

(2015) 10 GUJ CK 0065
In the Gujarat High Court

Case No : Civil Application (for Condonation of delay) No. 11103 of 2015 to in L.P.A (Stamp Number) No. 1158 of 2015, Civil Application No. 11125 of 2015 in L.P.A (Stamp Number) Nos. 1158 and 1180 of 2015 in Special Civil Application No. 1008 of 2013, L.P.A (Stamp

Municipal Commissioner	Vs	APPELLANT
Prashantbhai Bapurao Godase and Others		RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Limitation Act, 1963 — Section 5

Citation : (2015) 147 FLR 1074

Hon'ble Judges : Jayant M. Patel, Actg. C.J. and N.V. Anjaria, J.

Bench : Division Bench

Advocate : Nilesh A. Pandya, for the Appellant

Final Decision : Dismissed

Judgement

Jayant M. Patel, Actg. C.J.

1. As all the applications with the main respective appeals and interim applications therein are connected with each other and common questions are to be considered, they are being considered simultaneously. Civil Application No. 11103 of 2015 to 11125 of 2015 are for condonation of delay of 350 days for preferring LPAs against the order passed by the learned Single Judge in the respective petitions.

2. We have heard Mr. Pandya, learned Counsel appearing for the applicant-appellant on the application for condonation of delay as well as on merits of the main LPAs.

3. If the explanation, as stated in the applications for condonation of delay, is considered as it is, by no stretch of imagination, it could be said that the delay is sufficiently explained. The ground sought to be canvassed is that since Full Bench

of this Court had initially taken the view that the LPA would not be maintainable against the order passed by the learned Single Judge arising from the award of the Labour Court, the LPAs were not preferred. Thereafter, as the Apex Court has reversed the order of the Full Bench and remanded the matter to this Court, the applicant - appellant has decided to prefer appeals.

4. In our view, such can hardly be said as sufficient cause for not preferring appeals within the prescribed period of limitation.

5. At this stage, we may record that it is by now well settled that when the delay is for a shorter period, Court may take a lenient view, but if the delay is for a longer period, the Court may take a strict view of the matter. The reference may be made to the decision of the Apex Court in the case of Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, and more particularly the observations made at paragraphs 14 to 16 as under:--

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the Courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate- Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , N. Balakrishnan Vs. M. Krishnamurthy, and Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others, .

(Emphasis supplied)

16. In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay - G. Ramegowda, Major and

Ors Vs. Special Land Acquisition Officer, Bangalore, , State of Haryana Vs. Chandra Mani and others, , State of U. P. and others Vs. Harish Chandra and others, , State of Bihar Vs. Ratan Lal Sahu and Others, , State of Nagaland Vs. Lipok AO and Others, and State (NCT of Delhi) Vs. Ahmed Jaan, ."

6. If the facts of the present case are considered in light of the above referred legal position, we do not find that the case is made out for exercising the discretion to condone such a long delay of 350 days.

7. In order to see that the merits of the matter may not be frustrated on a mere ground of delay, we have also heard Mr. Pandya for the appellant on merits of the appeals.

8. The perusal of the order passed by the learned Single Judge shows that the award in Reference (IT) No. 446 of 1981 dated 19.12.1983 was already passed by the Industrial Tribunal in respect of the employees concerned, whereby it was held that upon completion of 720 days as daily wager the employees would be entitled to regularization of service. The appellant Corporation accepted the award and no appeal was preferred. By office order dated 2.2.2006, the employees concerned were regularized in service by way of implementation of the aforesaid award. However, as the treatment was not given for regularization after completion of 720 days immediately and was given only, as per the order dated 2.2.2006, for the difference of wages/salary for the period from completion of 720 days until the order for regularization was passed on 2.2.2006, recovery applications were made before the Labour Court under section 33C(2) of the Industrial Disputes Act (hereinafter referred to as the "Act"). The Labour Court thereafter has passed the order in the respective matters, against which the main SCAs were preferred by the Corporation before this Court. The learned Single Judge has rejected the petitions and under the circumstances, the present appeals.

9. The only contentions raised by Mr. Pandya, learned Counsel appearing for the appellant were that there was no specific award prior to the filing of the recovery application and another was that when the employees concerned were regularized in service vide office order dated 2.2.2006, they did not object for not granting benefits for the period prior to 2.2.2006. He further submitted that there was acquiescence on the part of the employees concerned and, therefore also, the Labour Court could not have exercised the power for passing the order below recovery application.

10. In our view, the first contention is on a nonexistent premise and rather misconceived, inasmuch as there was already an award passed by the Tribunal in Reference (IT) No. 448 of 1981 dated 19.12.1983, wherein it was concluded that the daily wager, upon completion of 720 days in service, would be entitled to regularization. If the benefits flowing from the award were not made available to the workmen/employees, the workmen/employees can directly file recovery application under section 36C(2) of the Act. No separate award would be

required for such purpose as sought to be canvassed in the present case.

11. On the second aspect that the workmen/employees did not object to the regularization benefits at the relevant point of time, when office order dated 2.2.2006 was passed, is also without any substance, because once the rights were crystallized as per the award, which has been accepted by the appellant Corporation and not challenged before the higher forum, merely because Corporation, in a half-hearted manner, complied with the award would not result into taking away the right of the workmen/employees for claiming the benefits as per the award, which is accepted by the Corporation. It is hardly required to be stated that no bar of estoppel could operate against the rights flowing from the judgement of a competent Court.

12. In view of the above, we find that on merits also, there is no case to be considered in the LPAs. Under these circumstances, when there is no case on merits of LPAs, no useful purpose would be served in taking too lenient view on the aspect of delay and thereafter to hear the appeals at a later stage.

13. In view of the above, the delay does not deserve to be condoned. Hence, not condoned. Civil Applications No. 11103 of 2015 to 11125 of 2015 for condonation of delay are dismissed. As the applications for condonation of delay are dismissed, LPA (St.) Nos. 1158 of 2015 to 1180 of 2015 as well as CA (St.) Nos. 10947 of 2015 to 10969 would also stand disposed of.