



WEB COPY

W.A.No.3370 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No. 3370 of 2024
and
C.M.P.No. 26126 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 - 560055, Karnataka.

Office Premises at:
5th Floor, Global Info City,
MGR Road, Perungudi,
Kandanchavadi, Chennai - 600096.

...Appellant

Vs.

1.Joint Commissioner of Labour (Minimum Wages),
Labour Commissionerate,
DMS Campus DMS Subway,
Anna Salai, Chokkalingam Nagar,
Teynampet, Chennai - 600006.

2.K.Chidambara Kumar Karunakaran

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the
order dated 28.08.2024 made in W.P.No.15505 of 2024 and
WMP.Nos.16856 & 16857 of 2024



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For Appellant : Mr.R.Sathish Parasaran, Senior Advocate
for Mr.Rahul Balaji

For Respondent : Mr.R.Kumaravel
Additional Government Pleader for R1
R2 - No Appearance

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in this appeal is to the order of the Writ Court upholding the order of the Authority under the Tamil Nadu Shops and Establishments Act, 1948 (herein after referred to as Shop Act for the purpose of convenience), condoning the delay of 160 days in filing an appeal against the order of termination.

2. The 2nd respondent was terminated from service by the appellant on 25.07.2023. Though Mr.Sathish Parasaran, learned Senior Counsel appearing for the appellant would vehemently contend that termination was after exhausting very strict control measures that are put in place by the appellant / Corporation while taking action against delinquent employees, we do not propose to go into the question as the proceedings have not



reached that stage yet. Under the Shop Act, the appeal has to be filed under Section 41 within a period of 30 days from the date of termination. It is not in dispute that the 2nd respondent had knowledge of the termination on 25.07.2023 itself. He ought to have filed the appeal by 24.08.2023. He approached the Authority under Shop Act in January, 2024 with a delay of 160 days.

3. The delay is sought to be explained by the employee stating that after the termination he had issued a legal notice to the employer on 17.09.2023 and the employer had sent a reply asking him to wait for a detailed reply on 03.10.2023. A detailed reply was sent by the appellant on 25.10.2023. A rejoinder was also issued by the 2nd respondent on 27.11.2023. Thereafter, the appeal came to be filed in January, 2024 with a delay of 160 days. The reasons assigned for the delay are that the 2nd respondent awaited the resolution of the dispute, after his legal notice dated 17.09.2023 and only upon receipt of the reply dated 27.11.2023 he realised that the appellant is in no mood to recall the order of termination. He would also add that his parents were in Nagercoil in Kanyakumari District and he was travelling back and forth because they were unwell.



4. Mr.Sathish Parasaran, learned Senior Counsel would vehemently contend that these reasons are not sufficient to condone the delay of 160 days. Reliance is also placed on the judgment of this Court in ***Tamil Nadu Mercantile Bank Ltd., (represented by its Chairman), Tuticorin Vs. Appellate Authority under the Tamil Nadu Shops and Establishments Act Madurai and Another*** reported in ***1990 1 LLN 457***. No doubt, the Hon'ble Division Bench has held that sufficient cause has to be shown for condonation of delay. The Division Bench on facts found that the employee therein had claimed that he had Jaundice and the delay that is sought to be condoned was of 285 days. The Division Bench found that the delay has not been properly explained.

5. We should also take into account the march of law. In the recent past, this Court as well as the Hon'ble Supreme Court have repeatedly held that Courts must be liberal in condoning delays, if it is shown that the party causing the delay does not gain any undue advantage because of the delay. Moreover, the Hon'ble Supreme Court has time and again pointed out that once the original Authority exercises its discretion in condoning the delay, this Court sitting under Article 226 should be slow to interfere. The same



principle has been held to be applicable even to applications under Section 5, filed in civil appeals. In *Collector, Land Acquisition, Anantnag & Another Vs. Katiji and Others* reported in (1987) 100 MAD LW 676, the Hon'ble Supreme Court had while deciding the question of delay observed that when technical considerations are pitted against substantial justice the cause of substantial justice should be preferred.

6. In the case on hand, the appellant after all seeks a judicial determination of the validity of his termination order and we do not think, we should throw him out at the threshold denying him that opportunity also. Hence, we do not see any reason to interfere with the order of the Writ Court. This Writ Appeal therefore, fails and it is accordingly, **dismissed**. It is made clear that all contentions are left open. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) (C.K., J.)
18.11.2024

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Internet: Yes

Index: No

Speaking order

Neutral Citation : No

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R.SUBRAMANIAN, J.
and
C.KUMARAPPAN, J.

KKN

To:

1.Joint Commissioner of Labour (Minimum Wages),
Labour Commissionerate,
DMS Campus DMS Subway,
Anna Salai, Chokkalingam Nagar,
Teynampet, Chennai - 600006.

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