

EXH.No. O-

Presented on	:-	11/01/2018
Registered on	:-	11/01/2018
Decided on	:-	06/08 /2018
Duration	:-	00Yr.06 M.25 D.

IN THE INDUSTRIAL COURT AT DHULE
(Presided over by S. E. Bangar, Member)

Misc. Application (ULP) No.1/2018

MHIC 18-00002-2018

Suyog Subhash Gavale,
Age- 30 yrs. Occ:Service,
R/o -Plot No.114.
Saptashruni Police Society,
Walwadi Shivar, Dist: Dhule.

...Applicant.

Vs.

The Divisional Controller,
Maharashtra State Road Transport Corporation,
Dhule Division, Dhule.

...Respondent.

[In the matter of Condonation of delay...]

C O R A M: S. E. BANGAR, MEMBER,...

Appearances :-

Shri. Q. M. Sayyad for Applicant-complainant.

Shri. Shivdas B. Patil for Respondent.

J U D G M E N T

(Dated- 6th August, 2018)

This is an application seeking the condonation of delay caused in preferring Complaint under section-28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, regarding the alleged engagement of the Respondents in Unfair Labour Practices falling under Items 9 and 10 of the Schedule IV of the said Act.

(2) The facts in brief are as under :-

[i] The Applicant had joined the services of the Respondent as a “Bus Driver” since year 2012 and since then he is discharging unblemished duties and without any accident.

[ii] The Applicant contends that, the Respondent served upon him allegedly false charge-sheet and after conducting Departmental Enquiry, has imposed punishment of stoppage of annual increments for one year permanently, by order

bearing No.3287/2016 dated 31/12/2016 and accordingly the Respondent had passed order No.12600/2017 dated 23/01/2017 for giving effect to the said order of punishment. The Respondent has imposed disproportionate and harsh punishment, after issuing false charge sheet and conducting illegal and improper enquiry in violation of principles of natural justice. Therefore, the Applicant preferred First Department Appeal against the said order of punishment on 17/01/2017 which was heard on 10/10/2017, as per the instructions in letter No.733 dated 23/09/2017 and the same was dismissed by the First Appellate Authority on 14/10/2017. The decision of the said Appeal was communicated to the Applicant vide letter No.799 which was received on 17/10/2017. Thereafter immediately the Applicant preferred this application along with the complaint of unfair labour practice against the Respondent.

[iii] The Applicant further contends that, the delay is caused because of the filing of the First Departmental Appeal by him against the punishment order and that is not deliberate. In fact the cause of action is recurring in nature. Therefore, it is prayed to condone the delay. If the delay is not condoned, the Applicant would suffer irreparable loss, on the other

hand, he will get an opportunity to put forth his grievance. Hence the delay is prayed to be condoned in the interest of justice.

(3) The Respondent has opposed the application for condonation of delay by filing Written Say at Exh.C-

3. It is contended that, there is delay for the period from 01/04/2017 till January-2018 for preferring the complaint. It is deliberate and not explained with sufficient, proper and genuine grounds. The filing of Departmental Appeal is not sufficient cause for condonation of delay. The Applicant-Complainant is continuously in employment and drawing regular salary. Hence it is prayed to reject the application with costs.

(4) From the rival contentions and pleadings of the parties, the following Points arise for determination. I proceed to record my findings before each of them for the reasons to follow :-

<u>Sr No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Does the Applicant show good and sufficient reasons for the delay caused in filing complaint(ULP) against the Respondents ?	--In the affirmative.

2.	Whether the delay is liable to be condoned ?	--In the affirmative.
3.	What order ?	--Application is allowed subject to costs of Rs.500/-.

REASONS

(5) Both the parties have not adduced any oral evidence and filed pursis at Exh.U-7 and C-2 respectively in that regard. The Applicant has filed his affidavit at Exh.U-2 in support of his application for condonation of delay.

(6) **AS TO POINTS NO.[1] & [2]:**

It is an admitted fact that, the Applicant is serving as a driver at Dhule Bus Depot within the Dhule Division of the Respondent Corporation. It is also an admitted fact and is evident from the Departmental Misconduct Order bearing No.3287/2016 dt.31/12/2016, issued by the Depot Manager, (Senior), (Competent Authority), State Transport, Dhule, that, the Applicant was imposed with punishment of stoppage of annual increment for a period of one year permanently upon the conduct of Departmental Enquiry by serving a charge-sheet. It is also seen that, the First Departmental Appeal preferred by the Applicant on

17/1/2017 was informed to be fixed for hearing on 10/10/2017 which was communicated to him by letter bearing Outward No. राप / विनिधु / प्रशा / अपिल / 733 dated 23/09/2017. So also, it is an admitted fact that, the First Departmental Appeal preferred by the Applicant was dismissed by the Appellate Authority and the said decision was informed to him by the First Appellate Authority-cum-Divisional Controller, S.T. Dhule by letter bearing outward No. राप / विनिधु / प्रशा / अपिल / 799 dated 14/10/2017.

(7) From the documents placed on record, it is clear that, the Applicant has caused delay in preferring this complaint but he has some reasons which precluded him from prosecuting the Respondent. He could not prefer the Complaint regarding the Unfair Labour Practices, wherein the Respondent has been allegedly engaged because he was engaged in prosecuting in another forum. So also the Applicant has supported his pleadings by filing his affidavit, as well as, there is nothing from other side to disbelieve on the version of the Applicant. The case of the Applicant cannot be thrown out merely on the ground of huge delay which is explained by him by leaving his side unheard. It is therefore just and proper to condone the delay and afford the Applicant an opportunity to seek the contest of the Complaint on merits. The

Respondent would not be at prejudice, since it would be entitled for an opportunity to contest the Complaint on merits, thereby to defend the order of the imposition of punishment.

(8) So also Hon'ble High Court of Bombay in the case Ganpat Govind Dhale Vs. Commissioner, Kolhapur Municipal Corporation & Others, MRTU & PULP CASES (Bombay High Court), observed in para No.(3) of the Judgment as under:

“ 3.But, assuming for the sake of argument that the petitioner's complaint was time barred, I feel that the learned Labour Judge should not have taken a technical view of the matter so strictly and should not have dismissed the complaint of the petitioner as being barred by law of limitation. In a case like this a workman deserves all the sympathy of court of law and it would not have been unreasonable in this case if the learned Judges were to entertain the complaint of the petitioner and decide it on merits one way or the other. I am, therefore, inclined to exercise supervisory writ jurisdiction of this Court under Article 227 of the Constitution and interfere with the

impugned order passed by the learned Labour Judge and quash and set aside the same.”

(9) Further the observations of the Hon'ble High Court of Bombay in the case of Hiper Karmachari Sanghtana Vs. Hiper & Ors. MRTU & PULP CASES 119, which are as under :

“4. It is well settled that when applications are made by workers for condonation of delay, delay is required to be condoned, unless the workers have acted mala fide or there is such gross negligence as a result of which the employer has changed his position and would be prejudiced. At the highest the delay may only disentitle the workers for securing back wages for this period, that is provided they are successful in obtaining relief against the alleged closure.”

(10) It is also observed in the case of **Collector Land Acquisition, Anantnag & Anr Vs. Mst. Katiji & Ors (Civil Appeal No. 460/ 1987 decided on 25/02/1987)** by their Honourable

Lordships of the Hon'ble Supreme Court that, “ The power to condone delay is conferred on the Courts in order to enable them to do substantial justice to parties by disposing of matters on 'merits'. This Court has been making a justifiably liberal approach in this respect in matters instituted in this court. This liberal approach is adopted on principle as it is realised that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in meritorious matter being thrown out at the very thresh-hold and cause of justice being defeated. As against this when delay is condoned, the highest that can happen is that a Cause would be decided on merits after hearing the parties.
3. “ Every day's delay 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 rational commonsense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to

have vested right in injustice being done because of a non- deliberate delay.

5. There is no presumption that delay is occasioning deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its powers to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

(11) Further the observations of the Honourable High Court of Bombay, in the case of **HIPER Karmachari Sanghatna Vs. HIPER & Others (Writ Petition No. 1913 of 1988, decided on 25/01/1990)**, whereby it has been held that, “ It is well settled that when applications are made by workers for condonation of delay, the delay is required to be condoned, unless the workers have acted mala fide or there is such gross negligence as a result of which the employer has changed his position and would be prejudiced. At the highest the delay may only disentitle the workers for securing backwages for this period, that is

provided they are successful in obtaining relief against the alleged closure.”

(12) It is observed in the case of Kamalbai w/o Narasaiyya Shrimal and another Vs. Ganpat s/o Vithalrao Gavare, reported in 2007 (1) Mh. L. J. 807, by Hon'ble High Court in paras 13 and 14 of the Judgment as under:-

“ 13. What the petitioner is asking herein is extension of the time only on equitable ground. The Apex Court in Commissioner of Central Excise, Cochin Vs. Mathew Kurian Pro. South India Products , 1999 AIR, SCW 3867 examined the similar question about condonation of delay. In N. Balakrishnan Vs. M. Krishnamurthy, (1998) 7 SCC 123 the Apex Court has observed that object of fixing time limit under the Limitation Act is not with purpose to destroy right of the parties but it is founded on public policy. The Apex Court has observed :

“Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.”

14. Needless to say the question of delay condonation would depend upon peculiar fact situation of each case. There can not be a straight jacket formula in such a matter. The adequacy of reasons stated by the petitioner was duly considered by the learned appellate court and as such the impugned interference regarding absence of sufficient cause as drawn by the appellate court is justified. In any case, it can not be held that the impugned order is perverse or mala fide.”

(13) In view of the observations from the reported cases referred above, the delay caused in filing the complaint doesn't appear huge and inordinate delay and there is no any gross negligence on the part of the Applicant, I answer Points No.(1) and (2) in the affirmative and hold that, the Application deserves to be allowed by imposing some reasonable costs for inconvenience caused to the Respondent. Hence the following Order :-

ORDER

[1]	Miscellaneous Application (ULP) No. 1 / 2018 is hereby allowed on costs of Rs.500/
-----	---

[2]	The delay caused in preferring the Complaint (ULP) by the Applicant against the Respondent, is hereby condoned.
[3]	Upon the costs being paid by the Applicant to the Respondent, the Complaint (ULP) be examined and registered on due compliance, for being presented for passing of the first order.

Place : Dhule

Sd/-xx

(S. E. BANGAR)

Member,

Industrial Court,Dhule

Date : 06/08/2018