

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

LETTERS PATENT APPEAL NO. 32 OF 2014
IN
WRIT PETITION NO.3459 of 2010
with
CIVIL APPLICATION NO. 48 OF 2014

State of Maharashtra & ors. ... Petitioners

V/s.

Shri Anand Balkrishnan Kulkarni ... Respondent

Mr. P.G. Sawant, AGP for the State.
Mr. Manoj Patil for respondent no.1.

**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

10th June, 2015.

P.C.

The Respondent had filed a complaint under Section 28 of the MRTU & PULP Act, 1971 before the Industrial Court, Solapur. By judgment and order dated 15th December, 2007, the Industrial Court allowed the complaint by passing following order.

“i) The complaint (ULP) No. 68/1999 stands allowed.

ii) It is hereby declared that the respondent has indulged into unfair labour practice prescribed under Item 9

of Sch. IV of the MRTU & PULP Act, 1971, and therefore, directed to cease and desist hence forth.

iii) The respondents are directed to pay wages with retrospective effect to the complainant in pay scale as applicable to the post of Laboratory Attendant in revised pay scale of Rs.950-1400 and thereafter in a pay scale of Rs. 3050-4590 in the implementation of the Pay Commissions Recommendations within a period of one month from the date of passing this order.

iv) No order as to costs.”

2. The appellant filed a writ petition no. 3459/2010. By an order dated 8th September, 2010 the learned Single Judge of this Court rejected the petition as the appellant failed to explain the delay in filing the writ petition.

3. The learned AGP submits that delay has occurred due to administrative procedure. The delay has been properly explained. It was submitted that learned Single Judge ought to have considered the matter on merits instead of rejecting the petition on account of delay in filing writ petition. On merits learned Counsel submits that respondent was appointed as a dark room attendant. Therefore, he is not entitled to claim wages applicable to laboratory attendant even if the respondent claims to have worked as a laboratory attendant.

4. Learned Counsel appearing for respondent submits that nothing adverse is brought on record to counter the contention of the respondent that though he was appointed as a dark room attendant, he has been discharging his duties as a laboratory attendant till now. The respondent is to retire in the next year as per learned Counsel. A copy of the order passed by Industrial Court is placed on record. We have perused the same. The Industrial Court passed order in the year 2007. The writ petition was filed in the year 2010. The LPA is filed in the year 2010 which is being circulated now before this Court. Except denial the appellants have failed to place on record any material to counter the case of the respondents that he was discharging his duties as a laboratory attendant. He was working as Laboratory Attendant but drawing salary of a dark room attendant. According to learned Single Judge, the appellant had failed to show any sufficient cause for condoning the delay. We are not convinced to take a contrary view then what was adopted by the learned Single Judge. The appellant is to retire next year. At least at this stage the issue shall be finally concluded. Taking into consideration all these aspects of the matter, we are of the view that no interference is warranted. LPA is dismissed.

5. In view of dismissal of LPA, nothing survives for consideration in Civil Application and the same is disposed off.

(S.B. SHUKRE, J.)

L.S. Panjwani, P.S.

(NARESH H. PATIL, J.)