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W.P.No.15505 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.08.2024

CORAM

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**W.P.No.15505 of 2024 and**  
**W.M.P.Nos.16856 & 16857 of 2024**

Amazon Development Centre (India) Private Limited,  
Having Registered Office at No.26/1,  
Brigade World Trade Centre, 10th Floor,  
Dr.Raj Kumar Road, Malleshwaram (W),  
Bangalore 560 055, Karnataka.

... Petitioner

Vs.

1.The Joint Commissioner of Labour (Minimum Wages),  
Labour Commissioner,  
DMS Campus, DMS Subway,  
Anna Salai, Chokkalingam Nagar,  
Teynampet, Chennai 600 006.

2.Mr.K.Chidambara Kumar Karunakaran

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India,  
to issue a Writ of Certiorari, to call for the records of the impugned order  
dated 06.05.2024 in the Interlocutory Application bearing  
Ref.No.T.N.S.E.No.II/I.A./2/2024 passed by the 1st respondent,  
condoning the delay in filing the Appeal by the second respondent and



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quash the same as being wholly without jurisdiction, non-speaking, ultra vires and in contravention of the Tamil Nadu Shops and Establishment Act, 1948.

For Petitioner : Mr.Rahul Balaji  
For Respondents : Mrs.M.Jayanthi, AGP for R1  
R2- party-in-person

### **ORDER**

This Writ Petition has been filed for the issuance of a Writ of Certiorari, to call for the records of the impugned order dated 06.05.2024 in the Interlocutory Application bearing Ref.No.T.N.S.E.No.II/I.A./2/2024 passed by the 1st respondent, condoning the delay in filing the Appeal by the second respondent and quash the same as being wholly without jurisdiction, non-speaking, ultra vires and in contravention of the Tamil Nadu Shops and Establishment Act, 1948.

2. Heard Mr.Rahul Balaji, learned counsel for the petitioner, Mrs.M.Jayanthi, learned Additional Government Pleader for R1 and Mr.K.Chidambara Kumar Karunakaran, party in person and perused the materials available on record.



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**3.** The impugned Interlocutory Application has been filed by the second respondent for condoning the delay in filing the appeal and the same was allowed by the first respondent. Aggrieved over that, the petitioner has filed this Writ Petition challenging the above order stating that the said order is a non-speaking order which was passed without appreciating the legal position in a right perspective.

**4.** The second respondent was the ex-employee of the petitioner and he was in a senior position as an Operations Manager (Devices Operating Systems Training Associates - DOSTA) in terms of the employment agreement dated 24.12.2017. The second respondent's services have been terminated with effect from 25.07.2023 on certain proved charges. However, the second respondent has got a grievance that he was illegally terminated and initiated action by filing an appeal under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 and challenged his termination. As there was a delay of 160 days in filing the appeal, he has filed the same along with an Interlocutory Application for condoning the delay of 160 days in filing the appeal.



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**5.** The second respondent has stated that he has already filed a civil case against the petitioner Management by alleging that he was ill-treated and harassed on the basis of caste and he believed that there would be some negotiations and the matter will be settled amicably as there was an exchange of notices. Further the second respondent's aged parents were ill and lived in Kanyakumari and hence, the second respondent was under compulsive circumstances to be at Kanyakumari and that also caused delay in raising the appeal.

**6.** However, the petitioner Management raised their objections stating that after having received a reply from the Management and knowing that the second respondent will not get any benefit legally, he had filed an appeal after the delay of 160 days. The above said delay is wanton and the first respondent authority did not appreciate the matter in proper perspective and condoned the delay.

**7.** The learned counsel for the petitioner submitted that the reasons stated for condoning the delay in filing the appeal should be convincing



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and acceptable. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of ***Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi, reported in (2021) 18 SCC 384***, wherein, the Hon'ble Supreme Court has held that the principles of equity cannot be applied in cases of condonation of delay.

8. It is further submitted that the delay for each and every day should be properly explained in order to get it condoned. It is also submitted that a party who has acted with negligence, lack of bonafides or inaction cannot have any justification for getting the delay condoned even on condition. The learned counsel for the petitioner also cited a decision of the Hon'ble Supreme Court rendered in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy, reported in (2013) 12 SCC 649***. The Hon'ble Supreme Court has held that *lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact and the concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play*. So in toto, the learned counsel for the



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petitioner vehemently opposed the impugned order stating that it is unreasonable and it is not supported by acceptable reasons.

9. In fact, on the side of the petitioner, a series of judgments was submitted by making out a point that law of limitation has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds and while exercising discretion for condoning the delay, the Court has to exercise discretion judiciously.

10. The second respondent appeared in person and he simply stated that the impugned order has been passed only after correctly appreciating the grounds placed by him.

11. The first respondent is the authority whose order is under challenge and hence, there cannot be any submission contrary to what has already been stated in the impugned order.



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12. On perusal of the impugned order, it is seen that the first respondent applied the principles laid down by the Hon'ble Supreme Court in the case of ***Peruman Bhagvathy Devaswom Vs. Bhargavi Amma, reported in 2008 8 SCC 321*** wherein, it is held that *the words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of the case. The words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant.*

13. The citations submitted by the petitioner and the citation referred by the first respondent in the impugned order do not make any difference on the principles to be applied while condoning the delay involved in filing the appeal. So there cannot be any disagreement on the fact that sufficient and acceptable reasons should be stated for condoning



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the delay.

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**14.** While re-asserting the said principles, it is also clarified that the discretion to condone the delay should be used in a very reasonable, practical and liberal manner. The only one thing against which the Court has to exercise caution is the lack of bonafide and the dilatory tactics to be adopted by the party. In the instant case, the second respondent has pleaded that he had a thought of filing a suit for claiming compensation for which there was an exchange of notice and at some point of time, he came to know that filing of appeal could be a better remedy. But, the said fact was considered by the petitioner as a delay making tactics.

**15.** The second respondent has also stated the reason that due to his parents' illness, he has to visit Kanyakumari and that also caused delay in preferring the appeal. The second respondent was terminated and he is out of employment. Hence, the urge to get reinstated or getting compensation would be more in the mind of the second respondent. No doubt, a person cannot sit on the fence with uncertainty and then, come



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to the Court and claim that he has bonafide reasons for the delay caused.

The conduct of the second respondent is very patent that he did not give away the cause of action, but he was issuing notice and getting reply notice and rejoinder from the petitioner. The second respondent has not only stated the reason of his preference to file a civil suit as the reason for the delay, but he has also stated about his personal commitment which came in the way and delayed the proceedings.

16. The first respondent had chosen to approach the issue in a practical and liberal manner and considered the reasons putforth by the second respondent are acceptable, by appreciating the situation on hand. Admittedly, the petitioner did not bring out any lack of bonafide or dilatory tactics on the part of the second respondent in causing delay of 160 days in preferring an appeal. Both parties did not prefer to let in any oral or documentary evidence and they stood on their pleadings. So the order of the first respondent cannot be strictly found fault by alleging that he did not consider the materials on record in a proper perspective. The opportunity given to the second respondent to stand his appeal by



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condoning the delay, in my considered view serves the interest of both parties in a better manner as they can argue their case on merits. As that would promote substantial interest of justice, I feel the impugned order of the first respondent does not warrant any interference from this Court.

17. In view of the above stated reasons, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**28.08.2024**

Index : Yes /No  
Speaking / Non-speaking  
Neutral Citation : Yes / No  
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To

The Joint Commissioner of Labour (Minimum Wages),  
Labour Commissioner,  
DMS Campus, DMS Subway,  
Anna Salai, Chokkalingam Nagar,  
Teynampet, Chennai 600 006.



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**R.N.MANJULA, J.**

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