



W.P.No.35608 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.10.2024

Coram:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.35608 of 2023 and
W.M.P.No.35542 of 2023 &
W.M.P.No.17661 of 2024

The Management of Woori Bank
Chennai Branch, Lotte India
2nd Floor, No.4/169, Rajiv Gandhi Salai (OMR)
Kandanchavadi, Perungudi Taluk,
Chennai - 600 096

...Petitioner

Vs

1. The Joint Commissioner of Labour,
Tamilnadu Shops and Establishment Tribunal
Chennai
2. M.Dinesh Kumar
New No.2, Old No.42/2, 2nd Floor,
Lal Begum Street, Chepauk,
Chennai – 600 005

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari and call for the records of the 1st respondent in TNSE-II/IA/16/2021 and quash the impugned order dated 22.05.2023.

For Petitioner : Mr.Gaurav Chatterjee

For Respondents : Mrs.M.Jayanthi for R1
Mr.K.M.Ramesh for R2
Senior Counsel for



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Mr.R.Subramani

ORDER

This Writ Petition has been filed challenging the order of the appellate Authority dated 22.05.2023 made in TNSE-II/IA/16/2021.

2. An application has been filed by the 2nd respondent to condone the delay of 1010 days in filing the appeal, challenging the order of termination dated 03.12.2018. The 1st respondent / appellate authority had chosen to condone the delay by giving the benefit of exemption of limitation allowed for certain period by the **Hon'ble Supreme Court in its order dated 23.03.2020 made in Suomotu Writ Petition (Civil) No.3 of 2020**. The said order of the Hon'ble Supreme Court would exclude the period between 15.03.2020 to 02.10.2021 in computing the period of limitation for any suit, appeal, application or any proceedings. The balance period of limitation remaining as on 15.03.2020 shall be available to the party concerned with effect from 03.10.2021. So far as the 2nd respondent is concerned, he has got 30 days limitation from 03.12.2018. In such case, the limitation would expire by 02.01.2019. The 2nd respondent has filed an appeal on 14.10.2021, during which time, the limitation of 30 days has already been expired. This is even after providing the special exclusion of relaxation period from



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15.03.2020 to 02.10.2021 in view of covid.

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3. The learned counsel for the petitioner submitted that the exclusion can be applied only for those cases for which the limitation expires by 15.03.2020 or between the period from 15.03.2020 to 02.10.2021 and not for the 2nd respondent's case for whom limitation has been expired one year prior to the Covid Pandemic, i.e., on 02.01.2019. The attention was drawn to the Judgment of the Hon'ble Supreme Court in dated 18.09.2020 made in Civil Appeal nos.3007 and 3008 of 2020 [**Sagufa Ahmed & Others Vs. Upper Assam Plywood Products Pvt., Ltd., & Ors**]. In the said case, the Hon'ble Supreme Court has clarified that exclusion has been given only for the period of limitation and not for the period on which the delay can be condoned by exercising the discretion conferred by the statute. The words of the Hon'ble Supreme Court, relevant part of the order reads as under:-

“19. But we do not think that the appellants can take refuge under the above order. What was extended by the above order this Court was only “the period of limitation” and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation



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prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.”

4. Further, the submission of the learned counsel for the petitioner is that no acceptable reason is stated by the 2nd respondent to condone the delay of 1010 days, but the 1st respondent / authority has misdirected himself by granting covid special exemption to the 2nd respondent and also by condoning the further delay without proper appreciation.

5. The learned counsel for the 2nd respondent submitted that the 2nd respondent has been illegally terminated and he has lost his livelihood and his life itself was a chaos, he was not able to get any placement elsewhere as the back ground verification conducted by any of the companies went against him; as the 2nd respondent was not left with any financial resources, he was not able to challenge the order immediately and thereafter; covid pandemic also followed and that caused huge delay of 1010 days and the 1st respondent has rightly appreciated the same and condoned the delay.



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6. No doubt, the limitation for the 2nd respondent to file an appeal expired much before the Covid Pandemic and for the rescue of the 2nd respondent the exclusion period allowed by the Hon'ble Supreme Court in Suomotu Writ Petition (Civil) No.3 of 2020 dated 23.03.2020 is not applicable. Though the appellate authority might be wrong in computing the exclusion to the 2nd respondent's case, the merits of the order of the 1st respondent / authority has to be appreciated in a comprehensive manner. No doubt, the 2nd respondent has suffered order of termination and lost his livelihood. It may not be easier for a person, who has been dismissed from service from finding an alternate job, as he has got negative track record. As stated by the 2nd respondent himself, consequences of the order of dismissal stared at him whenever he tried to find an alternate employment.

7. Had there not been any covid pandemic, it would have been possible for the 2nd respondent to approach the court at the earlier instance, though with certain amount of delay. Covid had multiplied the difficulties experienced by the 2nd respondent. The 1st respondent / appellate authority has also relied upon the Judgment of the **Hon'ble Supreme Court reported in 1987 (1) LLJ page 500 [Collector Land Acquisition, Anantnag Vs. Ms.Katiji and Others]**, in order to make the informed decision as to the reasonable and practicable approach in the matters of condoning the delay. The relevant portion of the said Judgment of the



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Hon'ble Supreme Court is extracted as under:-

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“ The expression 'sufficient cause' is elastic enough to apply the law in a meaningful manner to sub serve the ends of justice. A liberal approach should be adopted since it is realised. Refusing to condone delay can result a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when the delay is condoned the highest that can happen is that a cause would be decided upon merits after hearing the parties “Every day's must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a natural common sense pragmatic manner.”

8. It has been held time and again by the Hon'ble Supreme Court and this Court as well that in the matters of condoning the delay, liberal approach is expected in the interest of substantial justice. It appears that the 1st respondent has taken some practical approach in condoning the delay by taking consideration of the circumstances in which the 2nd respondent has been placed subsequently to his dismissal along with Covid Pandemic, which prevailed during the relevant point of time.



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9. The question of sufficient cause would depend on the facts to facts of each case. So there cannot be any straight jacket formula to appreciate the sufficient cause and each case has to be appreciated on its own merits. So far as this case is concerned, the 2nd respondent is not able to secure any appointment subsequent to his dismissal and he was suffering due to non employment, during the Covid Pandemic. It is needless to state that even those who have been well employed and making better livelihood also got affected during Covid. Hence I feel that approach of the appellate court in allowing delay to be condoned cannot be viewed adverse to the interest of the 2nd respondent.

As I do not find any perversity in the order of the 1st respondent, the Writ Petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

15.10.2024

Index : Yes / No
Internet : Yes / No
Speaking Order / Non Speaking Order

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R.MANJULA, J.

ssd

To

The Joint Commissioner of Labour,
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