

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO.1492 OF 2012 (L-MW)

BETWEEN:

SMT.SURRAYYA PARVEEN @ ANNAPOORNA,

... PETITIONER

(BY SRI JAVEED S., ADVOCATE)

AND:

1. LABOUR OFFICER CUM
MINIMUM WAGES ENQUIRY AUTHORITY,
SUB-DIVISION -02,
CHICKMAGALUR.

2. M/S. R.S.NURSING HOME,
J.M.ROAD, MUDIGERE POST,
CHICKMAGALUR DISTRICT,
BY ITS PROPRIETOR.

... RESPONDENTS

(BY SRI SHIVANANDA D.S., AGA FOR R1;
SRI RAGHUVeer, ADVOCATE FOR
SMT.ANANYA Y.V., ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, SEEKING CERTAIN RELIEFS.

THIS WRIT PETITION COMING ON FOR FINAL HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Sri.Javeed.S, learned counsel for petitioner, Sri.Raghuveer, learned counsel appearing on behalf of Smt.Ananya Y.V, for respondent-2, have appeared through video conferencing.

Sri.Shivananda D.S. learned AGA for respondent-1 has appeared in-person.

2. The brief facts of the case are stated as under:-

It is stated that the petitioner was working in M/s.R.S.Nursing Home from June 1994 as Aya till 02.03.2008 with due diligence, honestly and immaculately. But the respondents refused the service of the petitioner w.e.f. 02.03.2008 onwards.

It is averred that during the course of her employment, she was paid lesser wages than the minimum wages fixed to the category post of Aya. When queried, the Officials of Nursing Home used to give verbal assurance of payment. It is said that even after refusal of her employment, they went on giving false assurance but did not pay any amount.

Hence, petitioner filed a claim application before the Labour Commissioner cum Minimum Wages Enquiry Officer, in M.W.A.No.48/2008 with a prayer to direct the Nursing Home - the second respondent to pay the difference amount of Rs.1,28,648.52/- (Rupees One Lakh Twenty Eight Thousand Six Hundred and Forty Eight and fifty two paise only) and also 10 times penalty of Rs.12,86,485.20 (Rupees Twelve Lakhs Eighty Six Thousand Four Hundred and Eighty Five and twenty paise only) in total a sum of Rs.14,15,130.70/- (Rupees Fourteen Lakhs Fifty Thousand One hundred and thirty and seventy paise only). It is stated that an application under

Section 5 of the Limitation Act was also filed for condonation of delay.

The Nursing Home entered appearance and filed objections denying the claim of the petitioner. The Labour Officer - the first respondent - Authority after recording evidence and hearing both the parties dismissed the claim application on the ground of delay.

Under these circumstances, having left with no other alternative and efficacious remedy, the petitioner has invoked the writ jurisdiction of this Court under Articles 226 & 227 of the Constitution of India.

3. Sri.Javeed.S, learned counsel for petitioner submits that the order dated 24.11.2011 passed by the first respondent - Labour Officer - Authority is unsustainable in law and illegal.

Next, he submitted that the petitioner filed the claim application in the year 2008 and the application under Section 5 of the Limitation Act was also filed to

condone the delay by narrating the reasons to condone the delay.

A further submission was made that Authority has erroneously proceeded to pass the order and erred in not condoning the delay. It is submitted that the Authority has misdirected itself and refused to condone the delay and rejected the claim petition.

Counsel strenuously urged that the Authority ought to have condoned the delay and allowed the claim petition of the petitioner.

Lastly, he submitted that the order is liable to be quashed by issue of an appropriate writ.

4. Sri.Shivananda, learned AGA justified the order of the Authority.

Next, he submitted that that as per proviso to Section 20 (2) of the Minimum Wages Act, 1948, a claim application shall be made within six months from the date

on which the minimum wages (or other amount) became payable. But in the present case, the application is filed after 8 years.

A further submission was made that there is an inordinate delay in filing the claim application. It is also submitted that the petitioner has failed to show the sufficient cause to condone the delay.

Lastly, he submitted that the petitioner has not made any good grounds to exercise the power under Articles 226 and & 227 of the Constitution of India. Accordingly, he submitted that petition may be dismissed.

5. Sri.Raghuv eer, learned counsel for respondent-2 also justified the order of the Authority.

Next, he submitted that according to the petitioner the minimum wages became payable i.e., w.e.f. 01.04.2000. But the claim application is filed in the year 2008 after lapse of 8 years.

A further submission was made that the reason accorded by the petitioner to condone the delay is the alleged assurance of payment. It is submitted that the same is not true.

Counsel vehemently contended that the Hon'ble Apex Court in number of cases has held that each day's delay has to be explained by showing sufficient cause.

Lastly, he submitted the petitioner has not shown sufficient cause to condone the delay. The Authority is justified in rejecting the claim. Accordingly, he prayed for the dismissal of the writ petition.

6. Heard the contentions urged on behalf of respective parties and perused the Annexures with care.

The short point which requires consideration is whether the Enquiry Authority is justified in concluding the claim is time barred?

The facts have been sufficiently stated. It is not in dispute that the petitioner filed a claim application for payment of difference of wages. The claim application is dated 20.05.2008. It is significant to note that an application under Section 5 of the Limitation Act was also filed to condone the delay in filing the application and the petitioner has filed an affidavit in support of the said application. The application is dated 21.05.2008.

The principal ground urged on behalf of petitioner is that the delay ought to have been condoned. Before, I consider this point, let us have a bird's eye view on the principle of limitation.

Section 5 of the Limitation Act is a statutory, beneficial provision, intended to mitigate the hardship of a suitor from rigour of limitation, because the party may have a justifiable reason for not approaching the Court on time.

Section 5 enables the Court to admit an appeal or an application after the expiry of the prescribed period on sufficient cause being shown for the delay. Section 5 provides that an appeal may be admitted after the limitation period has expired, if the appellant satisfies the Court that there was sufficient cause for delay.

The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub serves the ends of justice. The matter has to be dealt with in a rational commonsense pragmatic manner and justice.

Since sufficient cause has not been defined, the Courts are left to exercise discretion to conclude whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the presentation of the matter. The entire gamut of facts is to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion

which is founded on objective reasoning and not on individual perception.

The law is well settled that delay cannot be excused as a matter of 'judicial generosity' in any special case. An order extending time should give sufficient indication that the discretion given by the law has been judicially exercised. The law is also well settled that an order excusing delay is not final and is liable to be questioned at a later stage. But an Appellate Court will not ordinarily interfere with the discretion exercised by the Court below. But the differentiating factor is whether the exercise of discretionary power is just and proper.

Bearing these principles in mind let me see what facts I have here.

The petitioner filed a claim application for payment of difference of wages. She also filed an application under Section 5 of the Limitation Act. The claim application is dated 20.05.2008. the same is at Annexure-'A'. The application filed under section 5 of the Limitation Act and

the petitioner has filed an affidavit also. The application and the affidavit is dated 21.05.2008. The same is at Annexure-'B'. It is stated in the affidavit that she was working under the respondents as Aya since June 1994 and the services were terminated w.e.f. 02.03.2008 without any notice. During service, she was paid lesser wages than the minimum wages fixed to her category. After termination of her service also, the respondent gave false assurance of payment of difference of wages. She believed the assurance. Hence there is a delay. Accordingly, the petitioner contended that the delay may be condoned.

Even before this Court also, the petitioner adhered to the contention that the reason for the delay is the false assurance given by the respondent. Learned counsel for petitioner strenuously urged that the petitioner was diligent and sufficient cause is shown and that the Authority ought to have condoned the delay.

I am unable to accept the said contention. The reason to enlarge time must be so detailed as to let the Court or the Authority concerned see the nature of the reason and the circumstances under which it arose. The applicant who seeks the indulgence of the Court under Section 5 must act with utmost good faith and make a full disclosure of all the relevant facts. It is needless to say that it is the duty of the applicant to explain the delay for every day that elapses beyond the period allowed by the Act for filing an application. In the absence of sufficient cause, the Court or the Authority has no power to extend the time.

It is perhaps well to observe that Section 20 of the Minimum Wages Act, 1948 mandates that the application shall be presented within six months from the date on which the minimum wages [or other amount] became payable:

Provided further that any application may be admitted after the said period of six months when the

applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

In the present case, the cause for not making the application within six months is that the alleged false assurance. According to the petitioner, the amount became payable with effect from 01.04.2000. However, she approached the Authority in the year 2008. In my view, the petitioner has failed to discharge the onus to explain the delay and hence, the Authority - the first respondent is justified in dismissing the application.

To conclude, I can say only this much that the law of limitation is not an equitable statute. It is a statute of repose.

7. In the result, the Writ petition is ***dismissed***.

**Sd/-
JUDGE**

VMB