

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

WRIT PETITION NO.10789 of 2014

1. Maharashtra State Road Transport Corporation,
Through its Divisional Controller,
MSRTC, Jalna,
Tq. & Dist. Jalna.
2. The Divisional Traffic Officer,
Maharashtra State Road Transport Corporation,
Jalna, Tq. and Dist. Jalna.

...PETITIONER

VERSUS

Shri Tulshiram s/o Dhondiram Pawar,
Age 43 years, Occu: Service,
R/o. Changale Nagar, Ambad,
Tq. Ambad, Dist. Jalna.

...RESPONDENTS

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Shri D.S.Bagul, Advocate for the petitioner.

Shri G.K.Salvi, Advocate for respondent / sole.

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CORAM: P.R.BORA, J.

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Date of reserving the judgment: 8/6/2016

Date of pronouncing the judgment:15/06/2016

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JUDGMENT:

1. Heard. Rule. Rule made returnable forthwith. With the consent of learned Counsel appearing for the parties, the matter is heard finally.

2. This Writ Petition has been preferred against the order passed by the Member, Industrial Court, Jalna, in Miscellaneous (ULP) No.01/2012, on 15.4.2014, whereby the Industrial Court has condoned the delay caused in filing a complaint of unfair labour practice by the present respondent against the present petitioners.

3. The question to be determined in the present petition is: "can a pendency of a criminal case against an employee and his consequent acquittal therefrom be accepted as good and sufficient cause so as to condone the delay occurred in filing a complaint by the said employee against the punishment imposed on him in the departmental proceedings held against him based on the same incident which had given rise for institution of a criminal prosecution against him."

4. Respondent was working as a Driver at the State Transport Depot at Ambad in Jalna Division. On 5/10/2014 an accident had occurred to the State Transport Bus, which was being driven by the respondent. The said accident had resulted in causing death of two persons and injuries to some other persons. The State Transport Bus, being driven by the respondent, was alleged to have given dash to a Rickshaw. Some damage was also alleged to have been caused to the S.T. Bus. Based on the said instance of accident, Departmental proceedings were initiated against the respondent, wherein he was held guilty for the charges levelled against him in the said enquiry, and by way of punishment, his three increments were permanently stopped. The order of imposing punishment in the Departmental Enquiry was passed on 5.10.2006.

5. In connection with the road accident happened on 5.10.2004, a criminal case was also registered against the respondent for offenses punishable under Sections 279, 337, 338, 304A and 427 of the I.P.C. as well as under Section 184 of the Motor Vehicles Act, 1988, in the Court

of Judicial Magistrate, First Class, Yeola. The trial was held in the said criminal case and vide judgment delivered by the Judicial Magistrate, First Class, Yeola, on 23rd February, 2011, respondent was acquitted of all the charges levelled against him.

6. After being acquitted by the Court the petitioner, on 20th August, 2011, submitted an application to the competent officer of the M.S.R.T.C. at Jalna, informing that he has been acquitted from the criminal case registered against him in connection with the accident happened on 5.10.2004 and further prayed for setting aside the punishment imposed on him in the Departmental proceedings based on the said incident. According to the respondent, since his request was not considered, he submitted an application on 19th January, 2012, to the Divisional Controller, M.S.R.T.C., Jalna, and prayed for setting aside the punishment imposed on him, and to pay him the difference in the wages because of stoppage of the increments.

7. As per the further contention of the respondent, since his requests were not considered by the officers of

the M.S.R.T.C., he was constrained to approach the Industrial Court at Jalna, by filing a complaint of unfair labour practice under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as MRTU & PULP Act). Since delay had occasioned in filing the complaint within the stipulated period, the respondent filed an application seeking condonation of the delay, which was caused in preferring the complaint of unfair labour practice. The said application was registered as Miscellaneous ULP No.1/2012. As stated in the said application, the delay of 5 years and 22 days' was caused in filing the complaint. Pendency of the criminal case has been stated to be the only reason for not filing the complaint within the period of limitation. The application so filed by the respondent was vehemently opposed by the petitioners. A detailed say was filed by the petitioners to the said application raising an objection that pendency of a criminal case, and acquittal of the respondent from the said criminal case, cannot be a ground for condoning the huge delay of more than five years. The learned Industrial Court, however, condoned the delay caused in

filing the complaint by the respondent, vide order dated 15.4.2014, which has been impugned in the present petition.

8. Shri D.S.Bagul, learned Counsel appearing for the petitioners, submitted that the impugned order is against the settled principles of law, and hence deserves to be quashed and set aside. Learned Counsel reiterated the contentions raised in the petition, as well as in the say which was filed by the petitioners to the delay condonation application, before the Industrial Court that, pendency of, and acquittal in the criminal case, cannot be a ground, or sufficient cause, for condonation of delay. Shri Bagul further submitted that the respondent has failed in explaining the delay, which was caused in making a representation by him, and thereafter, in filing a complaint by him in the Industrial Court. Learned Counsel submitted that though the judgment in the criminal case was delivered on 23rd February, 2011, the respondent for the first time approached the competent officer of the M.S.R.T.C. at Jalna by filing an application to him on 21st August, 2011, i.e. after the period of more than six

months. Learned Counsel submitted that the said delay has not at all been explained by the respondent. Learned Counsel further submitted that the respondent filed a complaint before the Industrial Court on 7th February, 2012. The delay, which has been caused in preferring the complaint, after filing of the applications dated 28.10.2011 and 19.1.2012, has also not been explained by the respondent. Learned Counsel further submitted that the learned Industrial Court has failed in appreciating the judgments relied upon by the petitioners.

9. Shri G.K.Salvi, learned Counsel appearing for the respondents, supported the impugned judgment. Learned Counsel submitted that once the Court below has accepted the explanation given by the present respondent as sufficient, this Court may not disturb the said finding. To substantiate the said contention, the learned Counsel relied upon the judgment of the Honourable Apex Court in the case of N. Balakrishnan vs M. Krishnamurthy (AIR 1988 SUPREME COURT 3222).

10. I have carefully considered the submissions advanced by the learned Counsel appearing

for the respective parties. I have perused the impugned judgment as well as the other material placed on record. Section 5 of the Limitation Act provides that an appeal or an application may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. There cannot be any duality of opinion that the words "sufficient cause" in Section 5 should receive a liberal construction so as to advance substantial justice, nevertheless, as held by this Court in Sow Kamalabai, W/o Narasaiyya Shrimal and Narsaiyya, S/o Sayanna Shrimal Vs. Ganpat Vithalroa Gavare (2007 (1) Mh. LJ 807) the expression "sufficient cause" cannot be erased from Section 5 of the Limitation Act, 1963, by adopting excessive liberal approach which would defeat the very purpose of Section 5. There must be some cause, which must be termed as sufficient one, for the purpose of delay condonation.

11. In the instant matter, the respondent had sought condonation of delay of the period of more than five years on the sole ground that a criminal case was

pending against him and he was awaiting the decision thereof for the reason that the departmental proceedings were initiated against him and he was held guilty in the said proceedings on the basis of the same incident giving rise for institution of a criminal case against him.

12. The question is: can a pendency of a criminal case, and consequent acquittal of the respondent therefrom, be accepted as good and sufficient reason to condone the delay which has occurred in filing a complaint by him against the punishment imposed on him in the form of withholding three increments in the departmental proceedings held against him based on the same incident which had given rise for filing of a criminal case against him.

13. The Industrial Court has held the said cause to be good and sufficient for condoning the delay and has accordingly condoned the delay. As has been submitted by the learned Counsel appearing for the respondent, once the Industrial Court has accepted the explanation as sufficient, this Court shall not disturb the said finding. In support of his said contention, learned Counsel has placed

reliance on the judgment of the Honourable Apex Court in the case of N. Balakrishnan (cited supra). I have carefully perused the entire text of the aforesaid judgment. In the said matter, delay of 883 days had occurred in filing the application by the appellant for setting aside ex parte decree. The said delay was caused due to failure of the Advocate of the appellant in the said matter to inform the appellant as well as his failure to take appropriate action. The reason so stated was found to be satisfactory by the trial Court and hence the delay was condoned by the trial Court. However, the Madras High Court in its revisional jurisdiction set aside the order passed by the trial Court whereupon the appellant approached the Honourable Apex Court and the Honourable Apex Court set aside the order of the High Court and restored the order passed by the trial Court. The Apex Court, in paragraph No.9 of the aforesaid judgment has observed thus:

" It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable

explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower court."

14. If the observations made by the Honourable Apex Court as aforesaid are carefully perused, what has been said by the Apex Court is that, "normally, (emphasis supplied) the superior Court should not disturb the finding recorded by the trial Court." Before making such observation, the Apex Court has categorically said that the length of delay is no matter, acceptability of the explanation is the only criteria. The Court has further observed that some times delay of shortest range may be uncondonable due to want of acceptable explanation whereas, in other cases, delay of very long range can be condoned as the explanation thereof is satisfactory. Thus, the question of delay condonation would depend upon the peculiar fact situation of each case.

15. In so far as the facts involved in the instant case are concerned, the only ground put forth by the respondent for occurrence of delay of five years in filing the complaint by him is that a criminal case was pending against him, and he was awaiting the decision thereof for the reason that the departmental proceedings were initiated against him and he was held guilty in the said proceedings on the basis of the same incident.

16. It has to be, therefore, examined whether the aforesaid cause can be accepted to be a sufficient cause for condoning the delay which has occurred in filing the complaint by the respondent.

17. It is the contention of the learned Counsel for the respondent that the criminal Court has acquitted the respondent and, therefore, he has every right to challenge the punishment imposed on him in the departmental proceedings instituted on account of the same incident, and to get set aside the said punishment. The submission so made is apparently un-acceptable. It is well settled that the principles underlying the appreciation of the evidence adduced, in a criminal case, are not strictly

applicable to the departmental proceedings. In the circumstances, acquittal from criminal case cannot be a ground for challenging the findings recorded in the enquiry proceedings, and the consequent punishment imposed in the said proceedings. Consideration of the punishment imposed in a departmental proceeding would only arise if the punishment is based on conviction by the criminal Court and the said conviction gets set aside by the appellate Court. Where enquiry is independent of the criminal proceedings, acquittal in a criminal Court is of no help. Acquittal of a person by a Criminal Court would not have any impact on the disciplinary proceedings already concluded by the Department. The Honourable Apex Court, in paragraph no.11 of its judgment, in the case of Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G.Vittal Rao ((2012) 1 SCC 442), has observed thus:

"11. The question of considering reinstatement after decision of acquittal or discharge by a competent criminal Court arises only and only if the dismissal from services was based on conviction by the criminal Court in view of the provisions of Article 311 (2)(b) [sic Article 311(2) second proviso (a)]* of the Constitution of India, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the

criminal proceedings, acquittal in a criminal Court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal Court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied. "

[* Ed.: Article 311(2) second proviso (a) reads as follows: [Art.311(2) shall not apply - (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge."]

18. In Nelson Motis Vs. Union of India (1992 4 SCC 711), the Honourable Supreme Court has held that,

" The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding".

19. It is further a settled position of law that acquittal in a criminal case cannot be held to be a bar to hold the departmental enquiry for the same misconduct for the reason that in a criminal trial, standard of proof is different as the case is to be proved beyond reasonable doubt whereas in the departmental proceeding, such a

strict proof of misconduct may not be required. Acquittal of an employee cannot be construed as a clear exoneration of the said employee for the allegations levelled and proved against him in the departmental proceedings. As held by the Honourable Apex Court in State Bank Of India & Ors vs R.B. Sharma ((2004) 7 SCC 27), The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service.

20. The three Judge Bench of the Honourable Apex Court in Ajit Kumar Nag. Vs. Indian Oil Corpn. Ltd. ((2005) 7 SCC 764) in paragraph No.11 has observed thus:

"11. In our judgment, the law is fairly well settled. Acquittal by a criminal Court would not debar an employer from exercising power in accordance with the Rules and

Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a Court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability."

Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings i.e. the criminal prosecution and departmental proceedings is quite different, acquittal of the employee in a criminal case cannot be the basis for taking away the effect of departmental proceedings.

21. In view of the aforesaid legal principles enunciated and reiterated above, pendency of a criminal case, and consequent acquittal therefrom arising from the same incident on the basis of which the departmental

proceedings were held and punishment was imposed on the respondent employee, cannot be accepted to be a sufficient cause for condoning the delay of five years caused in filing a complaint by the respondent employee before the Industrial Court. The learned Industrial Court has failed in appreciating these aspects. In no case, the reason put forth by the respondent in justification of the delay caused of five years in filing a complaint by him in the Industrial Court can be said to be good and sufficient reason. The conclusion arrived at by the Industrial Court, therefore, cannot be sustained.

22. The decision in the case of N. Balakrishnan (cited supra), relied upon by the respondent, may not be of any help to take further the cause of the respondent. In the aforesaid judgment, the Honourable Apex Court has held that, 'Normally, the superior Courts shall not disturb the finding recorded by the trial Court if the trial Court has recorded its satisfaction on the grounds stated for condonation of delay as good and sufficient'. In the instant case, the learned Industrial Court has accepted the pendency of a criminal case to be a good and sufficient

reason for condoning the delay caused in filing the complaint by the present respondent. In view of the legal principles enunciated and reiterated above, pendency of a criminal case, and consequent acquittal, cannot be accepted to be a sufficient cause. As such, the order passed by the Industrial Court has to be set aside. Hence, the following order:

ORDER

1) The order dated 15.4.2014, passed by the Industrial Court, Jalna, in Miscellaneous ULP Delay No.01/2012, is quashed and set aside. Consequently, the Miscellaneous (ULP) No.1/2012 on the file of Industrial Court at Jalna stands rejected.

In the circumstances, no order as to costs.

Rule made absolute in above terms.

(P.R.BORA)
JUDGE