

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2006 OF 1997

M/s Mahaveer Paper Products Ltd.,
MIDC Area, Station Road, Aurangabad
through its Managing Director
Ravindra Khivraj Gadiya, age 38 years,
Occupation Business, R/o Aurangabad. ..Petitioner

Versus

1. The State of Maharashtra

2. Shamrao Janoji Sarkate
Age major, Occ. Labour
R/o Ambedkar Nagar, Cidco,
Aurangabad.

3. Damodhar Shripat Sathe,
Age major, Occ. Labour
R/o Ambedkar Nagar, Cidco,
Aurangabad.

4. Anil Laxmanrao Kulkarni,
Age major, Occ. Labour
R/o Savita General Stores,
Opp. SRT No.52, Harsh Nagar,
Labour Colony, Aurangabad. ..Respondents

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Advocate for Petitioner : Shri P.S.Shinde
h/f Shri S.G. Shinde
AGP for Respondent 1 : Shri S.N.Kendre
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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 28, 2016
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ORAL JUDGMENT:-

1. The petitioner is aggrieved by the order dated 13.2.1997,
passed by the Industrial Court, Ahmednagar in Misc. Application (ULP)

Nos. 30, 31 and 32 of 1996.

2. This Court while admitting the petition on 4.9.1997, refused interim relief to the petitioner.

3. The learned Advocates for the petitioner have strenuously criticized the impugned order. Contention is that the Court, which delivers a judgment, ex-parte, has the inherent power to recall or review its judgment. Merely because the application for recalling the order was not filed within 30 days from the date of the judgment, would not mean that the Industrial Court has no jurisdiction to review its own order. It is further submitted that since this petition has been admitted, the petitioner desires that the issues raised in this petition be decided on their own merits. My attention is drawn to the nine grounds set out by the petitioner below paragraph No.11 to support the contention that the delay of 748 days could have been condoned and the Industrial Court could have reviewed its own judgment.

4. I have considered the strenuous submissions of the learned Advocates for the petitioner and have gone through the petition paper book with their assistance. Learned AGP has appeared on behalf of respondent No.1, who is a formal party. None has appeared for respondents 2 to 4 employees, who are the original complainants

before the Industrial Court.

5. I find from the record, that the petitioner, which is an industrial establishment, was duly served with Court notice in the three complaints before the Industrial Court. It is observed in paragraph No.3 of the judgment of the Industrial Court dated 14.10.1994 that the management appeared through an authority and subsequently failed to file its written statement and neither cross-examined the workers nor led evidence. The issue before the Industrial Court was with regard to the applicability of the Industrial Employment (Standing Orders) Act, 1946. The Industrial Court came to a conclusion that the original complainants are entitled for work and wages in accordance with their service conditions.

6. The petitioner / management is aggrieved by the refusal of the Industrial Court to review its ex-parte judgment. It is settled law that after the Labour or Industrial Court decides a complaint on merits, there can be no review. So also, the proviso below Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act"), only permits an interim order to be reviewed.

7. This Court, in the matter of Dilip Vithalrao Jogdand Vs. Vaidyanath Urban Cooperative Bank Ltd. Beed [2007 (114) FLR 182],

by placing reliance upon the order of the Appeal Bench in LPA No.3 of 2004 has concluded that, where a complaint has been dismissed in default, after the expiry of 30 days from the date of the order, the Industrial Court cannot entertain an application for restoration in the light of there being no power to condone the delay.

8. Be that as it may, it appears from the impugned order dated 13.2.1997 that the petitioner herein did not put forth any proper reason for having not participated in the three complaints, which were filed in 1989 and which were decided on 14.10.1994, after period of about five years. So also, the grievance of the petitioner was considered by the Industrial Court, though it was dealing with the Misc. Application for condonation of delay in an application for review / recalling of it's judgment.

9. Learned Advocate prayed that if this petition is being disposed off, liberty may be granted to challenge the judgment dated 14.10.1994 by filing a proper Writ Petition in this Court. Normally, if a wrong proceeding is initiated, the time spent in such proceedings are to be taken into account, while condoning delay. In the instant case, however, I am not inclined to grant this liberty to the petitioner for the reason that the three respondent / employees have settled in employment considering the judgment of the Industrial Court delivered 22 years ago. All of them are aged, considering the

affidavit in reply filed by the employee in this petition, which indicates that respondent 2 was 37 years in June 1997, respondent 3 was 53 years in June 1997 and respondent 4 was 37 years as in June 1997. Respondent No.3, therefore, must have retired by now and respondents 2 and 4 must be about 56 years' old. It would be harsh and impracticable to permit the petitioner to reverse the clock by 27 years and take the respondents back to their three complaints of 1989 to start a rehearing in the matter. Considering these irreparable hardships and manifest inconvenience, I am not granting any liberty to the petitioner to reopen the issue.

10. This petition being devoid of merits is, therefore, dismissed.
Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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