
(1993) 10 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 3437 of 1993

Rajendra Shantaram Chavan

APPELLANT

Vs

Executive Engineer and Others

RESPONDENT

Date of Decision : 27-10-1993

Acts Referred:

Citation : (1994) 68 FLR 419

Hon'ble Judges : V.P. Tipnis, J

Bench : Single Bench

Judgement

V.P. Tipnis, J

Rule.

Mr. Pai, learned Asstt. Govt. Pleader, waives service of Rule on Behalf of the respondents.

By consent of the parties, Rule heard forthwith. Hard parties. Perused the judgments and the material on record.

1. The petitioner filed a complaint bearing complaint (ULP) No. 671 of 1989 before the Labour Court at Nasik under the provisions of the MRTU & PULP Act, 1971. The crux of the complaint was that the petitioner was entitled to be continued in service as a permanent employee of the respondents. Along with the complaint, an application for condonation of delay was also filed. IT was pointed out that though the complaint is filed on 6.12.1989, the services of the petitioner were terminated on 30.9.1988. IT was contended that thereafter he was approaching the respondents from time to time, but only oral assurances were given. It was further alleged that the respondents have also taken in service the employees whose series were terminated along with the petitioner. IT was further averred that the petitioner was disturbed and he fell sick for certain period and was taking treatment of Doctor.

2. The learned Judge of the Labour Court took into consideration the affidavit

filed by the petitioner as also the affidavit of the Asstt. Engineer on behalf of the respondents. He also took into consideration the arguments advanced by the learned counsel for the petitioner. It is very important to note that the respondents and their counsel remained absent when the delay condonation application was heard. In this situation, on the basis of the record and also on the basis of the decision of this Court referred to by the learned Judge in his order, the learned Judge formed the opinion that the petitioner had shown sufficient reason for condonation of delay in the complaint and he felt that the parties should be heard on merits of the claim. As such, by order dated 21.7.1992, the learned Judge of the Labour Court, Nashik, condoned the delay.

3. The respondents filed revision application (ULP) No. 283 of 1992 in the Industrial Court at Nashik challenging the legality of the order. The learned Member of the Industrial Court, Nashik, went into the details of the matter as if it was an appeal. He observed that the application for condonation of delay is silent on the period of sickness. He further held that mere production of medical certificate will not explain the delay. He also felt that the ratio of the decision of this Court was not attracted to the facts of the case. On detailed examination of all these facts, the learned Member of the Industrial Court allowed the revision and set aside the order of condonation of delay passed by the learned Judge of the Labour Court.

4. It must be remembered that discretionary order of condonation of delay by the trial Court should not be interfered with lightly by the superior Court. This is more so in case of a revision. The revisional jurisdiction is for the limited purpose of undoing gross illegality or when the trial Court exceeds the jurisdiction. When the respondents' counsel was not even present at the time of hearing of the condonation application and when on the basis of material on record, the learned Judge of the Labour Court found enough reason to condone the delay, in the facts and circumstances of the case, the revisional authority ought not to have interfered with such an order. It is also an admitted position before me that identical complaints of several other workers are pending before the learned Labour Court. Under the circumstances, on the over-all view of the facts and material on record, I am of the view that the interests of justice require that the delay be condoned.

5. Accordingly, the order dated 8.7.1993 passed by the learned Member of the Industrial Court, in Revisional Application (ULP) No. 283 of 1992 is quashed and set aside and the order passed by the learned Judge of the Labour Court, Nashik, dated 21.7.1992 is confirmed and restored. Consequently, the order passed by the learned Judge of the Labour Court on 22.7.1993 dismissing the original application is also quashed and set aside. The rule is made absolute in the aforesaid terms. There shall be no order as to costs.