

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

REVIEW APPLICATION NO.134 OF 2015
IN
WRIT PETITION NO.704 OF 2014

1. Sayaji s/o Mahadu Gavhane,
Age 45 years, Occu. Nil,
R/o Anjanapur, Taluka Kopargaon,
District Ahmednagar
2. Suresh s/o Pundalik Sonone,
Age 44 years, Occu. Nil
R/o Bharadi, Taluka Sillod,
District Ahmednagar
3. Suresh s/o Gobra Chavhan,
Age 42 years, Occu. Nil
R/o C/o SB Jadhav, Plot No.42,
in front of Supreme Colony,
Jalgaon
4. Raju s/o Machindra Thokal,
Age 38 years, Occu. Nil
R/o Saukheda, Taluka Gangapur,
District Aurnagabad
5. Haridas s/o Eknath Shinde,
Age 42 years, Occu. Nil
R/o Dhotra Bhangoji,
Taluka Chikhali, Dist. Buldhana .. Applicants

Versus

- . M/s Bajaj Auto Limited,
Waluj, Aurnagabad .. Respondent

Mr N.S. Tekale, Advocats for applicants
Mr S.V. Dankh, Advocate for respondent

CORAM : N.W. SAMBRE, J.

**DATE OF RESERVING
THE ORDER : 5th February 2016**

**DATE OF PRONOUNCING
THE ORDER : 16th March 2016**

ORDER

1. By the present review application, the applicants-employees are seeking review of the order dated 30th January 2015 passed by this Court dismissing the Writ Petition No.704 of 2014, filed by the applicants.

2. The facts as are necessary for deciding the present review application are as under :

3. The applicants herein claimed to be employees of respondent and according to them there exists employer-employee relationship.

4. Based on the said relationship, the applicants filed Complaint (ULP) No.140/1999 before the learned Industrial Court, Aurangabad under Sections 28 and 26 read with Item 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act.

5. The said complaint came to be dismissed for want of prosecution on 21st August 2004 by the Member, Industrial Court, Aurangabad. The cause for dismissal was, the lawyer of the applicants - employees remained absence, as he had joined judiciary.

6. The applicants after coming to know about dismissal of the complaint, moved an application for issuance of certified copy of the said order on 28th September 2004. The applicants received the certified copy on 29th September 2004 and they filed the application

for restoration of the complaint (ULP) 140/1999 on the same date i.e. 29th September 2004.

7. The application – Miscellaneous ULP No.53/2004 in Complaint (ULP) No.140/1999, for restoration was heard and dismissed by the learned Member, Industrial Court, Aurangabad on 19th January 2011 on the ground that the present applicants are negligent in prosecuting their remedies and were terminated way back in January 1999. According to learned Industrial Court, the order of termination is not questioned.

8. This Court, by order dated 30th January 2015, which is under review, having regard to the law laid down by this Court in the matter of **Sudarshan Steel Manufacturing Co. Vs. Mumbai Labour Union and another**, reported in **(2004) iii LLJ 704 Bom.** was pleased to dismiss the petition on the ground that the petitioners have not challenged their order of termination and hence, the learned Industrial Court was right in rejecting their application for restoration.

9. Mr Tekale, learned Counsel for the applicants, while trying to make out the grounds, seeking review of the order, made following submissions:

10. According to him, the fact as regards the lawyer of the applicants had joined judiciary was not disputed by the employer and as such, there was genuine ground for non-appearance on the date of dismissal of the complaint for default. He would then submit that the

restoration application was filed at the earlier, as is apparent from the following dates :

- 1) Date of dismissal of complaint ... 21st August 2004
- 2) Date of application for Certified
Copy of the order ... 28th September 2004
- 3) Date of filing of application for
restoration ... 29th September 2004

11. Mr Tekale then would urge that similarly placed employees like present applicants were already benefited by the orders of the Apex Court passed in various Special Leave Petitions. Amongst them are Civil Appeal Nos.2159-2160 of 2012, which were decided by the Apex Court in favour of the employees. He would then urge that in a similar set of facts, this Court, in another Writ Petition bearing No.7756 of 2009, by oral judgment dated 29th September 2010, has set aside the order of dismissal, though the delay for moving application for restoration in the said matter was much more than the one caused in the present case. He would submit that the said judgment since was not within the knowledge of the present applicants on the date of decision and since was in respect of similarly placed employees, the present applicants are entitled for similar relief.

12. The next submission of Mr Tekale is that even if the termination order is not questioned, the repercussion of such failure on the part of

the applicants ought to have been taken into account and could have been dealt with on merit by the Industrial Court, while dismissing the complaint (ULP).

13. Mr Dankh, learned Counsel for the respondent-employer would strenuously urge that the present review application is not maintainable, as the grounds that are sought to be canvassed were not raised in Writ Petition, when the petition was dismissed. He would then submit that the law, as holds the field governing the issues, which are raised herein above, are answered by catena of judgments against the applicants, particularly entitlement of employees for relief in case they have not questioned their termination. According to him, even if the complaint is permitted to be restored, still the fact remains that the termination effected in 1999 is not questioned by the applicants till date.

14. Having bestowed my anxious thoughts to the submissions made, it is not in dispute that in similar set of facts between the same employer and similarly placed employees, this Court while allowing the Writ Petition No.7756 of 2009 has considered the object and statute under which the application for restoration was made before the learned Industrial Court. Mr Tekale, learned Counsel for the applicants, in my opinion, is right in pointing out that the delay caused in moving restoration application in the said petition was very much more than the one caused in the facts of the present case. It is further required to be noted that the issue that was required to be

adjudicated was whether the case for restoration and condonation of delay before the learned Industrial Court was made out or not and whether the Industrial Court was right in refusing the relief of restoration. In my opinion, even if the case of the respondent-employer is that of termination, the repercussion of such termination or the claim of the present applicants – employees and the fact that the applicants herein have made out strong case for restoration, particularly in the background of the reasons cited for absence of their lawyer, before the learned Industrial Court warrants invoking jurisdiction of review vested in this Court.

15. For the aforesaid reasons, in my opinion, it will be appropriate to set aside the order passed by this Court dismissing the Writ Petition by order dated 30th January 2015.

16. As such, the order dated 30th January 2015 passed by this Court, in Writ Petition No.704 of 2014 is hereby set aside and the Writ Petition No.704 of 2014 is restored to the file.

17. It is clarified that this Court has not gone into or dealt with the merits of the matter.

18. The review application as such stands allowed in above terms.

(N.W. SAMBRE, J.)

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