



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6001 OF 2014

Indira Gandhi Nagari Patsanstha
Limited & another

.. Petitioners

versus

Bapu Vitthal Hole

.. Respondent

Mr. P. V. Barde, Advocate for the Petitioners.

Mr. V. P. Golewar, Advocate holding for Mr. A. R. Joshi, Advocate for
the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 22nd AUGUST, 2025.

PER COURT :

1. This Petition takes exception to the order dated 21.10.2013 passed by the Industrial Court, Ahmednagar in Complaint ULP No. 15/2009 whereby the Respondent was directed to be paid difference of minimum wages and actual payment from 01.01.1991 and backwages as directed by the Labour Court in Complaint ULP No. 56/1994 with effect from 08.12.2001 till the period he was not paid wages along with interest at the rate of 10% per annum.

2. Petitioner is a credit co-operative society. Admittedly Respondent was appointed on 17.02.1989. It is the case of the Petitioner that the Respondent was appointed as a Secretary whereas Respondent claims that he never worked as a Secretary and was performing clerical duties. Respondent, on the claim that his services are terminated illegally, filed Complaint ULP No. 56/1994 seeking re-instatement with full backwages. This Complaint came to be allowed by the Labour Court on 08.12.2001. Respondent was directed to be re-instated in service with 25% backwages. This order came to be challenged by the Petitioner unsuccessfully and the said order has attained finality. Admittedly, though re-instatement was directed by order dated 08.12.2001. He was actually re-instated on 05.12.2005. Further, admittedly, he is not paid backwages for the said period. Since the Complainant was denied permanency and benefits of permanency including minimum wages and that the backwages were not paid to him, he filed present Complaint ULP No. 15/2009 before the Industrial Court, Ahmednagar.

3. It is the contention of Respondent in the said Complaint that he is a workman and was discharging clerical duties. He also raised claim with regard to his entitlement to permanency and

difference of wages between actual payment and wages. Similarly, he claims backwages in view of the order passed by the Labour Court Complaint ULP No. 56/1994.

4. Petitioner appeared in the said Compliant and resisted it on the ground that Respondent is not a workman within meaning of Section 2(s) of the Industrial Disputes Act and Section 3(5) of The Maharashtra Recognition Of Trade Unions And Prevention of Unfair Labour Practices Act, 1971 (for short 'MRTU & PULP Act'). It is claimed that the Complaint filed by Respondent is barred by limitation and unreasonable and inordinate delay dis-entitles the Respondent from seeking any relief. On these amongst other contentions, the Complaint was sought to be dismissed.

5. After framing of the issues by the Industrial Court, Complainant led his evidence. Respondent failed to adduce any evidence. The Complaint came to be allowed by the impugned order. Hence, this Petition.

6. Learned counsel for Petitioner submits that the Respondent was appointed as a Secretary and in view of standing

orders applicable to the establishment, he was performing duties which are managerial in nature and hence he is not a workman within meaning of Section 2(s) of the Industrial Disputes Act. It is further argued that the Respondent would not have raised claim after 90 days of the occurrence of the cause of action and in view of the same, the Complaint was required to be dismissed by the Industrial Court. It is his further submission that in any case, Complaint has been filed belatedly and as such he is not entitled to seek any relief. To support his submissions, he has placed reliance on following judgments :-

- (i) Union of India and another vs. S. Nrasimhulu Naidu
(Deceased through LRs) & others
2021(20) SCC 321.
- (ii) Sakal Deep Sahai Srivastava vs. Union of India & another
AIR 1974 Supreme Court 338
- (iii) Shiv Dass vs. Union of India & others
2007(D) BCI 189
- (iv) Ganesh Raghunath Mamidwar vs. Devgiri Sahakari Sakhar
Karkhan Ltd. Phulambri & others
2011(2) ALL MR 709
- (v) N. M. Siddique vs. Union of India
AIR 1978 Supreme Court 386
- (vi) Workmen of the Straw Board Manufacturing Ltd. vs. Straw
Board Manufacturing Co. Ltd.
AIR 1974 Supreme court 1132(1)
- (vii) Rajendra Sahakari Pani Purvatha Mandali Limited
vs. Rajendra bandu Khot and others
2019 DGLS (Bom) 1590
- (viii) Brihan Mumbai Electric Supply and Transport Undertaking

- vs. Best Jagrut Kambar Sanghatana and others
2023 DGLS (Bom) 2017
- (ix) Mharashtra Genral Kamgar Union vs. Universal Dyeing and
Printing Works and anothr
2007 (Supp) Bom.C.R. 946
- (x) Har Narayan Tewari vs. Cantonment Board & othrs
2024 DGLS(SC) 609

7. Learned counsel for Respondent submits that in Complaint ULP No. 56/1994, issue of workman was not raised and as such it is not open for the Petitioner to raise the said issue in the present Complaint. It is his further submission that in any event, Respondent has led evidence indicating that he was performing the duties which are clerical in nature and hence the Complaint is rightly held to be maintainable. On the point of claim of backwags, it is sought to be argued that since the order of Labour Court was not complied with it amounts to unfair labour practice within meaning of Item 9 of Schedule 5 of MRTP & PULP Act and as such, the order passed by the Industrial Court is proper. As far as claim of difference of wages from 1991 is concerned, it is his submission that the benefits of permanency are to be granted with retrospective effect and that there is no bar for granting relief beyond the period of three years of filing of the Complaint. To support his submissions, he has placed reliance on judgment of Supreme Court in case of Dharam

Singh and others vs. State of U.P. and another in Civil Appeal No. 8558/2018.

8. At the outset, it is to be recorded that admittedly, Respondent was appointed in the year 1989. His services came to be terminated in the year 1994. He, therefore, filed Complaint ULP No. 56/1994 before the Labour Court challenging such termination. Before the Labour Court, Petitioner has not raised issue with regard to the status of the Respondent as workman within meaning of Section 2(s) of Industrial Disputes Act. The said Complaint came to be allowed by the Labour Court directing re-instatement of Respondent with 25% backwages. It is not in dispute that Respondent was re-instated on 05.12.2005.

9. Insofar as the issue of workman as raised by the Petitioner is concerned, though it is sought to be argued that res judicata would not apply, as a matter of fact, it was open for the Petitioner to raise objection with regard to the status of Respondent as workman in the previous Complaint. In spite of the same, no such plea was raised, though available. In such circumstances, since the issue which could have been raised in the previous Complaint, i.e.

challenge to the status of Respondent of 'workman', but has not been raised, in view of explanation IV of Section 11 of Code of Civil Procedure, is deemed to have been matter/issue substantially involved herein, the constructive res judicata would certainly apply to the present case. It cannot be accepted to say that the principle of res judicata would not apply to the proceeding under the MRTTP & PULP Act. The principle of res judicata is necessary in order to bring finality to the adjudication of any dispute and unless such finality is attached, the parties would tend to challenge the same issue again, which is wholly impermissible in law.

10. Apart from this, as a matter of fact, the Respondent has led evidence in order to substantiate his claim that he was performing clerical duties. Even during cross-examination, nothing could be elicited to discard his evidence. Infact, cross-examination strengthens the case of the Respondent that he was performing the duties which are clerical in nature and that he was not exercising any managerial duties. Pertinently, Petitioner has not led any evidence in order to prove contrary. Thus, no fault can be found with the entertainment of the Complaint by the Industrial Court.

11. Insofar as the ground of backwages is concerned, since the order passed by the Labour Court in the previous Complaint has attained finality, the Petitioner was duty bound to comply with the said order. Since the said amount was withheld unjustly by the Petitioner, direction to pay interest at the rate of 10% per annum on the said amount of backwages is fully justified. Thus, no interference is called in the said part of the judgment.

12. As far as clause No. 2 of the operative part of the order is concerned, the Industrial Court granted benefit of permanency to the Respondent from 01.01.1991 and it was directed that difference of minimum wages be paid to the Respondent from the date of joining till the date of the order. Though it is sought to be argued on behalf of the Respondent that the Complaint is maintainable as it is a recurring cause of action, though Complaint can not be held to be barred by limitation, question arises as to whether the Respondent is entitled for monetary benefits from the year 1991 till filing of the Complaint.

13. In this regard, it would be fruitful to consider the law settled by the Apex Court, in case of State of Madhya Pradesh and

others vs Yogendra Shrivastava, (2010) 12 SCC 538 and *Union of India and others vs Tarsem Singh, (2008) 8 SCC 648*. In State of Madhya Pradesh and others (supra) Hon'ble Supreme Court has held in paragraph No. 18, that -

"18. We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. [See: M.R. Gupta vs. Union of India - 1995 (5) SCC 628, and Union of India vs. Tarsem Singh 2008 (8) SCC 648]

Conclusion :

19. The appeals are allowed in part as follows:

(i) We uphold the decision of the Tribunal, affirmed by the High Court that respondents are entitled to 25% of their pay, as NPA.

(ii) The respondents will be entitled to NPA @ "25% of pay" only upto 20.5.2003. Thereafter, the amended Rules will apply.

(iii) In so far as arrears, the respondents are entitled to recover the difference in NPA only in regard to the salary which accrued due during the three years prior to the date of filing of the original applications by the respondents before the Tribunal and not from the date of their appointments.

(iv) As a consequence, if the appellants, in pursuance of the orders of the Tribunal/High Court, had paid the difference in NPA, for any period beyond three years before the date of the respective original applications, they will be at liberty to recover the same from the respective respondents in 24 monthly instalments."

In *Union of India and others vs Tarsem Singh* (supra), while dealing with issue of grant of relief of arrears in case of belated service related claim it is held that-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing

wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

14. In view of above settled position of law, though the Complaint is held to be maintainable, the monetary relief is required to be restricted for the period of three years prior date of Complaint.

15. Petition, therefore, stands partly allowed in following terms:

- (i) Impugned order is modified.
- (ii) Clause No. 4 of the operative order of the impugned judgment is maintained.
- (iii) Clause No. 4 of the impugned judgment is modified as below :
Respondent would be entitled to get the difference of wages between minimum wages and actual payment of wages for the period of three years from prior to the date of filing of the Complaint. The said amount be paid to the Respondent with interest at 10% per annum.

16. At this stage, learned counsel for both sides submit that since certain amount is deposited in this Court, they will submit joint calculations in order to ascertain the entitlement of the Respondent to withdraw the amount. The issue of withdrawal of amount is kept open.

17. Pending Application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge