

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 3421 OF 2015

Keshav s/o Sopan Ghogre,
Age: 57 years, Occu: Service,
R/o. Upala (M), Tq. & Dist. Osmanabad.

... **PETITIONER**

VERSUS

1. The President,
Osmanabad Dist. Postal Karmachari
Pat Sanstha, Parmar Building,
Sawarkar Chowk, Osmanabad,
Tq. & Dist. Osmanabad.

2 The Secretary,
Osmanabad Dist. Postal Karmachari
Pat Sanstha, Parmar Building,
Sawarkar Chowk, Osmanabad,
Tq. & Dist. Osmanabad.

3 Shri B. H. Sawtar,
(Sahakari Adhikari Shreeni-1
Sallaghana Sahayyak Nibandhak,
Shakari Sanstha, Tq. Osmanabad)
and Adminstrator,
Osmanabad Dist. Postal Karmachari
Pat Sanstha, Parmar Building,
Sawarkar Chowk, Osmanabad,
Tq. & Dist. Osmanabad.

... **RESPONDENTS**

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Mr. S. B. Bhosale, Advocate for Petitioner.

Mr. V. V. Ingle, Advocate for Respondent Nos.1 and 2.

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CORAM : **P. R. BORA, J.**

DATE : 28th June, 2016.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties, the matter is taken up for final disposal.

2 The Petitioner has invoked jurisdiction of this Court by taking exception to the order passed by the Industrial Court in Miscellaneous (ULP) No.1 of 2013. The learned Industrial Court has rejected the said application. Vide the said application, the Petitioner had sought condonation of delay, which has caused in filing a revision application by him against the order passed by the Labour Court, Latur on 7th October, 2011 in Complaint (ULP) No.41 of 2006.

3 The present Petitioner had initially filed a complaint before the Labour Court and the same was dismissed on 6th March, 2010. Against the said decision, the Petitioner had filed a revision before the Industrial Court bearing Revision (ULP) No.14 of 2010 and the same was allowed by the Industrial Court, Latur vide its order dated 10th August, 2010. The Industrial Court had granted back-wages to the

extent of 25% only. The decision of the Industrial Court in Revision No.14 of 2010 was challenged by the present Petitioner as well as the present Respondent by filing writ petitions before this Court. Writ Petition No.9280 of 2010 was filed by the present Respondent, which was disposed of by this Court vide order passed on 23rd March, 2011 whereby the matter was remanded to Labour Court, Latur and a fresh hearing was directed. Writ Petition No.6713 of 2011, which was filed by the present Petitioner was disposed of by this Court on 25th October, 2012. In the meanwhile, the Labour Court had finally decided the complaint presented by the present Petitioner on 7th October, 2011. The Labour Court allowed the complaint filed by the Petitioner and directed his reinstatement with continuity of service, however, without back-wages. While disposing of the writ petition, this Court had, therefore, granted liberty to the present Petitioner to challenge the said order by filing a revision application before the Industrial Court. Said order reads thus:

“1. Writ Petition (6713/2011) is disposed of reserving liberty in favour of the petitioner to file revision under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, before the Industrial

Court against the judgment and order dated 7.10.2011 in Complaint (ULP) No.41 of 2006, passed by the Labour Court, Latur.

Civil Application (No.7713/2012) also stands disposed of.

No order as to costs.

2. The learned Counsel states that the revision shall be filed within a period of one month from today. After filing of the revision, in view of the retirement of the petitioner, the Industrial Court shall endeavour to decide the said revision within a period of six months from the date of filing of the revision, since the matter relates to the year 2006. Considering pendency of this Writ Petition, the Industrial Court may sympathetically consider the issue of limitation.”

4 As per the liberty granted by this Court, the Petitioner approached the Industrial Court, Latur, however, belatedly and since the delay has occasioned in approaching the Court, filed an application Miscellaneous (ULP) No.1 of 2013 seeking condonation of delay, which has caused in filing the revision application before the said Court. After hearing of the said application, the Industrial Court rejected the said application and the said order is impugned in the present petition.

5 The learned counsel for the Petitioner submitted that there were genuine reasons because of which the Petitioner was prevented from approaching the Court within the time given by this Court for approaching the Industrial Court. The learned counsel submitted that since the Petitioner was required to be hospitalized, he could not file the revision application within time. The learned counsel submitted that since the Petitioner was represented before the Industrial Court by a labour representative and not by a lawyer, the procedural lapses had occurred and for want of such compliance, the Industrial Court has refused to allow the application so filed by the Petitioner.

6 Shri Ingle, learned counsel for Respondent has opposed the submissions advanced on behalf of the Petitioner. The learned counsel submitted that despite several opportunities the objections were not removed and as such, there was no alternative before the Industrial Court except to dismiss his application. The learned counsel further submitted that in view of the order passed by this Court stipulating the time limit of one month for filing the revision before the Industrial Court, the Industrial Court was right in stating

that time stipulated by the High Court could not have been extended by the Industrial Court. The learned counsel submitted that, if at all, the Petitioner was to get extended the time, he ought to have approached this Court and the Industrial Court was not empowered to extend the period, which was stipulated by the High Court. The learned counsel therefore, prayed for dismissal of the writ petition.

7 I have gone through the impugned order. It reveals that the learned Industrial Court has rejected the application seeking condonation of delay filed by the present Petitioner on the ground that the Petitioner did not file alongwith application for condonation of delay, copy of revision memo as well as the certified copy of the order passed by the Labour Court against which the revision was intended to be filed by the Petitioner. There is also a reference in the impugned judgment that when the time limit was fixed by the High Court vide order passed on 23rd March, 2011, it was not within the competence of the said Court to condone the delay.

8 After having considered the arguments advanced by the learned counsel for the respective parties and on perusal of the material on record, it appears that all the three grounds on which the

Industrial Court has refused to condone the delay occasioned in filing the revision application by the Petitioner, are technical grounds. The learned counsel for the Petitioner has undertaken before this Court that all these objections will be removed and the compliances as are suggested will be made by the Petitioner, but his petition may be heard on merits by directing the Industrial Court to consider his application for condonation of delay on its own merits. Though it is true that in the order passed on 23rd March, 2011, while disposing of Writ Petition No.6713 of 2011, liberty was given to the present Petitioner to approach the Industrial Court within a month, if the said order read as a whole, shows that it was the statement made by the learned counsel appearing for the Petitioner that within a month the Petitioner will file an application before the Industrial Court. However, in the meanwhile, as has been submitted in the petition, the Petitioner got ill and was required to be hospitalized and that was the reason he could not approach the Court within the stipulated period. In such circumstances, it appears to me that merely because some delay has occurred and that some procedural compliances remained to be made, the right of the Petitioner to agitate his dispute on merit cannot be denied. In view of the undertaking given by the learned counsel

for the Petitioner that all compliances will be made, I deem it appropriate to pass the following order :

ORDER

- I. The Writ Petition is allowed.
- II. The order passed by the Industrial Court in Miscellaneous (ULP) No.1 of 2013 stands quashed and set aside and Miscellaneous (ULP) No.1 of 2013 stands restored to the file of the Industrial Court, Latur.
- III. Industrial Court shall allow the Petitioner to file on record memo of revision and the certified copy of the order passed by the Labour Court within two weeks whereupon the Industrial Court shall hear the parties and decide the application on merits.
- IV. Time granted by this Court of one month to the Petitioner for approaching the Industrial Court shall stand extended by virtue of this order.

V. The Petitioner shall pay costs of Rs.2,000/-
(Rupees Two Thousand only) to the Respondent.

VI. Rule made absolute in above terms.

[P. R. BORA, J.]

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