

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9710 OF 2014

Shri Sakharam Ashruba Sanap,
Aged 44 years, Occ. Unemployed,
R/o Tandalwadi, Post Parogaon-
Siras, District Beed.

..Petitioner

Versus

Shri Chatrapati Rajarshi Sahu
Urban Cooperative Bank Ltd.,
Branch Near Hotel President Park,
Jalna Road, Aurangabad,
Through Chief Executive Officer.

..Respondent

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Advocate for Petitioner : Shri Sawji Ulhas S.
Advocate for Respondent : Shri Salunke V.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 08, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. Complaint (ULP) No.78 of 2001, instituted by the petitioner before the Labour Court for challenging his termination dated 27.4.2001 with effect from 5.5.2001, was dismissed in default on 29.4.2011. The

petitioner contends that he acquired knowledge about the said dismissal in default on 11.8.2011. He preferred Misc. Application No. 8 of 2011 for restoration of the said Complaint on 12.8.2011. The respondent filed its say opposing the application on 1.12.2011.

5. By an order dated 20.8.2013, the delay of 85 days, caused in preferring the Misc. Application for restoration was condoned by the Labour Court. It is not in dispute that the condonation of delay in preferring the application for restoration of a Complaint dismissed in default, has not been challenged by the respondents. It is also not in dispute that the question of jurisdiction was not raised when the Labour Court dealt with the condonation of delay application.

6. The petitioner submits that Misc. Application No. 8 of 2011, seeking restoration of the Complaint was decided by the Labour Court by order dated 30.9.2013, by which the application has been rejected. Consequentially, the Complaint dismissed in default has not been restored. The petitioner preferred Revision (ULP) No. 79 of 2013 before the Industrial Court, which has been dismissed by judgment and order dated 28.8.2014.

7. The petitioner submits that the Labour Court has adopted a hyper technical approach. The Complaint was dismissed in default on 29.4.2011. Delay of 85 days in preferring the restoration application was condoned. As such, since the delay was condoned, the Labour Court was required to consider, whether laches were attributable to the conduct of the petitioner

and as to whether he would benefit by his Complaint being dismissed in default. The Labour Court could have imposed costs and could have put the petitioner to certain conditions while restoring the Complaint. By the impugned order, the petitioner is rendered remediless.

8. Shri Salunke has strenuously opposed this petition. He submits that the petitioner was negligent and careless. His Complaint was at the stage of recording of oral evidence. He did not care to attend the Court proceedings and was apparently not interested in the Complaint. The Court should not rescue a sleeping litigant and the Complaint dismissed in default cannot be restored on the ground of sympathy. Proper explanation is to be tendered so as to convince the Labour Court for restoring the Complaint.

9. Shri Salunke further submits, in the alternative, that in the event this Court is inclined to restore the Complaint, costs may be imposed upon the petitioner which will be deposited in the Labour Court as a precondition for leading evidence in his Complaint. He further submits that the respondent is made to suffer hardships of litigation by the careless and negligent attitude of the petitioner. He should, therefore, be penalized for causing severe hardships to the respondent.

10. I have considered the submissions of the learned Advocates who have taken me through the petition paper book. Apparently, the first hurdle in the path of the petitioner was the delay aspect. Now that the delay has been condoned and the order of the Labour Court dated 20.8.2013

condoning the delay having not been challenged before the Industrial Court and/or this Court, I am not required to go into the aspect as to whether the Labour Court had jurisdiction to condone the delay.

11. Issue therefore, is as regards sufficiency of reasons and circumstances for deciding the restoration application. The Complaint was dismissed in default on 29.4.2011. Application for restoration was filed on 12.8.2011. The petitioner has stepped into the witness box and has tried to justify the circumstances in which his Complaint was dismissed in default. It is stated that he came to Aurangabad from his native place and on causing an enquiry, realized that his Complaint was dismissed. He has preferred his Restoration Application as expeditiously as possible.

12. The Labour Court as well as the Industrial Court, while delivering the impugned orders have taken into account the fact that the petitioner did not contact his Advocate in the said period. He was not present in the Court in between 12.3.2010 to 29.4.2011. It is in these circumstances that the application was rejected.

13. Since I am to deal with the issue merely of sufficiency of reasons, I find that the Labour Court and the Industrial Court should have adopted a liberal approach. The Complaint filed by the petitioner was pending for almost ten years as on date of its dismissal. The petitioner does not benefit from neglecting his Complaint. He derives no advantage in letting his Complaint be dismissed. In fact, he is rendered remediless against his

termination owing to the dismissal of his Complaint.

14. The reasons cited by the Labour Court in support of its conclusions indicate that the Court has adopted a stringent approach. It could have imposed costs upon the petitioner as well as certain conditions in order to punish him and grant him an opportunity to contest his Complaint on its merits. There are no laches attributed to the conduct of the petitioner. The impugned orders have resulted in rendering the petitioner remediless.

15. In the light of the above, I am unable to agree with the conclusions of the Labour Court as well as the Industrial Court.

16. This petition is, therefore, partly allowed. The judgment of the Industrial Court dated 28.8.2014, delivered in Revision (ULP) No. 71 of 2013 is quashed and set aside. Similarly, the order of the Labour Court dated 13.9.2013, delivered in Misc. Application No. 8 of 2011 is set aside. The said Application stands allowed.

17. However, in doing so, I am imposing costs of Rs.2,000/- on the petitioner, who shall deposit the same before the Labour Court, within a period of four weeks from today. On depositing the costs, the respondent shall be at liberty to withdraw the same without any conditions.

18. It be noted that besides the costs, the petitioner shall be deprived of backwages and monetary benefits by the Labour Court for the period

29.4.2011 till the passing of this order today, in the event, Complaint (ULP) No. 78 of 2001 is allowed by the Labour Court.

19. Complaint (ULP) No. 78 of 2001 stands restored to the file of the Labour Court, Aurangabad at the stage at which it was dismissed in default. The litigating sides shall appear before the Labour Court on 27.4.2015 at 11.00 am. Separate notice need not be issued therefor by the Labour Court.

20. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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