

ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1916 OF 2015

Shri Avertino Miranda

.. Petitioner

Vs.

M/s. Business Standard

through Chairman and Managing Director & others .. Respondents

Ms.Jane Cox a/w Mr.Rajmohan Amonkar, Advocates for Petitioner.

Mr.S.R.Nargolkar i/b Mr.Aumkar Joshi, Advocate for Respondents
No.1 to 3.

CORAM : R. G. KETKAR, J.

DATE : 05th March 2015

P.C. :

. Heard Ms.Jane Cox, learned Counsel for the petitioner and
Mr.S.R.Nargolkar, learned Counsel for the respondents No. 1 to 3 at
length.

2. By this petition under Articles 226 & 227 of the Constitution of
India, the petitioner has challenged the judgment and order dated
30/09/2014 passed by the learned Member, Industrial Court, Pune
(for short 'Tribunal') in Complaint (ULP) No. 138 of 2009. By that
order, the Tribunal dismissed the complaint instituted by the
petitioner alleging commission of unfair labour practices by
respondents No.1 to 3 falling under Items 3, 9 & 10 of Schedule IV of
the Maharashtra Recognition of Trade Unions and Prevention of

Unfair Labour Practices Act, 1971 (for short Act'). The relevant and material facts for disposal of this Petition are set out hereinafter.

3. The petitioner, hereinafter referred to as the complainant, was working as a Correspondent in respondent No.1. He was employed with respondents No. 1 to 3 from 1994 and was at the relevant time working as a Principal Correspondent at Pune. By order dated 16/08/2001, the complainant was transferred to Chennai. The order of the transfer was posted on 23/08/2001 and was received by the complainant on 31/08/2001. The complainant instituted the complaint on or about 17/08/2009 challenging the transfer order. By the impugned order, the Tribunal dismissed the complaint.

4. In support of this petition, Ms. Cox has taken me through correspondence exchanged between the parties. She submitted that the complainant was demanding his dues for the period from 1995-96 onwards. She submitted that the dues were initially not admitted by respondents No.1 to 3 and eventually, the dues were paid by letter dated 11/01/2002. She submitted that the complainant, however, was not paid salary from September 2001. In fact, the cheque issued in November was dishonored. She submitted that the correspondence on record and in particular, the letter dated 28/03/2002 clearly shows that the complainant asserted that the

management was bent upon harassing and victimising him through repeated threats of action against him. The decision to transfer him from Pune to Chennai was with malafide intentions only after he insisted through several letters to settle his long pending dues including unpaid salaries. In other words, Ms.Cox submitted that order of transfer was clearly malafide and was passed with a view to harassing and victimising the complainant. She further submitted that since the correspondence was exchanged between the parties, it cannot be said that the complaint was barred by limitation. The Tribunal, however, did not accept the submission advanced on behalf of the complainant that it was continuous cause of action and that it was recurring cause of action. The complainant could have filed complaint at any time. She submitted that the Petition requires consideration.

5. On the other hand, Mr.Nargolkar supported the impugned order. He submitted that the complainant did not allege any malafides in the complaint on the part of the management in transferring him from Pune to Chennai. The complainant also did not dispute the right of the management to transfer the employee. No factual malafides were alleged in the complaint. In other words, complainant did not allege either factual or legal malafides in issuing transfer order dated 16/08/2001. He further submitted that

admittedly, order of transfer was received by the complainant on 31/08/2001. The complainant was paid his dues by letter dated 11/01/2002. He was also paid transfer advance of Rs.15,471/-. Despite that, complainant did not resume duties at Chennai. He was issued charge-sheet on 11/04/2006 for not complying transfer order. Even thereafter, complainant did not file complaint challenging order of transfer. The complaint is filed only on 17/08/2009, which suffers from gross delay and laches. He further submitted that during the pendency of the complaint, the complainant was also dismissed from the services after holding enquiry in October 2010. For all these reasons, he submitted that no case is made out for invoking powers under Articles 226 & 227 of the Constitution of India.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the complainant was appointed vide letter dated 19/11/1994. The appointment letter provides as under :

“You are currently posted at Pune. However, subject to the requirements of the company you may be transferred to any part of India or to any of the publication of the company or to any section of the news department.”

7. Perusal of the clause of the appointment letter clearly shows that subject to the requirements of the company, the employee can be transferred to any part of India or to any of the publication of the

company or to any section of the news department. It is the case of the complainant that he was not paid long pending dues pertaining to the expenditure incurred on Pune editorial operations of Business Standard as also he was not paid some of his allowances. It is his case that he had demanded dues to the tune of Rs.72,925/- by the communication dated 03/12/1999. As against this, it is the case of the management that he was called upon to submit the details and the said details were not furnished by the complainant. Be that as it may. The fact remains that by letter dated 16/08/2001, the complainant was transferred to Channai office with effect from 01/09/2001. It is not in dispute that complainant received this transfer order on 31/08/2001. The complainant was specifically informed by letter dated 01/10/2001 that since he has not reported at Channai by 01/09/2001, company has treated him as absent from duties from that date. The company once again advised him to report for duty at Chennai immediately without further delay. This was followed by letter dated 11/10/2001. By letter dated 19/10/2001, the complainant was specifically advised to report for duties at Channai office and explain the reason for unauthorised absence within 10 days on receipt of that letter, failing which, the management will be constrained to take appropriate disciplinary action against him. This was followed by communication dated 29/10/2001 and company once again advised complainant to report

for duties at Chennai. It is also evident from the material on record that the complainant was paid the amount of Rs.72,295/- claimed by him under various heads on 11/01/2002. He was also paid transfer advance of Rs.15,471/-.

8. On 28/03/2002, the complainant referred letters dated 01/01/2002, 11/01/2002 and 05/03/2002 and asserted that all three letters were sent with malafide intentions so as to cause him maximum financial damage, mental stress and strain for which he reserved his right to claim damages. It was further asserted that the management is bent upon harassing and victimising him through repeated threats of action against him and the decision to transfer him to Chennai was with malafide intention. Thus, though in communication dated 28/03/2002, the complainant alleged that transfer order was with malafide intention, he did not file the complaint challenging the transfer order. At the same time, though he had received his dues in January 2002, he did not resume duties at Chennai on the ground that he was not paid salary from September 2001. As noted earlier, by various communications, the complainant was advised to report for duties at Chennai and that failure on his part to report at Chennai from September 2001, will be treated as absence from duties. In such state of affairs, it was expected from the complainant to resume duties, at least after

receipt of his dues in January 2002 subject to reserving his right to claim salary from September 2001.

9. It is also material to note that this was followed by charge-sheet dated 11/04/2006 on the ground that since the complainant did not resume duties at Chennai, the management was constrained to presume that he was not interested in the employment and on his volition, he has abandoned the services. The charge-sheet was issued for non compliance of transfer order dated 16/08/2001 despite taking money towards transfer expenses. Even thereafter, the complainant did not institute the complaint and only on 17/08/2009, the complaint was instituted. In my opinion, the Tribunal therefore, rightly held that the complaint was hopelessly barred by delay and laches. That apart, perusal of the complaint also does not show that it was challenged on legal and factual malafides. As noted earlier, appointment letter clearly indicates that the management can transfer the services of the complainant in any part of India. Thus, after considering the material on record from any angle, I do not find that the Tribunal committed any error in dismissing the complaint. Accordingly, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)