

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

WRIT PETITION NO.6396 OF 2001

Miraj Medical Centre, Miraj
having its Hospital at Miraj
District Sangli,
through its Director.

.. Petitioner.

V/s

1. Vijaykant Nilkanth Ohal
resident of Mangalwar Peth
Miraj, District. Sangli.

2. Shri C.A. Jadhav
Member, Industrial Court,
Kolhapur.

.. Respondents.

Mr.K.S. Bapat, for Petitioner.

Mr. M.S. Topkar, for Respondents.

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

Date : 26th March, 2015

P.C.

1. Short question that arises for consideration in this petition is, whether a complaint to challenge the order of suspension filed six years after the same was passed, is barred by the limitation provided under Section 28(1) of the Maharashtra Recognition of Trade Unions and Prevention of

Unfair Labour Practices Act, 1971 ('MRTU & PULP Act' in short). The Industrial Court by the order dated 15th June, 2001 which is impugned in the present petition holds that the case of action is a continuous cause of action and hence the complaint is maintainable.

2. Petitioner is a Charitable Institution which runs hospital by name Wanless Hospital at Miraj. Respondent No.1 was employed as 'Cashier' with the petitioner. In the month of October, 1987, misappropriation of amount of Rs.1,00,000/- from the hospital by respondent No.1 was discovered. On being confronted with the misappropriation of money, respondent No.1 admitted his guilt by the writing dated 05th October, 1987. Then on the same day, he was suspended from service with immediate effect. The decision of suspension was ratified in Board Meeting held on the next day i.e. 06th October, 1987. The admission of guilt was repeated by respondent No.1 in his next letter dated 05th November, 1987, by which he had sought pardon. After the incident of misappropriation the

petitioner had complained to the Police and also filed the civil proceeding for recovery of the amount misappropriated.

3. More than six years after his suspension i.e. on 08th January, 1993, respondent No.1 filed complaint under Section 28 read with Items No. 9 and 10 of Schedule IV of the MRTU & PULP Act by seeking quashing of the order of suspension and permission to resume duty. He also sought directions regarding payment of wages since the date of suspension.

4. The petitioner contested the complaint on its maintainability as well as merit. It alleged that the complaint was barred by limitation provided under Section 28(1) of the MRTU & PULP Act. In the additional written statement filed, petitioner claimed that it had infact terminated services of respondent No.1 soon after his suspension. The relevant averments at para-3 of the additional written statement reads as follows :-

“ On expiry of first fortnight of suspension Order, the Complainant was orally informed that serious charges of misappropriation of very large

amount are being investigated by our internal auditor. It is likely that criminal and civil action may be taken against him after the investigation is complete. He was, therefore, orally removed from service and was assured orally that in case he is acquitted from the Criminal court honourably, he would be reinstated with full back wages and continuity of service.”

It contended that since the suspension of respondent No.1 had culminated into his removal from service, challenge to the order of suspension alone was not maintainable.

5. The allegations made by respondent No.1 of unfair labour practice on the part of the petitioner were on five grounds. They are :-

- (i) Suspension of respondent No.1 from service was for false reason.
- (ii) Suspension order does not state that it is pending enquiry or pending any criminal action. As such, it is against the provisions of the Standing Orders.
- (iii) The order of suspension was illegal as it was

for indefinite period.

(iv) Petitioner had failed to initiate any departmental enquiry against respondent No.1.

(v) Letter of admission of guilt had been obtained by the Director of the petitioner by coercion and misrepresentation.

6. At Para-6 of the complaint, respondent No.1 averred that the cause of action to challenge the order of suspension is a recurring one and hence, the complaint is not barred by limitation. The Industrial Court has cursorily at para-25 of the impugned order dismissed the contention of bar of limitation taken up by petitioner with one line reasoning. It states “It is settled law that an unfair labour practice under Item 9 of Schedule IV of the Act is continuous cause of action.”

7. Since the bar of limitation is provided under Section 28(1) of the MRTU & PULP Act, it will be convenient to reproduce it at this stage.

28. Procedure for dealing with complaints relating to unfair labour practices :- (1) Where any person has engaged in or is engaging in any unfair labour practice, then

any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such unfair practice, file a complaint before the Court competent to deal with such complaint either under Section 5, or as the case may be, under section 7, of this Act.

Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint.

(2) The Court shall take a decision on every such complaint as far as possible within a period of six months from the date of receipt of the complaint.

8. Mr. Bapat, the learned advocate for the petitioner submits that observations of Industrial Court are completely contrary to the provisions of Section 28 of the MRTU & PULP Act. He argues that there is a specific period limitation of 90 days provided under the Section and in case of delay, it also provides for filing application for condonation of the delay. Mr. Bapat, points out that respondent No.1 did not file any

application for condonation of the delay in filing the application. Therefore, the complaint was not maintainable.

9. Mr. Topkar, the learned advocate for the respondent No.1 seeks to support the impugned order with the submission that order of suspension being continuous order can be challenged at any point of time during its subsistence. He points out that the order of termination of respondent No.1 from the service is not on record anywhere. There is no document whatsoever produced relating to termination of the respondent No.1 from the service.

10. Respondent No.1 did not step into witness box to give evidence despite having made serious allegations as regards his letter expressing guilt in the matter of misappropriation. Petitioner examined its Chief Accountant in support of the claim in the written statement.

11. The finding on the issue of bar of limitation under Section 28(1) of M.R.T.U. & P.U.L.P Act depends upon answer to the question whether the cause of action in the complaint can be

said to be a continuous cause of action. The complaint contains nine prayers, out of which first two are about declaration of unfair labour practice. Prayers (e) and (f) are to challenge the order of suspension. The remaining three prayers are for interim reliefs and formal prayers. Thus the complaint is to challenge the order of the suspension alone. The act of suspension occurs only once. What continues thereafter is only the effect of the act of suspension. On each succeeding day there is no fresh occurrence of order of suspension. Thus, the occurrence of an unfair labour practice of suspension from service of the respondent No.1 contrary to the standing orders had already taken place, therefore, it was necessary for the respondent No.1 to file the complaint within 90 days from the occurrence of unfair labour practice i.e. from 21st October, 1987. As such, complaint filed on 08th January, 1983 without application for condonation of delay was not maintainable. Further the contention of the petitioner was that services of respondent No.1 were terminated. In that case, it was necessary

for respondent no.1 to examine himself to establish that the suspension continued and was not broken by termination of service. Mr. Topkar argues that petitioner has not produced any material whatsoever of termination from service. It is obvious there would be no document relating to the termination, since the claim of the petitioner is of oral termination from the service. If the termination is not supported by the resolution of the Managing Committee that would at the highest be a cause of action for challenging the termination. There is nothing in the evidence of the witness examined by the petitioner to disbelieve his words that service of the respondent No.1 were orally terminated.

12. Mr. Bapat, submits that in view of admission of the guilt by the respondent No.1, there was no need for the petitioner to hold the departmental enquiry into misconduct by respondent No.1.

13. It is thus seen that complaint filed by respondent No.1 was not maintainable, being barred by limitation provided

under Section 28(1) of M.R.T.U. & P.U.L.P, Act. Besides with the termination of service of respondent No1, the order of suspension from service ceased to operate and could not have been the subject matter of challenge. In the above circumstances, the impugned order cannot be sustained. The petition is allowed. Rule is made absolute in terms of prayer clause -(a). Complaint (ULP) No.13 of 1993 is dismissed.

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