

**IN THE INDUSTRIAL COURT AT AHMEDNAGAR
BEFORE SHRI B.R.GUPTA, MEMBER**

**ORDER BELOW EXH.C-1 in APPEAL (PGA) No.01/2018
(CNR No.MHIC160000922018)**

- 1) By way of this application appellant / original non applicant in Appln. PGA No.560/2011 applied to condone delay to file PGA Appeal to challenge order of Asstt. Commissioner of Labour, Ahmednagar in Appln. PGA No. 560/2011 dt. 5-2-2018.
- 2) Heard Mr. Ashok Patil, Advocate for appellant and Mr. Asnikar Advocate for respondent and also perused case papers.
- 3) As per contention of counsel of appellant respondent union had filed Appln. PGA No. 560/2011 before competent authority i.e. Asstt. Commissioner of Labour, A.nagar for grant of gratuity to 267 members. Said application is decided on 5-2-2018. As per their contention appellant received copy of said order on 20-2-2018 and they wants to challenge said order.
- 4) As per appellant after receipt of copy appellant was required to go through various process as appellant is Government institution. Moreover, approval of superior authority were also required and also policy decision is required to be taken. In that process some delay caused in filing appeal. Hence, they requested to condone the delay of about 44 days and register the appeal.
- 5) To support his contention appellant also examined one witness on oath vide Exh.C-6 i.e. Suresh Dagadu Abhang, the employee of opponent. Counsel of appellant argued that in original application the claim of so many

employees was involved for grant of gratuity. Out of them so many workers had not completed five years of service and therefore they were not entitled to get gratuity. Appellant wants to challenge said findings. Some other legal aspects are also involved in said application. Accordingly, he requested for condoning delay and registration of appeal.

5) In this respect on law point he relied on two Judgments of Hon'ble Apex Court and Bombay High Court-

- 1) **Collector Land Acquisition Anantnag Vs. Mst. Katij (1997-(I)-CLR,92)**
- 2) **George Thomas Vs. Bombay Tyres International Ltd. (1997-(I)-CLR,482)**

wherein it is held that while condoning the delay the approach of Court should be liberal and some guideline principles also enumerated.

6) Counsel of respondent strongly opposed the application with contention that there is no sufficient cause to condone the delay. As per his submission supported documents are also not produced to show that delay caused in official proceeding and sanction. Note sheet regarding official formalities also not produced hence delay should not be condoned and application should be rejected. On law point he also cited two judgments of Hon'ble Bombay High Court. They are :-

- 1) **Pune Dist.. Central Co-Op.Bank Ltd. Vs. Hira Lal R. Gaikawad [1999-(81)-FLR,611]**
- 2) **Vasudeo D. Joshi Vs. Bombay Textile Research Association (2004-(III)-CLR,852)**

wherein on the basis of long delay and fact of those cases it is held that delay is properly not explained and therefore application to condone delay rejected.

7) As per Section-7(7) of Gratuity Act any person aggrieved by an order under sub section-(4) may within 60 days from the date of receipt of the order prefer an appeal to appropriate authority. As per proviso of said section appellate authority may condone delay of further 60 days on satisfaction of sufficient cause. In present case as per contention of appellant they received copy of disputed order on 20-2-2018 and they filed present appeal with delay condonation application on 2-6-2018 that means there is delay of about 44 days in preferring the appeal. In any case if it is presumed that appellant received copy on 5-2-2018 i.e. on the date of order itself then also present appeal is filed after about 59 days delay. That means case of appellant is covered under proviso of Sec. 7(7). Therefore, only aspect to be decided, as to whether there is sufficient cause to condone the delay.

8) From perusal of order of competent authority i.e. Asstt. Commissioner of Labour, A. nagar it appears that in said PGA Application claim of 267 employees were decided and separate chart of employees regarding calculation, period etc. also mentioned. Moreover, huge amount involved in said application. Appellant deposited amount mentioned in said order, however wants to challenge said order with contention that all the employees were not eligible for gratuity and also mentioned reason for delay.

9) It is not in dispute that the appellant is Govt. institution and for taking decision to prefer appeal they have to perform some formalities and also take approval of superior authority. Moreover, claim of so many employees were involved in this case and amount involved is also huge. Considering said fact contention of appellant for reason of delay appears sufficient and acceptable. Moreover, said fact is also supported by Affidavit of appellants witness. Hence, I hold that delay caused in preferring appeal may be condoned and

matter may be decided on merit through judicial forum. Hence, I pass following order :-

ORDER

- 1) Application to condone the delay in filing Appeal is allowed and delay is condoned.
- 2) Appeal filed with present application be registered as PGA Appeal and parties are directed to appear in said appeal suo-moto on 07-01-2020.
- 3) No order as to costs.

Sd/-

(B.R. Gupta)

Appellate Authority under P.G. Act &
Member, Industrial Court, Ahmednagar

Date:- 06-12-2019