

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10134 OF 2016

Damu s/o Maharu Marathe,
Age : 63 years, Occupation : Retired,
R/o Plot No.7, Sudarshan Colony,
Khedi, Nashirabad Road,
Tq. and Dist.Jalgaon.

...PETITIONER

-VERSUS-

Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division, Jalgaon,
District Jalgaon.

...RESPONDENT

...
Advocate for Petitioner : Shri Patil Sandesh R.
Advocate for Respondent : Shri Manoj Shinde h/f Shri M.K.Goyanka.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th October, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the order dated 01.12.2015
delivered by the Industrial Court, Jalgaon by which Miscellaneous

Application (ULP) No.6/2014 filed by the Petitioner seeking condonation of delay of 39 months, has been rejected.

3 The Petitioner submits that the ULP complaint has been filed by the Petitioner after it was noticed that the difference in the wages payable to a Chargeman in comparison to an Artisan, has not been paid to the Petitioner. He was temporarily working as a Chargeman from 01.10.1985 till 09.01.1994. From 10.01.1994, he was appointed as a Chargeman by way of promotion on regular basis and he superannuated on 31.05.2010. The wages payable to a Chargeman are admissible under various agreements and circulars of the MSRTC.

4 He submits that Complaint (ULP) No.25/2010 was filed on 04.03.2009 before the Industrial Court seeking the difference in the pay scale. The said complaint was dismissed in default on 01.03.2011. An application for restoration of the said complaint by way of Miscellaneous Application (ULP) No.6/2014 was filed. It is admitted that there was delay of 39 months. It is further submitted that the Petitioner was held up in his family affairs on account of serious illness suffered by his wife. He was attending to her and she was under medical treatment which kept the Petitioner engaged. The Petitioner does not gain any advantage by neglecting his own case. No laches have been attributed to his conduct.

Yet, the Industrial Court has taken a technical view and has rejected the application by order dated 01.12.2015.

5 The learned Advocate for the Respondent/ MSRTC submits that there is no provision under the Industrial Courts Regulations, 1975 for seeking restoration of the dismissed complaint for non prosecution, after 30 days. The application filed by the Petitioner, therefore, could not have been entertained by the Industrial Court. He further submits that on account of the delay caused in seeking restoration, in the event, the Petitioner succeeds in his ULP complaint, there is possibility that he would pray for interest on the unpaid amount and there is every possibility that the Court may also grant such interest. He, therefore, submits that the Petitioner would derive advantage on account of his own conduct. He further submits that the Petitioner has been paid all retiral benefits pursuant to his retirement.

6 I have considered the submissions of the learned Advocates.

7 Insofar as the jurisdiction of the Labour or Industrial Court in entertaining an application seeking restoration of a complaint dismissed in default is concerned, the same has been considered by the learned Division Bench of this Court in Letters Patent Appeal No.3/2004 (*Rangrao*

Fakiraji Chandekar vs. Regional Manager, Maharashtra Agro Industries Development Corporation) decided on 05.01.2004. The order passed by the learned Division Bench has been considered by the learned Single Judge of this Court in the judgment delivered in the case of *Dilip Vithalrao Jogdand vs. Vaidyanath Urban Cooperative Bank Ltd.*, **2007 II CLR 78**. As such, the application filed by the Petitioner seeking restoration of his complaint dismissed in default, after 30 days of the dismissal, could not have been entertained by the Industrial Court.

8 It cannot be ignored that the Petitioner had filed Complaint (ULP) No.25/2010. It also cannot be ignored that he gains no advantage by neglecting his own case which has resulted in the dismissal of his complaint. In fact, he has suffered grave loss on account of the dismissal of his complaint. No laches have been attributed to his conduct.

9 In the light of the above, I find that this petition can be allowed by depriving the Petitioner of interest in the event his complaint is allowed, from the date of the dismissal till the date of passing of this order.

10 Shri Patil submits, on instructions, that the Petitioner is

agreeable to waive the interest on the amount claimed, in the event his complaint is allowed, from the date of the dismissal of his complaint till the restoration by an order of this Court.

11 In the light of the above, this Writ Petition is partly allowed. The impugned order dated 01.12.2015 is quashed and set aside. Miscellaneous Application (ULP) No.6/2014 is allowed and Complaint (ULP) No.25/2010 is restored to the file of the Industrial Court.

12 The Industrial Court shall note that in the event the said ULP complaint is allowed, the Petitioner shall not be entitled for any interest from 01.03.2011 till the date of this order. It be further noted that this Court has not dealt with the merits of the complaint and the Industrial Court shall decide the same on it's own merits.

13 Rule is made partly absolute in the above terms.