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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5030 OF 2018
((Nawabmiya Bapumiya Deshmukh Vs. The Chief Executive Officer)

Mr.R.S.Deshmukh a/w Mr.S.V.Deshmukh i/b Mr.D.R.Deshmukh, Senior Counsel for the petitioner.
Mr.S.S.Panale, Advocate for the sole respondent.

(CORAM : PRAFULLA S. KHUBALKAR, J.)

DATE : JUNE 26, 2025

PER COURT :

1. Heard learned Senior Counsel Mr.R.S.Deshmukh a/w Mr.S.V.Deshmukh i/b Mr.D.R.Deshmukh for the petitioner and the learned Advocate Mr.Panale for the sole respondent.

2. By way of instant petition, the petitioner takes exception to the order dated 16.01.2018 passed by the Member, Industrial Court, Latur below Exh.-1 in Misc.(ULP) No.03/2016, by which the application filed by the petitioner for condonation of delay is rejected.

3. The learned Senior Counsel Mr.R.S.Deshmukh submits that the petitioner was in employment of the respondent and was suspended

w.e.f. 27.07.2004 and the suspension continued till 28.07.2006. The respondent had paid subsistence allowance to the petitioner, without considering the entitlement due as per the rules, resultantly, he was paid less subsistence allowance. It is submitted that for claiming the difference of subsistence allowance for which he is entitled as per the rules, the petitioner filed complaint u/s 28 r/w Item 9 and 10 of Schedule IV of the The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as MRTU and PULP Act). It is submitted that since the complaint was filed after delay of 10 years, an application at Exh.U-1 was filed seeking condonation of delay. He submits that in the application for condonation of delay, the petitioner has mentioned 'weak financial condition' as the reason for delay. However, the application came to be rejected by order dated 16.01.2018, which is impugned in the instant petition.

4. It is vehemently submitted that the Industrial Court failed to consider the fact that the petitioner was an employee and on account of his weak financial condition, he was not able to file the complaint within the stipulated time. It is also vehemently submitted that in

support of his application for condonation of delay, the petitioner has led evidence, and since the respondent had not led any evidence, adverse inference was required to be drawn against the respondent. He submitted that the position of law is settled that a liberal approach has to be adopted in deciding the application for condonation of delay and hence the delay ought to have been condoned.

5. In order to point out the position of Law, he relied on judgments, in the matter of **Inder Singh Versus The State of Madhya Pradesh [2025 SCC Online SC 600]**, an unreported judgment in the matter of **Mool Chandra Versus Union of India and another in Civil Appeal Nos.8435-8436 of 2024** , dated 05.08.2024 and **Raghubir Singh Versus General Manager, Haryana Roadways, Hissar [(2014) 10 SCC 301]**. He submits that it is settled position of Law that while considering the application for condonation of delay, it is not the length of the delay that would be required to be considered but it is the cause of delay which has to be examined. As such, in the instant matter, he submits that although there is delay of 10 years, the reason of weak financial condition, ought to have been property considered.

6. Per contra, learned Advocate Mr.S.S.Panale for the respondent strongly opposes the petition. He strenuously submitted that the application for condonation of delay does not mention any reasons, as such, constituting sufficient cause. The only reason mentioned is 'weak financial condition' of the petitioner. He submitted that the petitioner was employed with the respondent/Sanstha and was getting regular salary and therefore the reason of weak financial condition for filing the complaint can not constitute a sufficient cause. Apart from this, he invites attention of the Court to the crucial admission given by the petitioner that the petitioner/employee was aware that the subsistence allowance, which was paid to the petitioner was at a lesser rate at the time when it was paid. He submits that the claim for additional subsistence allowance for the period from 27.07.2004 till 28.07.2006 could have been raised within a reasonable time, if at all the subsistence allowance was paid at a lesser rate. The grievance raised by the petitioner after his retirement is liable to be dismissed on account of delay and laches. In support of his submissions, he relies on the judgment in the matter of **Prabhakar Vs. Joint Director, Sericulture Department and another [(2015) 15 SCC 1]** and submits that there does not exist any live dispute and submits that the same analogy be

applied for deciding the application for condonation of delay under the MRTU and PULP Act, 1971.

7. Rival contentions thus fall for my consideration.

8. It has to be seen that the petitioner has filed the application for condonation of delay by mentioning 'weak financial condition' as the only reason for delay. Perusal of the application shows that a general statement is made by the petitioner that on account of his weak financial condition, he was not able to file the complaint within the stipulated time. Although the petitioner has led evidence in support of his application for condonation of delay, however, it has to be noted that he has admitted that subsistence allowance was paid to him in ratio of 1/3rd of wages and he has withdrawn that amount. It is pertinent to note that he has admitted that he has apprehended at that time that the subsistence allowance was paid at a lesser rate. He has further admitted that he has made the representations in that regard only from the year 2015 onwards, that means after about 9 years after his retirement in the year 2006. As such, it is clear that the petitioner was aware about his alleged

grievance of payment of subsistence allowance at a lesser rate, however, without any justifiable reason, he has not raised the grievance by filing any complaint u/s 28 of the MRTU and PULP Act, 1971. The reasons mentioned in the application for condonation of delay are also general in nature and in my opinion do not constitute sufficient cause to condone the delay of 10 years. It is pertinent to note that the applicant has not raised any grievance during or after suspension or after retirement or even at the time of retirement. Even the representations made by the applicants do not specifically raise any grievance about less payment of subsistence allowance, as observed by the Industrial Court. On consideration of the entire factual and legal aspects, I am of the considered view that the petitioner failed to demonstrate any sufficient cause for seeking condonation of delay of 10 years.

9. Although, the complaint filed by the petitioner being a complaint under MRTU and PULP Act, which is a social welfare legislation, the petitioner was expected to be diligent in raising the grievance at the relevant time. It is crucial to note that the petitioner himself has admitted that he was aware about his grievance of alleged less payment of subsistence allowance, but has not raised any grievance

at the relevant time. The grievance raised by the petitioner after his retirement and after a delay of 10 years, cannot be considered to be a live dispute. Applying the analogy as led down in the matter of **Prabhakar** (supra), the grievance raised by the petitioner being a stale dispute required plausible reasons for condonation of delay of 10 years, which are not established.

10. The learned Advocate for petitioner has also argued that adverse inference needs to be drawn against the respondents since they have failed to lead evidence, in the matter of condonation of delay. It has to be noted that the petitioner has led evidence in support of his application for condonation of delay, since the burden to prove sufficient cause was upon the petitioner. Failure of the respondent to lead evidence cannot be considered as an adverse circumstance necessitating any adverse inference against the respondent. As such, the argument advanced by the petitioner is not appealing.

11. Having regard to the entire factual and legal aspects, I am of the considered view that the petitioner has failed to demonstrate any sufficient cause for condonation of delay of 10 years. A perusal of the

impugned order passed by the Industrial Court shows that the Court has considered all the relevant aspects and has passed a well reasoned order. It needs no interference on any count. The writ petition therefore deserves to be dismissed.

12. The writ petition is dismissed. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)