

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12352 OF 2024

Pradyumna Ganadhar Nandarage

.. Petitioner

Versus

Dy. Secretary, Public Health Department & Anr.

.. Respondents

-
- Mr. Sandeep S. Koregave, Advocate for Petitioner.
 - Ms. Priyanka Chavan, AGP for Respondents – State.
-

CORAM : MILIND N. JADHAV, J.

DATE : JULY 10, 2025.

P.C.:

1. Heard Mr. Koregave, learned Advocate for Petitioner and Ms. Chavan, learned AGP for Respondents – State.

2. This Writ Petition is filed by the Petitioner to challenge the order dated 11.10.2022 passed by the Industrial Court in Condonation of Delay Application (ULP) No.33 of 2021, *inter alia*, rejecting the Application for Condonation of Delay of the Petitioner. Merits of the matter though discussed are of no relevance since issue pertains to condonation of delay only.

3. Mr. Koregave, learned Advocate appearing for the Petitioner would submit that Petitioner was appointed in the year 1993 as Medical Officer with Respondent No.1. He would submit that Petitioner is 61 years old today and has passed the superannuation age. He would submit that after a long and unblemished service

Respondent No.1 issued a show cause notice dated 14.12.2020 to Petitioner. Case of the Petitioner is denial of time bound promotional pay scale and timely promotion to him by the Respondent.

3.1. In that view of the matter, Petitioner being aggrieved filed ULP Complaint No.33 of 2021. Copy of that ULP Complaint is appended at Exhibit “A” – page No.21 of the Petition. Condonation of Delay Application (ULP) No.33 of 2021 is filed for seeking Condonation of Delay in filing the complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short “**MRTU and PULP Act**”). According to Petitioner, there is no delay since non-grant of time bound promotion until retirement of Petitioner was a continuing cause of action for the Petitioner and hence there was no delay.

3.2. He would submit that by virtue of the impugned order, the Delay Condonation Application has been rejected primarily on the ground that Application does not make out adequate grounds for Condonation of Delay neither the exact period of delay is mentioned therein. He would submit that in so far as the principal complaint of the Petitioner is concerned, it is Petitioner's case that he would be entitled to benefits of promotional pay scale on completion of 12 years from 1993 alongwith ancillary benefits which have been deprived to him. He would submit that principal complaint is in that regard which

will have to be agitated on its own merits.

3.3. He would submit that the sole ground on which Delay Condonation Application has been rejected is that the Applicant has not provided sufficient reasons in support of the delay. He would draw my attention to the findings returned by the learned Industrial Court in paragraph Nos.5 to 10 of the impugned judgment and order to contend that the sole reason stated for rejection is based on the guidelines laid down by the Supreme Court in the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.*¹ referred to by the Division Bench of this Court in the case of *Bhaurao Chavan Sahakari Sakhar Karkhana Ltd. Vs. Uttam Dattaram Jagdambe and Anr.*².

3.4. He would submit that if Application for Condonation of Delay appended at page No.21 of the Petition is *prima facie* perused, apart from the issues on merits, case of the Petitioner is that until the said Application was filed, cause of action of the Petitioner was a continuing cause of action and therefore non-denial of timeline promotion to the Petitioner during his service would be a good enough sufficient cause for condoning the delay.

3.5. He would submit that the learned Industrial Court has returned a finding stating that the Petitioner has not given detailed and

¹ (2013) 12 SCC 649

² Writ Petition No.5553 of 2016 – Decided on 25.01.2017.

sufficient reasons to support condonation of delay and it is a formal Application and therefore it deserves to be dismissed. He would persuade the Court to consider the grievance of the Petitioner in the facts of the Petitioner's case and quash and set aside the impugned judgment and order and resultantly condone the delay, if any, in filing ULP Complaint before the Industrial Court.

4. *PER CONTRA*, Ms. Chavan, learned AGP appearing on behalf of Respondents – State would persuade me to consider the objections raised by Respondents to the Delay Condonation Application in its written statement filed by the Petitioner below Exhibit 'C' – page No.49 of the Petition to contend that the reason for denial of timely promotion to the Petitioner was in view of his confidential reports having been withheld due to internal enquiry which resulted in considering a report received from the Commissioner holding the charges against the Petitioner proven which led to withholding the promotion to the Petitioner for a period of 3 years.

4.1. She would submit that the said confidential report in respect of the enquiry conducted against the Petitioner on the basis of the charges leveled against him was received as far back as in 2006 after which for a further period of 3 years promotion was denied to the Petitioner. She would therefore submit that filing of the Complaint ULP in the year 2020 – 2021 would therefore not be maintainable on

the ground of limitation and it is merely a futile exercise undertaken by the Petitioner beyond the limitation period.

4.2. She would next submit that in so far as the reasons for condonation of delay are concerned, no reasons are ascribed by the Petitioner to enable maintainability of the ULP Complaint and therefore the Industrial Court has correctly determined the Condonation of Delay Application and rejected the same since the same is without sufficient reasons for the delay in filing the ULP Complaint. Hence she would persuade the Court to uphold the impugned order.

5. I have heard Mr. Koregave, learned Advocate for Petitioner and Ms. Chavan, learned AGP for Respondents – State and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

6. At the outset, it is seen that even though the learned AGP has addressed the Court on the merits of the matter in view of the written statement filed by the Respondents before the Industrial Court which is referred to herein above, the issue before the Court in the present Petition pertains to rejection of the Condonation of Delay Application filed by Petitioner. In the impugned order, it is seen that the Industrial Court has stated that Application seeking Condonation of Delay is filed

in a formal manner and detailed and sufficient reasons have not been explained for the delay in filing the complaint.

7. Petitioner is 61 years old today. The Complaint was filed in the year 2021. That was the time when the Petitioner was about to retire from the services of the Respondents. It is only at the time of retirement that the Petitioner wanted to seek recourse to the Court of law since he was denied time bound promotion.

8. Reasons for denial for the same cannot be considered as grounds for rejecting the Condonation of Delay Application of the Petitioner. That will have to be agitated separately on its own merits before the Industrial Court when the Complaint ULP is heard and decided strictly in accordance with law.

9. *Prima facie* the record shows that due to certain reasons which are ascribed by Respondents, Petitioner was not granted time bound promotion. Reference to the same is made in the written statement filed by the Respondents before the Industrial Court which is referred to and alluded to herein above. Be that as it may, as and when the Complaint ULP is decided, the same will have to be considered and adjudicated upon its own merits strictly in accordance with law. However that not having been done, the case of Petitioner is rejected on the ground of delay in filing the ULP Complaint and not accepted by the Industrial Court solely on the ground that detailed and

sufficient reasons have not been given.

10. Reliance is placed by the learned Industrial Court on the decision of this Court in the case of *Bhaurao Chavan Sahakari Sakhar Karkhana Ltd.* (*2nd supra*) in which the Court relied upon the guidelines laid down by the Supreme Court in the case of *Esha Bhattacharjee* (*1st supra*) in the year 2013. *Prima facie*, if the said guidelines as enumerated in paragraph No.21 of the said decision of the Supreme Court are seen, then in my opinion it would enure to the benefit of the Petitioner before me primarily because it states that substantial justice is paramount and pivotal whereas technical considerations should not be given undue and uncalled for emphasis.

11. In that view of the matter, the term ‘sufficient cause’ will have to be understood and read in its proper spirit, philosophy and perspective as held by the Supreme Court as the said term is basically elastic and will have to be applied in its proper perspective to the obtaining fact situation by taking a liberal, pragmatic, justice – oriented and non-pendantic approach while dealing with an application for condonation of delay. Admittedly, Petitioner’s case is that he has been wronged for not having been given time bound promotion, whatsoever may the reason for the same. To shut out the Petitioner’s case at the threshold merely on the ground that Petitioner has approached the Court at a belated stage and has not provided

sufficient and detailed reasons for the delay cannot be held for rejecting the Application for Condonation of Delay in the attending facts and circumstances of the Petitioner's case. This is primarily because in the written statement filed by Respondents, the Respondents have categorically admitted that due to certain specific reasons the Petitioner was denied the time bound promotion to which he would be entitled to. Petitioner's case is that he was kept in the dark about the same and was never informed neither there was any enquiry held. In fact the written statement of the Respondents' itself states that the report which was received against the Petitioner pursuant to the enquiry was a confidential report due to which the CR's of three years of the Petitioner were withheld. If that be the case and Petitioner approached the Court before his retirement, Petitioner's grievance needs to be considered in accordance with law.

12. The Petitioner may succeed or may fail in his endeavor to prove his entitlement for promotion in accordance with law, but to shut out the Petitioner at the threshold by rejecting his Application for Condonation of Delay, in my opinion is not the right course of action.

13. In view of the aforesaid observations and findings, the impugned order in my opinion is not sustainable. The same is quashed and set aside. Resultantly, Petition is allowed. Application for condonation of delay stands allowed. Delay in filing the Application, if

any, stands condoned.

14. The learned Industrial Court is directed by this Court to determine the pending Complaint ULP filed by Petitioner as expeditiously as possible and in any event within a period of six months from today on its own merits and strictly in accordance with law.

15. Needless to state that the learned Industrial Court shall not be influenced by any of the observations and findings returned in this order. Copy of this order shall be placed before the learned Industrial Court seized of the Complaint (ULP) by the Petitioner on 14.07.2025 at 11.00 a.m. for taking cognizance.

16. All parties to act on a server copy of this order downloaded from the High Court website.

17. All contentions of the parties are expressly kept open.

18. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

Ajay

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