

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11607 OF 2013

The Manager, Solapur Municipal Transport, Solapur & Anr. Petitioners

Vs.

Shri. Chandrakant Narsinh Kulkarni Respondent

Mr. Vijay Killedar, Advocate for the Petitioners.
Mr. P.R. Arjunwadkar, Advocate for the Respondents.

Coram : Smt. R.P. SondurBaldota, J.

Date : 15th April, 2015.

P.C.

1 By consent, the petition is taken up for final hearing at the stage of admission. The petitioner, Solapur Municipal Corporation challenges the order dtd. 29th July, 2013, by which the Labour Court allowed the application filed by the respondent under Section 33C(2) of the Industrial Disputes Act ("I.D. Act" for short) claiming the dues in respect of gratuity, pension, arrears of salary and interest @12% per annum on the total amount payable. The respondent had retired on 31st July, 2004. The application under Section 33C(2) of I.D. Act was filed on 15th March, 2012. In their written statement, the petitioner raised an objection of the delay contending that there is no

explanation whatsoever offered for the delay of eight years in filing the application under Section 33C(2) of the I.D. Act. The Labour Court, while allowing the application by the impugned order did not consider the contention of delay raised by the petitioner.

2 Mr. Killedar, the learned advocate for the petitioner submits, relying upon the decision of this court in Deputy Engineer, Zilla Parishad (Works), Sub-Division, Nagpur & Others vs. Shantaram Ramaji and others, reported 1996(5) Bom. C.R., page 504 (Nagpur Bench), that even if there is no limitation is prescribed for filing application or making claim under Section 33C(2) of the I.D. Act, the claim made after long lapse of time or the claim which has become stale or an overstale cannot be entertained without reasonable explanation. In the decision cited, this court had held that an overstale case should not be encouraged or allowed unless there is satisfactory explanation for the delay. The reason stated for the view is by entertaining stale claim without explaining the delay after long lapse of time, the order passed entertaining such claim may affect the financial position and arrangement of the employer. Thus, the right of the employer may be seriously prejudiced. Whether a claim is stale or not and whether the claimant has furnished satisfactory explanation for delay in making the claim is always a question depending upon the facts of each case and no hard and fast rule can be laid down nor any absolute proposition framed as to when an application or claim under Section 33C(2) may be treated as stale or belated or in what

circumstances, the Labour Court would entertain such claim or hold the explanation reasonable. Each case would turn on its own facts and has to be examined on the basis of the facts obtaining therein. By the decision cited, this court had remanded matter to the concerned court for consideration of the question whether claim made by the employee was stale. Mr. Killedar requests that the claim in the present case also needs to be remanded to the Labour Court by giving an opportunity to the respondent for filing independent application explaining the long delay and permitting the parties to lead evidence.

3 Mr. Arjunwadkar, the learned advocate for respondent no.1 submits that if the petitioners were to rely upon and point out the decision cited by it to the Labour Court itself, the remand could have been avoided. Since the petitioners had not done so, remand of the matter would cause prejudice to the respondent. I find no substance in the submission advanced because, it was for the respondent to take care of this situation while filing the application. The respondent was well aware that the application has been filed after a long gap of eight years since retirement. Not taking care of this aspect indicates lack of diligence. It could also be argued that apparently, there is no ground available to the respondent for condoning the delay. However, in the interest of justice, I am inclined to pass the same order as in the decision cited i.e. of “remand of the matter” for fresh disposal of the application. Hence, the following order.

O R D E R

1 The petition is allowed in terms of prayer clause (b).

2 The order dtd. 29th July, 2013, passed by Labour Court, Solapur is set aside.

3 The Labour Court is directed to hear and decide the respondent's application afresh. The Labour Court may permit the respondent to make an independent application explaining the delay in filing the application under Section 33C(2) of the I.D. Act and also permit him to lead evidence in support of the averments made in such application.

4 It would be open for the petitioners to file a reply to any additional application that may be made by the respondent and lead evidence, if desired.

(Smt. R.P. SondurBaldota, J.)