

In the Court of Judge, Labour Court, Dhule
[Presided over by Shri M. M. Rao]

Misc. ULP (Delay) No. 5200001 / 2018

Exh. No. O - 2

CNR No. : MHLC18-000001-2018

Applicant : **Pranil Devidas Sonawane**
Age : 30, Occ. : Nil
R/o 54 A, Donde Housing Society,
Vidyanagari, Devpur, Dhule
Tal. & Dist. Dhule

Versus

Opponents : 1. **Dhule – Palasner Tollway Ltd.,**
Songir, Tal. & Dist. Dhule

2. **TeamLease Service Pvt. Ltd.,**
BMTCL Commercial Complex,
6th Floor, 80th Feet Road, Koramangala,
Bangalore - 560095

Appearances : Adv. Subhash B. Patil for Applicant
Adv. Goraksh J. Mali for Opponent No.1
Adv. Mohan V. Gharte for Opponent No.2

J U D G M E N T

(Pronounced on 28th Day of September 2018)

1. Applicant was appointed as **Toll Collector** with opponent No.2 vide appointment order dated 18.02.2012. The opponent No.2, an organisation engaged in collection of toll in state, transferred the work collection of toll at **Dhule – Palasner** toll to opponent No.1. The services of applicant was transferred to opponent No.1.

2. This being so, on 25.05.2016, he was terminated by an oral order. Thereafter, he approached 3 to 4 times to opponent No.1 with a request to reinstate him in service. The opponent No.1, under one or other pretext, has not reinstated the applicant

in service. So, he issued a legal notice through his Adv. Subhash Patil on 13.11.2017 and asked for his reinstatement. As, opponent No.1 did not take any interest in it and hence, the applicant is constrained to approach this court. In doing so, there is a delay of 16 months in filing a complaint for the relief of declaration of unfair labour practice and therefore, the present application came to be filed.

3. The opponent No.1, on the other hand, through its say, at C-11, denied the contentions of application as they being false. It contended that, the entity of the opponent No.1 and 2 are totally different and distinct. The applicant, after resigning from the job of opponent No.2, joined opponent No.1. An appointment order dated 01.04.2016 came to be issued and was under probation for 6 months. The applicant remained absent from his duties from 15/4/2016 without seeking permission from opponent No.1. On 04.05.2016, applicant, all of a sudden, appeared at office under the influence of liquor and raised dispute regarding his allotment of night shift. He also gave threats to the supervisor, who filed a written complaint with opponent No.1. Thereafter, when applicant was asked about the complaint given by the supervisor, at that time, he told that, he will not henceforth, come on duty. Accordingly, he stopped to attend his duties.

4. Under these circumstances, there is no question of delay arising. The applicant was aware of his acts and despite that a false claim of reinstatement is raised against opponent no.1. There are no just and sound grounds for condoning the delay and hence, the application is liable to be rejected.

5. Whereas, the opponent No.2, through its say, at C-14, contended that, the appointment of the applicant with it was purely on temporary and contractual basis and the same was extended from time to time till 2016. It denied the transfer of any job of toll collection to opponent No.1 by it. He further contended that, applicant resigned from job in the month of March-2016. Lastly prayed for rejection of the application.

6. Upon the consideration of the contents mentioned in application, say and the documents filed on record, following points arise for determination before this Court to which, findings are given along with suitable findings thereto :

	<u>Points</u>	<u>Findings</u>
<u>1</u>	<i>Whether the applicant is able to show that there are sufficient grounds for condoning delay for referring present application?</i>	<u>In the Affirmative</u>
<u>2</u>	<i>What order?</i>	<u>As per final Order.</u>

7. Heard learned Adv. Subhash Patil for applicant, Adv. Goraksh Mali for opponent No.1 and Adv. Mohan Gharte for opponent No.2 at length.

REASONS

Reasons as to Point No.1 :

8. Perused application, say and the documents filed on record.

9. It transpires that, since 18.02.2012 till March-2016, applicant was working with opponent No.2, who is engaged in the business of toll collection. It is also not at dispute that, since 01.04.2016, applicant was appointed as toll collector with opponent No.1.

10. The contention of the applicant is that, he was transferred by opponent No.2 to opponent No.1 along with all benefits of his service and thereafter he was terminated by opponent no.1 by an oral order dated 25.05.2016. Till that date his service was in continuation. Per contra, opponent No.1 differs and contends that, the appointment of the applicant on its establishment is a fresh one and there is no continuity of earlier service rendered by applicant with opponent no.2.

11. Furthermore, as per applicant, he was orally terminated and as per opponent No.1, applicant has himself stopped coming to work with opponent No.1 from 15.04.2016.

12. Both these are related to the service of the applicant with opponents. Whether these issues have any substance or not can be decided only, on the touchstone of the evidence. For that purpose, a full fledged trial is required.

13. Applicant is an ordinary person and having an income sufficient from his hand to mouth. Such a person could not initiate immediate action against his employer, especially, in private job. Applicant has categorically mentioned that, he has approached opponents 3 to 4 times. He tried his level best to settle the dispute amicably, so that, his purpose be served, but failed. This way there is a delay of 19 months.

14. It is a settled law that liberal approach should be taken while deciding the delay applications. The applicant has got right to challenge his termination and to make a prayer for reinstatement by opponent No.1. No doubt, there is a delay in approaching court. Not giving a chance to applicant will cause

great injustice to him. On the other hand no prejudice to opponents will be there. Merely on technical grounds it should not curtailed. The statutory period for filing a complaint regarding termination is 3 months. So, technically, there is delay of 16 months. The said period is liable to be condoned, but it should be on costs. Hence, Point No.1 is answered in affirmative.

Reasons as to Point No.2 :

15. In view of finding given to aforesaid point, the present application liable to be allowed. Hence, the following order :

Order

1. *Misc. Comp. ULP (Delay) No.5200001 / 2018, Pranil Devidas Sonawane – Dhule – Palasner Tollway Ltd., is hereby allowed, subject to costs of Rs.5,000/- (Rs. Five Thousand Only) paid to opponent No.1 i.e. Dhule – Palasner Tollway Ltd., Dhule.*
2. *Delay if any, stands condoned.*
3. *Main complaint of Pranil, if, it is without objection, then it be registered.*

Date : 28.09.2018

Place : Dhule

(M. M. Rao)

Judge, Labour Court, Dhule

Argued on : 28.09.2018

Judgment Dictated on : 28.09.2018

Judgment Transcribed on : 28.09.2018

Judgment Checked & signed on : 28.09.2018