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W.P.No.23848 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2024

PRONOUNCED ON : 29. 07.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.23848 of 2021
and W.M.P.Nos.25122 and 25124 of 2021

The Railway Employees Cooperative Credit Society Ltd.,
Rep., by The Chief Executive,
Old Zoo Road, Ashok vihar Complex,
Chennai-600 003.

...Petitioner

versus

1. The Commissioner of Labour,
Office of the Commissioner of Labour,
Fourth Floor, Teynampet,
Chennai-600 006.
2. The Joint Commissioner of Labour I,
Office of the Commissioner of Labour,
Chennai-600 006.
3. The Dy. Commissioner of Labour I,
(The Authority under Tamil Nadu Payment of Subsistence
Allowance Act 1981),
Office of the Dy. Commissioner of Labour I,
Teynampet, Chennai-600 006.

4. P. Yuvarajamuthu

... Respondents



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Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd and 3rd respondent dated 09.09.2021 in PSA 02/2020 as well as the order of the 3rd respondent dated 10.02.2020 passed in PSA IA No.10/2019.

For Petitioner: Mr.C.K.Chandrasekhar
& Mr.C.K.Ranjan

For Respondents : Mr.K.Tamil Vendan
Government Advocate for R1 to R3

: M/s.D.Geetha for R4

ORDER

This Writ Petition is filed for issuance of Writ of Certiorari and to quash the proceedings of the second respondent dated 09.09.2021 in PSA 02/2020 as well as the order of the 3rd respondent dated 10.02.2020 passed in PSA IA No.10/2019.

2. Petitioner society is multi state cooperative society registered under Multi State Co-operative Society Act, 2002. Fourth respondent was working as a Clerk in the petitioner's society. On 15.11.2011, the petitioner has received the transfer orders. He has not report to the Hubli Branch, however he has



participated in the strike. Basing on the enquiry reports, 26 employees were suspended, the fourth respondent was also directly involved in several untoward incidents, he was also suspended as per the order dated 20.01.2012. The copies of the suspension order was sent to Hubli Branch. However the petitioner's society has come to know that the fourth respondent has not reported to the duty at Hubli Branch. On 27.01.2012, orders rescinding the suspension order were issued and they were sent by Speed Post to the fourth respondent and the same was also posted in the Notice Board.

3. On 31.01.2012, fourth respondent has submitted letter seeking revocation of suspension order. However, fourth respondent was informed by the petitioner society that rescinding the suspension order were already issued. The fourth respondent has filed Writ Petition No.29255 of 2011 questioning the transfer orders through which the petitioner was transferred to Hubli Branch. However, on 21.12.2011, fourth respondent has withdrawn the Writ Petition and filed O.S.No.9434 of 2011, questioning the transfer orders. The XVI Assistant Court, Chennai has dismissed the O.S.No.9434 of 2011 on 08.04.2013. Even after that the fourth respondent has not reported to the duty.



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4. Fourth respondent has sent a letter dated 27.02.2013 seeking payment of subsistence allowance after a lapse of 13 months. A reply was sent by the petitioner society to the fourth respondent dated 20.09.2013 informing that suspension order was rescind and thereby the fourth respondent is not entitled for subsistence allowance. The said letter was received by the fourth respondent on 25.09.2013. The fourth respondent after a lapse of 2738 days filed Form 3 under Tamil nadu Payment of Subsistence Allowance Rules, before the third respondent and filed a Memorandum for condonation of delay of 2738 days. There was no Sworn statement filed along with the condonation of delay application except stating that the delay of 2738 days may graciously be pleased to condone. There were no grounds mentioned in the petitioner to condone the delay of 2738 days. The petitioner has filed Preliminary Counter Affidavit and raised objection in respect of condoning the delay of 2738 days as the fourth respondent has not given any reasons for condoning the enormous delay. The third respondent has passed the orders by condoning the delay of 2738 days. The petitioner society has filed Appeal and the same was also dismissed. Aggrieved by the same, the present Writ petition is filed.



5. Heard both sides and perused the records.

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6. The short questions that falls for consideration is that the second and third respondent authorities have properly appreciated in respect of condoning the delay of 2738 days. Whenever Statute fixes a time frame for claiming certain rights, the concerned person has to approach the authority within the time stipulated. In case, if there is any provision to condone the delay, the petitioner can seek to condone the delay explaining the reasons for the delay.

7. On perusal of the order in PSA IA No.10 of 2019, it is clear that the concerned authority has passed order on 10.02.2020, simply by holding that fourth respondent has not deliberately acted on his own thereby condoned the delay of 2738 days. When the petitioner preferred Appeal, the same was also dismissed by way of cryptic order stating that the details mentioned by the petitioner/fourth respondent can be entertained in the main petition.

8. Both the orders are cryptic and non speaking orders. Once the fourth respondent has sought for condoning the enormous delay of 2738 days, he is expected to submit the appropriate application to condone the delay along with



affidavit and supporting documents, if any, explaining the reasons for not approaching the authority within time stipulated.

9. It is surprising to note that in PSA IA No.10 of 2019, the fourth respondent has not even filed an affidavit explaining the reasons for condoning huge delay of 2738 days. The Joint Commissioner of Labour I should not have allowed the Application in PSA IA No.10 of 2019 condoning the delay of 2738 days, without even filing the affidavit stating the reasons for enormous delay of 2738 days.

10. Similarly, while disposing of the Appeal by the Appellate Authority has passed the cryptic order stating that the detail in response of delay stated by the fourth respondent can be decided in the main petition. It is to be noted that the reasons for not approaching the Court within stipulated time and the reasons for the delay have to be explained clearly. The issues which are required to be decided in PSA IA No.10 of 2019, in respect of condoning the delay cannot be decided in the main petition. This is because PSA IA No.10 of 2019 is confined to limited purpose as to whether delay can be condoned or not. Once the delay is condoned, the main petition will be taken up for disposal on merits. Therefore,



the third respondent in PSA IA No.10 of 2019 should have discussed and passed orders as to whether condoning the enormous delay of 2738 days is justified or not. Similarly, the Appellate Authority also should have considered the Appeal whether the Joint Commissioner of Labour can condone the enormous delay of 2738 days without explaining any reasons for the enormous delay of 2738 days.

11. Learned counsel for the petitioner has cited the following judgments

i) the Hon'ble Apex Court in ***Oriental Aroma Chemical Industries Limited vs. Gujarat Industrial Development Corporation and Another***, reported in (2010) 5 SCC 459 has observed as under:

“14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

This extract is taken from Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn., (2010) 5 SCC 459 : (2010) 2



SCC (Civ) 448 : (2010) 2 SCC (Cri) 1291 : (2010) 2 SCC (L&S) 50 : 2010 SCC OnLine SC 331 at page 465

15. The expression “sufficient cause” employed in Section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard- and-fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate—Collector (L.A.) v. Katiji [(1987) 2 SCC 107 : AIR 1987 SC 1353] , N. Balakrishnan v. M. Krishnamurthy [(1998) 7 SCC 123 : JT (1998) 6 SC 242] and Vedabai v. Shantaram Baburao Patil [(2001) 9 SCC 106] .”

ii) the Hon'ble Apex Court in ***Pathapati Subba Reddy (died) by L.Rs & Ors., vs. The Special Deputy Collector (LA)*** in Special Leave Petition (Civil) No.31248 of 2018 has observed as under:

“23. In *Basawaraj and Anr. v. Special Land Acquisition Officer* MANU/SC/0850/2013 : 2013:INSC:551 : (2013) 14 SCC 81, this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression “sufficient cause” as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if



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negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;



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(v) *Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*

(vi) *Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

(vii) *Merits of the case are not required to be considered in condoning the delay; and*

(viii) *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”*

iii) the Hon'ble Apex Court in ***Kranti Associates Private Limited and Another vs. Masood Ahmed Khan and others***, reported in (2010) 9 SCC 496 has observed as under:

“23. In Basawaraj and Anr. v. Special Land Acquisition Officer MANU/SC/0850/2013 : 2013:INSC:551 : (2013) 14 SCC 81, this Court held



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that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression ‘sufficient cause’ as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.

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the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

iv) the Hon'ble High Court of Judicature at Bombay in ***Brihan Mumbai Electric Supply and Transport through its General Manager vs. BEST Jagrut Kamgar Sanghatana through Parivartan and Ors.***, Writ Petition No.8045 of 2023 dated 25.09.2023 has observed as under:

“ 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. MANU/SC/0932/2013 : (2013) 12 SCC 649 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.



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(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 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.



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(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

12. Considering the submissions made by both sides and on perusal of the records including the judgments cited by the learned counsel for the petitioner, this Court is of the opinion that the third respondent has the Authority under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 and the second respondent the Appellate Authority have failed to discharge their duties and failed to appreciate properly with the settled legal principles as to whether delay can be condoned or not. Therefore the orders passed by the third respondent in PSA IA No.10 of 2019, dated 10.02.2020 and the orders passed by the second respondent in PSA No.02 of 2020 dated 09.09.2021 are perverse and are liable to be dismissed.

13. Accordingly, this Writ Petition is allowed and the orders passed by the third respondent in PSA IA No.10 of 2019, dated 10.02.2020 and the orders passed by the second respondent in PSA No.02 of 2020 dated 09.09.2021 are hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.



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Index : Yes / No
Neutral Citation: Yes/No
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Dr.D.NAGARJUN, J.
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