

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6342 OF 2014

1. The President,
The Maharashtra State Co-operative
Marketing Federation Ltd.,
Mumbai - 400 009.

2. The Managing Director,
The Maharashtra State Co-operative
Marketing Federation Ltd.,
Mumbai - 400 009.

...Petitioners

versus

Bhaskar s/o Ganpatrao Patil
Age major, Occ. Retired,
R/o. Potale, Tq. Karad,
District Satara.

...Respondent

.....
Mr. D.N. Suryawanshi, advocate for the petitioners
Mr. A.R. Kale h/f Mr. A. R. Joshi, advocate for respondent
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment : 23.02.2015**

**Date of pronouncing
the Judgment : 03.03.2015**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. By the present writ petition, the petitioners are challenging the

judgment and order dated 25.7.2013 passed by the learned Member, Industrial Court, Solapur, thereby rejecting Misc. Application No. 1 of 2011 filed by the petitioner federation for restoration of Misc. Application No. 4 of 2006. The Misc. Application No. 4 of 2006 was filed for restoration of Revision (ULP) No. 114 of 2002 filed by the petitioner federation. The said Misc. Application No. 4 of 2006 was dismissed in default by order dated 16.12.2010. The petitioner federation has challenged the judgment and order dated 7.10.2002 passed in complaint (ULP) No. 88 of 2000 by filing aforesaid revision (ULP) No. 114 of 2002.

Brief facts, giving raise to the present writ petition, are as follows:-

3. The petitioner federation is a Co-operative Society, registered under the provisions of Maharashtra Co-operative Societies Act, 1960 and the Rules of 1961. The federation is having its own separate Service Rules and bylaws, approved by the competent authority. The respondent was an employee of the federation joined the services in the year 1966. The respondent was initially appointed as a clerk and thereafter promoted from time to time. At the time of filing of complaint, he was working on the post of In charge District marketing officer at Latur. The respondent was found guilty of

negligence, misconduct, misappropriation and misusing of powers etc. He was suspended on 7.9.1995 and thereafter charge sheet was served on him on 27.11.1996. The Inquiry Officer was duly appointed and he conducted the enquiry. The Inquiry Officer has found some of the charges proved against the respondent and accordingly submitted a report to that effect in the year 1997.

4. Pursuant to the Inquiry Report and the findings recorded therein, a show cause notice dated 3.12.1997 was issued to the respondent as to why he should not be dismissed from service. The respondent however, had filed complaint (ULP) No. 123 of 1997 before the Labour Court challenging show cause notice dated 3.12.1997. The learned Judge, Labour Court by its order dated 25.5.1998 allowed the application filed by the respondent and thereby restrained the petitioner federation from taking any action against the respondent, on the basis of aforesaid show cause notice. Being aggrieved by the same, the petitioner federation had filed revision petition before the learned Member, Industrial Court, which also came to be dismissed in the year 1999. Against the said order, the petitioner federation had filed writ petition No. 4227 of 1999, wherein ad-interim relief was granted vide order dated 25.8.1999 and the order passed by the Labour Court, as aforesaid, came to be stayed. The writ petition also came to be disposed of on 27.9.2002.

On 6.12.1999 the petitioner federation has dismissed the respondent from services.

5. Being aggrieved by the dismissal order dated 6.12.1999, the respondent had filed complaint (ULP) No. 88 of 2000 before the learned Judge, Labour Court. The learned Judge of the Labour Court by its judgment and order dated 7.10.2002 allowed the complaint filed by the respondent herein and directed the petitioner federation to give continuity in service to the respondent and also back-wages as well as other consequential benefits.

6. Being aggrieved by the judgment and order passed in complaint (ULP) No. 88 of 2000, as above, the petitioner federation has filed revision (ULP) No. 114 of 2002 before the learned Member, Industrial Court. The respondent appeared in the matter and thereafter the matter was adjourned from time to time for one or another reasons. On 29.9.2005, the counsel for the petitioner federation remained absent and therefore, the learned Member of Industrial Court was pleased to dismiss the revision (ULP) No. 114 of 2002 for non prosecution.

7. Being aggrieved by the same, the petitioner federation had filed Misc. Application No. 4 of 2006 for restoration of revision (ULP)

No. 114 of 2002 alongwith an application for condonation of delay. The learned Member of Industrial Court by order dated 12.2.2008 has allowed the application for condonation of delay by observing that no delay is occurred in filing Misc. Application No. 4 of 2006 for restoration.

8. In Misc. application No. 4 of 2006, the petitioner federation had given affidavit on examination in chief of their employee in support of grounds raised in the restoration application and matter was posted for cross examination. However, on 16.12.2010, the witness as well as counsel remained absent and therefore, the learned Member of Industrial Court by order below Exh.1 in Misc. Application No. 4 of 2006 dismissed the same for non prosecution by imposing costs of Rs.1000/-.

9. Being aggrieved by the same, the petitioner federation again had filed misc. Application No. 1 of 2011 before the learned Member, Industrial Court for restoration of Misc. Application No. 4 of 2006 to its original stage. The respondent has put his appearance in the said application and contested the application by filing his say. On hearing both sides, the learned Member, Industrial Court by judgment and order dated 25.7.2013 has rejected Misc. Application No.1 of 2011. Hence, this writ petition is filed by the petitioner

federation.

10. The learned counsel for the petitioner submits that one Mr. Kasar, who happened to be the employee of the petitioner federation, looking after the court's cases, was seriously ill from the month of May, 2005 and unfortunately he died on 18.10.2005. Thus, on 29.9.2005, when the revision (ULP) No. 114 of 2002 was called for hearing, none was present on behalf of the petitioner federation. The learned counsel further submits that since the said employee Mr. Kasar was seriously ill from the month of May, 2005, the counsel representing the federation could not be informed about the date of hearing and even the petitioner federation also could not substitute the employee in place of Mr. Kasar.

The learned counsel further submits that on 16.12.2010, Misc. Application No. 4 of 2006 was dismissed for non prosecution, as the petitioner federation and its counsel remained absent, when the matter was called out. The counsel representing the petitioner federation was carrying pregnancy and therefore, on 13.10.2010 a request was made to the learned Member of Industrial Court to adjourn the matter, as the counsel would not be available for at least 2/3 months due to her state of pregnancy. However, the next date was given as 12.11.2010. In the meanwhile, on 30.10.2010, the

counsel had delivered a baby and therefore, she could to remain present before the Industrial Court from 12.11.2010 to 16.12.2010.

11. The learned counsel thus submits that the circumstances leading to non appearance/attendance of the petitioner federation and its counsel before the learned Member, Industrial Court, were beyond the control of the petitioners. Even the learned Member of Industrial Court by tis impugned judgment and order dated 25.7.2013 in Misc. Restoration application No. 1 of 2011 has observed that there is evidence that as per the medical advice learned counsel appearing for the petitioners could not attend the court till 16.12.2010 and that there are sufficient grounds to learned counsel for the petitioner federation for not appearing before the Industrial Court. However, the learned Member, Industrial Court has further observed that the petitioner federation or its representative remained absent on 13.10.2010 and even the cost was also not paid as ordered. The learned counsel for the petitioner federation submits that counsel for the federation was not keeping well due to pregnancy and even prior to 13.10.2010 long adjournment was sought on that ground but eventually the matter was posted for hearing on 13.10.2010. The learned counsel therefore, submits that the petition deserves to be allowed by setting aside order dated 25.7.2013, passed by the learned Member, Industrial Court in Misc. Application No. 1 of 2011

and order dated 16.12.2010 passed in Misc. Application No. 4 of 2006, filed for restoration of Revision (ULP) No. 114 of 2002. The learned counsel further submits that the petitioner federation was prevented from sufficient cause to pursue the revision before the learned Member of Industrial Court and therefore, the revision which came to be dismissed in default may be restored to its original stage.

12. On the other hand, learned counsel for the respondent sole submits that the petitioner federation has not made out any case for setting aside the order dated 25.7.2013 passed by the learned Member, Industrial Court in Misc. Application No. 1 of 2011 filed for restoration of Misc. Application No. 4 of 2006 and also the order dated 16.12.2010 passed in Misc. Application No. 4 of 2006 filed for restoration of Revision No. 114 of 2002. The learned counsel for the respondent further submits that the learned Judge, Labour Court by order dated 7.10.2002 has partly allowed the complaint (ULP) No. 88 of 2000 and thereby directed the petitioner federation to give continuity of service to the respondent till retirement alongwith the back wages and other consequential benefits. Consequently, the respondent is entitled to receive all retiral benefits. However, the petitioner federation has not paid the same. The financial position of the respondent is poor and he is not even able to provide medical treatment to his ailing wife.

13. The petitioner federation had filed Misc. Application No. 4 of 2006 for restoration of revision (ULP) No. 114 of 2002, which came to be dismissed in default on 29.9.2005 by the learned Member, Industrial Court. One Mr. Kasar, who was looking after the court's cases of the petitioner federation, pending before the Industrial Court was suffering from serious illness and he died on 18.10.2005. The petitioner federation came to know about dismissal of revision (ULP) No. 114 of 2002 only after respondent employee had communicated about the same to the petitioner federation. Immediately, thereafter the petitioner federation has filed Misc. Application No. 4 of 2006 alongwith an application for condonation of delay. However, after excluding the days required for obtaining certified copy of order dated 29.9.2005, the learned Member of the Industrial Court found that the restoration application No. 4 of 2006 was within limitation, as provided under Section 31(2) of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971. So far as the dismissal of revision (ULP) No. 114 of 2002 by the learned Member of Industrial Court, by order dated 29.9.2005, is concerned, the petitioner federation has immediately challenged the said order. It is also not disputed that one Mr. Kasar was looking after the matters of the petitioner federation pending before the Industrial Court and he died during that period. It thus appears that the

circumstances were beyond control of the petitioner federation.

14. Even subsequently, Misc. application No. 4 of 2006, as it appears from the order dated 16.12.2010, came to be dismissed for want of prosecution. The counsel representing the petitioner federation could not attend the date of hearing on account of her stage of pregnancy and subsequently due to her delivery. The learned Member of Industrial Court has also accepted in its impugned judgment and order dated 25.7.2013 that there are sufficient grounds for the counsel for petitioner federation for not appearing before the Court when the matter was called for hearing. It is well settled that no litigant should be allowed to suffer for the fault on the part of his counsel. The party has no audience once he is represented by the advocate. In case of federation, like the present one, once the matter is entrusted to the chosen advocate, then the petitioner federation would remain under the belief that the matter would be taken care of by the counsel. It is also a legal position that the party has no audience once he is represented by the advocate. In the following cases i.e. i) Rafiq and another vs. Munshilal and another, reported in AIR 1981 SC 1400 (1), ii) Raj Kishor Pandey vs. State of U.P. and Ors. reported in 2009 AIR (SC) 1640 and iii) K.D. Patel vs. State of Gujrat, reported in Laws (GJH) -1993-9-91, relied upon by the learned counsel for the petitioners, it is observed that a

liberal view is required to be taken for restoring the matter to the file.

15. The original complaint (ULP) No. 88 of 2000 was decided by the learned Judge of Labour Court on 7.10.2002 in favour of present respondent. In the circumstances of the case, as discussed above, I am inclined to restore Misc. Application No. 4 of 2006, which is filed for restoration of Revision (ULP) No. 114 of 2002. However, keeping in mind the delay caused in disposal of aforesaid Misc. application for various reasons, which obviously are not attributable to the parties to the litigation, in exercise of extra ordinary writ jurisdiction, it would be just and appropriate to quash and set aside the order dated 16.10.2010, passed in Misc. Application No. 4 of 2006 and the judgment and order dated 25.7.2013 in misc. Application No. 1 of 2011 and restore the Revision (ULP) No. 114 of 2002 in the files of learned Member, Industrial Court for disposal, in accordance with law, in a time bound manner with certain conditions. It would also be appropriate to saddle the petitioners with costs and direct them to deposit 25% of the back wages before the learned Member, Industrial Court, Solapur, to show their bonafides. In the light of above, following order is passed:-

ORDER

- A) Writ petition is hereby partly allowed.
- B) The judgment and order dated 25.7.2013 passed by the learned Member, Industrial Court, Solapur in Misc. Application No. 1 of 2011 and the order dated 16.12.2010 passed in Misc. Application No. 4 of 2006 are hereby quashed and set aside subject to the compliance of the conditions of restoration of Revision (ULP) No. 114 of 2002 as per clause "C" below.
- C) The Revision (ULP) No. 114 of 2002 be restored to its original number in the files of the learned Member, Industrial Court, Solapur on the following conditions:-
- i) The petitioner federation shall pay the costs of Rs.10,000/- (Rupees Ten thousand only) to the respondent Bhaskar Ganpatrao Patil, through his counsel by way of demand draft drawn in the name of respondent within two weeks from today.
 - ii) The petitioner federation to deposit 25% of the back wages within two weeks from today before the learned Member, Industrial Court, Solapur.
 - iii) On proof of payment of costs and deposit of 25% of back wages, as directed above, the learned Member, Industrial Court, Solapur shall restore the revision (ULP) No. 114 of 2002 to its original number.

- D) The learned Member, Industrial Court, Solapur shall thereafter dispose of revision (ULP) No. 114 of 2002 in accordance with law, within two months from the date of restoration of Revision (ULP) No. 114 of 2002.
- E) Needless to add that 25% amount of back wages deposited by the petitioner federation shall be subject to the final decision of Revision (ULP) No. 114 of 2002.
- F) The parties are directed to co-operate the learned Member, Industrial Court, Solapur for disposal of the Revision (ULP) No. 114 of 2002 within the time limit, as directed above by this Court.

16. Rule is made absolute in the above terms. The writ petition is disposed of accordingly.

(V. K. JADHAV, J.)

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