

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.5774 OF 2015

SARPANCH GRAM PANCHAYAT SHELGAON, PETITIONERS  
JALNA AND OTHERS

VERSUS

PANDITRAO BHAUDUJI SONWANE RESPONDENT

Mr.Shailendra S. Kulkarni, Advocate for the petitioners.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/06/2015

PER COURT :

1. I have heard Mr.Kulkarni on behalf of the petitioners. His submissions can be summarized in brief as follows :-

- (a) The respondent/workman was an employee of the Gram Panchayat, Shelgaon, Tal.Badnapur, Dist.Jalna.
- (b) He was suspended from employment for having committed a serious mis-conduct by order dated 21/01/2011.
- (c) He was dismissed from service on 27/02/2011.
- (d) The respondent preferred complaint ULP No.10/2012 before the Industrial court for challenging his suspension dated 21/01/2011.
- (e) By the interim order dated 26/07/2012, the Industrial court rejected his application for interim relief filed u/s 30(2) of the M.R.T.U. and P.U.L.P. Act, 1971.
- (f) The respondent preferred a ULP complaint before the Labour Court which is now registered as complaint (ULP) No.22/2014,

alongwith an application for condonation of delay.

- (g) The Misc.Appl.No.5/2002 was rejected by the Labour Court by judgment and order dated 23/07/2013, thereby concluding that the delay of 1 year, 4 months and 14 days does not deserve to be condoned.
- (h) The respondent preferred revision ULP No.166/2013 before the Industrial Court which was allowed by judgment and order dated 14/08/2014.
- (i) The judgment of the Labour Court dated 23/07/2013 was set aside and the delay was condoned by the Industrial Court.
- (j) Complaint ULP No.22/2014 has been finally allowed by the judgment and order dated 23/04/2015 delivered by the Labour court.
- (k) The petitioners have preferred Revision ULP No.31/2015 before the Industrial Court for challenging the judgment of the Labour Court dated 23/04/2015.
- (l) An application for interim relief has also been filed. Same is pending hearing.
- (m) The respondent/workman has filed criminal complaint before the Labour Court u/s 48(1) of the M.R.T.U. and P.U.L.P. Act 1971 alleging non-compliance of the judgment of the Labour Court dated 23/07/2013.

2. Having heard the learned Advocate for the petitioners, I have gone through the petition paper book with this assistance. It is not in dispute that the petitioners have not conducted a departmental enquiry against the respondent before concluding that the charges levelled upon him have been proved. It is also not disputed that a

charge sheet cum show cause notice was not issued to the respondent. The issue is as to whether the charges have been proved or not and as to whether a stigmatic dismissal order could be sustainable without conducting an enquiry and without giving the delinquent workman the due opportunity of defending himself. The Industrial Court is likely to consider this issue in the revision petition filed by the petitioners challenging the judgment of the Labour Court dated 23/04/2015.

3. In the light of the above, this petition is rendered infructuous to the extent of the subsequent events that have occurred. I am , therefore, not considering the submissions of the petitioners to that extent.

4. Mr.Kulkarni has, therefore, restricted the challenge of the petitioners in this petition to the extent of assailing the judgment and order of the Industrial Court dated 14/08/2014 delivered in Revision (ULP) No.166/2013, by which delay of 1 year, 4 months and 14 days has been condoned by the Industrial Court.

5. Mr.Kulkarni has strenuously submitted that the respondent has suppressed the fact of having received the order of termination.

He has deliberately approached the Industrial Court by filing complaint ULP No.10/2012 challenging the order of suspension dated 21/01/2011. Reasons cited by the respondent before the Labour Court in Misc.ULP No.5/2012 were rightly disbelieved by the Labour Court. The respondent has subsequently withdrawn complaint (ULP) No.10/2012 from the Industrial Court on 06/08/2012.

6. It is further canvassed that the delay has to be well explained by an employee and the same cannot be condoned only because he is a workman. The respondent has not come with clean hands before the Court and therefore the Industrial Court could not have allowed the revision application and could not have condoned the delay.

7. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has laid down guidelines while dealing with the application for condonation of delay, which are as follows ;

*" 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

*2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest*

*that can happen is that a cause would be decided on merits after hearing the parties.*

*3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

*4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

*5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

*6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

8. The test of condoning delay is primarily based upon whether the concerned litigant could have derived any advantage by delaying the institution of his complaint before the Labour Court. It needs to be considered whether he has any remedy available, whether he would be rendered remediless in the event the delay is not condoned and whether the delay could be branded as inordinate and does not deserve to be condoned. It also needs scrutiny as to whether laches are attributable to the litigant seeking condonation of delay.

9. Limitation is prescribed under the M.R.T.U. and P.U.L.P. Act, 1971 r/w Rule 60 and 61 of the Labour Court (Practice and Procedure) Rules, 1975. As such, if a complaint is filed beyond 90 days from the date of the cause of action, the complainant is required to file an application for condonation of delay supported with an affidavit. The said application has to be adjudicated upon by hearing the parties and the delay caused can be condoned by the Labour Court.

10. It is crystallized law that a Court ought not to take a pedantic approach in dealing with the applications seeking condonation of delay. The respondent/workman was served with order of suspension dated 21/01/2011. He preferred complaint (ULP) No.10/2012 before the Industrial Court on 27/01/2012. He had prayed for quashing and setting aside of the order of suspension. The petitioners herein filed their written statement on 07/03/2012 clearly stating therein that the charges levelled upon the workman are grave and serious and therefore he was terminated as per section 61 of the Maharashtra Village Panchayat Act. This complaint was withdrawn by the respondent/workman on 06/08/2012.

11. The issue as regards whether the petitioners could have terminated the services of the respondent by way of punishment on 27/02/2011 without conducting an enquiry, is subjudice before the Industrial Court in the pending revision petition filed by the petitioners. I, therefore, do not find it appropriate to deal with the said issue despite the submissions of the petitioners to do so, since a substantive challenge is pending and the petitioners can raise all the grounds and contentions in the said pending revision petition.

12. I find that the respondent had spent quite some time assailing his suspension order, oblivious of his termination. This, therefore, can be a ground for condonation of delay in raising a substantive challenge to the termination dated 27/02/2011.

13. In the event, the delay caused in preferring the complaint is not condoned, the respondent would be rendered remediless as he would have to suffer civil death on account of his termination, resulting in permanent loss of employment. I also do not find that the respondent can be said to have deliberately or willfully caused the delay in preferring the complaint before the Labour Court challenging his termination since he does not derive any advantage by delaying the challenge to his permanent loss of employment.

14. Per contra, the petitioners would have to justify the stigmatic termination of the respondent which has occurred admittedly without conducting an enquiry purportedly u/s 61 of the Maharashtra Village Panchayats Act, 1950. As such, the observations of the Apex Court in the case of Collector, Land Acquisition (supra), in my view, are squarely applicable to the case in hand.

15. The petitioners have contended that the judgment of the Industrial Court dated 14/08/2014, thereby condoning the delay and directing registration of complaint ULP No.22/2014 is assailed on the ground that the same is perverse and unsustainable. The petitioners have challenged the impugned judgment dated 14/08/2014 by filing this petition on 06/04/2015.

16. Having gone through the observations of the Industrial Court, I do not find that the petitioners have made out a case of perversity in the conclusions drawn by the Industrial Court. In my view, the Industrial Court has rightly considered the fact situation and has condoned the delay in the light of the pendency of the complaint challenging suspension as well as the fact that the respondent would

be precluded from questioning his permanent loss of employment.

17. The Apex court in the case of Syed Yakoob Vs.K.S.Radhakrishnan and others, reported at AIR 1964 SC 477 has laid down the law under paragraph Nos. 7 and 8 of the said judgment, which read thus :-

*7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ,*

but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide [Hari Vishnu Kamath v. Syed Ahmed Ishaque](#) ), [Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam](#) ([1958] S.C.R. 1240.), and [Kaushalya Devi v. Bachittar Singh](#) .

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is

*apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of a the legal provision which is alleged to*

*have been misconstrued or contravened.*

18. Similarly, the Apex Court in the case of the Surya Dev Rai Vs. Ram Chander Rai, reported at 2003(6) SCC 682, wherein the Apex Court has once again defined the scope and jurisdiction of the supervisory powers of this Court in paragraph Nos. 38 (1 to 9) and 39, which read thus :-

*38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-*

*(1) Amendment by Act No.46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.*

*(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.*

*(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction “ by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules*

*of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.*

*(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.*

*(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.*

*(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.*

*(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate*

*cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.*

*(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.*

*(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High*

*Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.*

39. *Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where 'a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial*

*conscience enriched by judicial experience and practical wisdom of the Judge.*

19. In the light of the above, I do not find that grave injustice has been caused to the petitioners by the impugned judgment of the Industrial Court condoning the delay caused in filing the complaint by the respondent/workman. The impugned judgment, therefore, cannot be termed as perverse or unsustainable. The Industrial Court has taken a pragmatic view to ensure that justice is done to the litigating sides and has rightly condoned the delay.

20. As such, this petition sans merit and is, therefore, dismissed.

( RAVINDRA V. GHUGE, J.)