 7(7) in relation to

requirement of predeposit before admitting the appeal is conspicuously absent in so far as the necessity of filing an application for condonation of delay alongwith the appeal itself, in cases where the appeal is filed after the period of limitation. Thus understood, there is no reason to assume that if the Appeal filed beyond limitation is not accompanied by an application for condonation of delay, the same would not be maintainable, as has been held by the Appellate Authority in this.”

7] Thus, the Court held that the appeal is maintainable even if application for condonation of delay is not filed. However, the persons like the petitioner must explain the delay through the appeal memo. That has been admittedly not done in the present case.

8] The learned Counsel for the petitioner submits that he sought time before the authority below to explain delay, however, no such opportunity was given. The petitioner was required to file pursis on this count. The Counsel appearing before the appellate authority has filed pursis dated 18/7/2022 stating therein that the order of dismissal of appeal was passed without giving opportunity to the petitioner to explain delay of 22 days and that the Counsel was required to sign the ordersheet.

9] The learned A.G.P. has supported the order on the count that the petitioner ought to have given sufficient cause for not filing appeal in time at least in appeal memo.

10] True it is that the petitioner ought to have explained delay; at the same time, the question being of payment of gratuity amount and even otherwise there appears no reason why should the appellate authority not

afford opportunity to the petitioner to explain delay. Instead the authority has glorified the delay by saying that the petitioner has filed appeal after lapse of 82 days, when the delay was of 22 days. The approach appears to be unreasonable.

11] In view of above, the petition is allowed. Order dated 23/9/2022 passed by the Deputy Chief Labour Commissioner, Nagpur, in PG Appeal No. N/48(02)/2012-PGA, is quashed and set aside. The appellate authority shall afford opportunity to the petitioner to explain delay and thereafter shall proceed to pass order in accordance with law. The petitioner shall appear before the appellate authority on 21/10/2024.

(ANIL L. PANSARE, J.)

Sumit