

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2768 OF 2014

The Sahebrao Deshmukh Co-op. Bank formerly
known as Shramik Sahakari Bank Limited ... Petitioner
Vs.
Pushpa Sapkal ... Respondent

Mr. Sudhir K. Talsania, Senior Advocate a/w. Mr. Vishal Talsania,
Mr. Nishant Vyas and Mr. Shreedhar Poojaray i/b. M/s. Sanjay Udeshi &
Co. for Petitioner.
Mr. R. D. Bhat for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 28, 2015

P.C. :

Heard Mr. Talsania, learned Counsel for petitioner and Mr. Bhat,
learned Counsel for respondent at length. Rule. Mr. Bhat waives
service for respondent. At the request and by consent of the parties,
Rule is made returnable forthwith and the Petition is taken up for final
hearing.

2. By this Petition under Article 226 of the Constitution of India, the
petitioner has challenged the- (i) judgment and order dated 02.04.2009
passed by the learned Judge of the 11th Labour Court, Mumbai thereby
condoning the delay in filing the complaint; (ii) judgment and order
dated 11.02.2011 passed by the learned Member, Industrial Court,
Mumbai dismissing the Revision Application preferred by the petitioner
against the order of the Labour Court condoning the delay; (iii) final
judgment and order dated 30.11.2012 passed by the 7th Labour Court
allowing the complaint and (iv) judgment and order dated 12.08.2014
passed by the learned Member, Industrial Court, Mumbai dismissing the
Revision Application filed against the order dated 30.11.2012.

3. Initially, Labour Court condoned the delay in filing the complaint. The petitioner filed Revision Application before the Industrial Court. The Industrial Court set aside the order and remitted the matter to the Labour Court for considering the application for condonation of delay afresh. After remand, Labour Court condoned the delay by order dated 02.04.2009. Aggrieved by that decision, petitioner preferred Revision Application (ULP) No.93 of 2009. That was dismissed by the Industrial Court on 11.02.2011. Aggrieved by these orders, petitioner instituted Writ Petition No.1410 of 2011. By consent of the parties, Petition was disposed of on 08.08.2011. It was made clear that the petitioner herein shall, at the time of impugning the final order passed by the Labour Court in Complaint (ULP) No.596 of 2002 i.e. if the said order is in favour of the respondent-complainant, be entitled to raise the issue pertaining to delay in filing the complaint.

4. The Labour Court finally allowed the complaint on 30.11.2012. Aggrieved by that decision, petitioner filed Revision Application before the Industrial Court. Mr. Talsania invited my attention to paragraph 24 of the Industrial Court's order dated 12.08.2014 and submitted that after recording findings in paragraph 24 to the effect that it is difficult to comprehend about reasoning given by the Labour Court Judge while answering issues No.1 and 2 in the affirmative and in favour of the respondent, the Industrial Court ought to have set aside the order of the Labour Court and directed the Labour Court to decide the complaint afresh. Despite that, Industrial Court proceeded to re-appreciate the evidence and held that the resignation was forced resignation and it was not voluntarily tendered by the respondent on 15.07.1999. Having regard to the width and magnitude of the power and scope of revision under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act'), the

Industrial Court ought to have remitted the matter to the Labour Court.

5. On the other hand, Mr. Bhat supported the impugned order and submitted that the Industrial Court was justified in partly allowing the Revision Application and setting aside the findings recorded by the Labour Court qua issue No.8 and remitting the case to the Labour Court for answering issue of unfair labour practice only within the meaning of Item 1(b) of Schedule IV of the Act.

6. After arguing the Petition for some time, Mr. Bhat submitted that the respondent has no objection for setting aside the orders dated 30.11.2012 and 12.08.2014 passed by the Labour Court and Industrial Court respectively and for restoration of the complaint for deciding it in a time bound manner. He submitted that the Labour Court may be directed to decide the complaint within 1 month from the date of appearance of the parties.

7. In view thereof, by consent of the parties, Petition is disposed of in the following terms:

- a. Impugned orders dated 30.11.2012 passed by the Labour Court and 12.08.2014 passed by the Industrial Court are set aside and the Complaint (ULP) No.596 of 2002 is restored to the file of the Labour Court;
- b. The parties agree that they will appear before the Labour Court on 09.02.2015 and for that, fresh notice need not be issued to them;
- c. The learned Judge of the Labour Court is requested to decide the complaint on the basis of the evidence already on record, as expeditiously as possible, and in any case, within 3 months from the date of appearance of the parties;

- d. All the contentions of the parties on merits are expressly kept open;
- e. Liberty is reserved to the petitioner to raise the issue pertaining to delay in filing the complaint in case the complaint is decided in favour of the respondent;
- f. Rule is made absolute accordingly in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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