

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

WRIT PETITION NO. 4353 OF 2014

Popat Tamaji Shelar,
Age : 63 years, Occupation : Labour,
R/o Sonwane Vasti, Godwani Road,
Ward No.1, Shrirampur,
District Ahmednagar.

...PETITIONER

-VERSUS-

1 Maharashtra State Khadi Gramodyog
Mandal, Bhatiya Bal Rakshak Vidyalaya,
19/21, Manohardas Road, Mumbai-1.
Through its Chairman.

2 Chief Executive Officer,
Maharashtra State Khadi Gramodyog
Mandal, Bhatiya Bal Rakshak Vidyalaya,
19/21, Manohardas Road, Mumbai-1.

3 District Village Industry Officer,
Maharashtra State Khadi Gramodyog
Mandal, Station Road, Ahmednagar.

...RESPONDENTS

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Advocate for Petitioner : Shri Barde Parag Vijay.
Advocate for Respondents : Shri Chavan Sudhir K.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th 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 judgment and award dated 30.08.2013 by which the Labour Court has answered Reference (IDA) No.28/2007 in the negative.

3 I have heard the strenuous submissions of the learned Advocates for the respective sides.

4 The impugned award rejecting the reference is passed on the following two issues:-

- (a) Reference (IDA) No.28/2007 has been instituted after the Petitioner was dismissed from service for a proved misconduct on 08.06.1995 and suffers from delay of 12 years.
- (b) Since the Petitioner has filed Complaint (ULP) No.107/2001 and which was withdrawn subsequently, the reference was rendered untenable in the light of Section 59 of the MRTU & PULP Act, 1971.

5 The learned Advocate for the Petitioner has placed reliance upon the judgment of the learned Full Bench of this Court in the matter of *C.S.Dixit vs. Bajaj Tempo Limited*, 2000(4) Mh.L.J. 261 : 2001(2)

Bom.C.R. 289 (paragraphs 19, 20 and 21).

6 The learned Advocate for the Respondent/ Establishment has relied upon the judgment of this Court in the matter of the *Maharashtra Kamgar Sangharsha Samiti vs. Horizon, The Beach Hotel and others, 2006(2) Mh.L.J. 87.*

7 The dates and events in the matter reproduced as under are not disputed:-

- (a) The Petitioner joined the services on 23.03.1973.
- (b) The Petitioner was dismissed on 08.06.1995.
- (c) The Petitioner preferred Complaint (ULP) No.413/1995 before the Industrial Court on 10.07.1995.
- (d) The said complaint was dismissed for want of jurisdiction on 05.09.2001.
- (e) The Petitioner filed Complaint (ULP) No.107/2001 before the Labour Court on 08.09.2001.
- (f) On 22.10.2002, the said complaint was withdrawn even before framing of issues.
- (g) On 28.10.2002, the Petitioner preferred a departmental appeal.
- (h) The said departmental appeal was dismissed on 26.06.2003.

- (i) On 15.05.2005, the Petitioner raised the industrial dispute.
- (j) On 30.01.2006, the Respondent/ Establishment filed the reply before the Conciliation Officer.
- (k) On 07.01.2007, Reference (IDA) No.28/2007 was referred to the Labour Court, Ahmednagar.

8 The learned Full Bench of this Court in the matter of Bajaj Tempo Limited (supra) has observed in paragraphs 19, 20 and 21 as under:-

- "19. In our opinion, there is no question of bar of Section 59 being invoked when the matter sought to be agitated is based on a new cause of action. As the matter was pending before the Industrial Court under the said Act, obviously it was not dealing with the said new cause of action.
- 20. In our opinion, therefore, mere filing of a complaint under the said Act without anything done in the matter will not attract the bar of Section 59. If the statute of limitation is successfully invoked in a matter before the Industrial Court under the said Act, the bar will not apply. About the new cause of action, also as noted above, there is no question of invoking the bar at all.
- 21. We are further of the opinion that if before any effective steps are taken by the Industrial Court under the said Act when the matter is withdrawn then also the bar would not apply. As to what could be the effective steps the question is to be decided as to the facts and circumstances of the case. It is obviously not possible to enumerate all possible set of circumstances which in a given case will induce us to conclude that the effective steps are not taken. At the same time, if effective steps are taken, bar under Section 59 would

certainly apply. No party can be permitted to either shop the forum or avoid outcome of its own action on the ground of exigency of convenience."

9 It is evident that the view taken by the learned Full Bench on 05.05.2000 was not cited before this Court in the Maharashtra Kamgar Sangharsha Samiti judgment (supra) decided on 05.08.2005.

10 On facts, it is apparent that Complaint (ULP) No.413/1995 was disposed of by the Industrial Court on 05.09.2001 after recording the statement of the Respondent/ Establishment that the Petitioner has been dismissed by way of punishment on 08.06.1995. There is no dispute that thereafter, the Petitioner preferred Complaint (ULP) No.107/2001 before the Labour Court for challenging his dismissal. The Respondent took a stand that a department appeal is provided under the Service Conditions and the Petitioner has approached the Labour Court without resorting to the said remedy. The Petitioner, therefore, withdrew the complaint on 22.10.2002 even before framing of issues and filed the department appeal on 28.10.2002 which was dismissed on 26.06.2003. Thereafter, he has raised an industrial dispute on 15.05.2005 and as the conciliation proceedings failed, the matter was referred to the Labour Court and registered as Reference (IDA) No.28/2007.

11 In my view, the issue of delay would not crop up since the Petitioner was pursuing different remedies that were available in law. Moreover, raising an industrial dispute under Section 2-A of the Industrial Disputes Act, 1947 is a deemed industrial dispute and the limitation is not prescribed for raising such a dispute.

12 Insofar as the applicability of the principles of res-judicata or the bar of Section 59 of the MRTU & PULP Act, 1971 is concerned, it is apparent that Complaint (ULP) No.107/2001 was merely filed and no orders were passed in the matter so as to conclude that the Petitioner had obtained some reliefs from the Court and thereafter, for self serving purpose, had resorted to withdrawing the complaint and had opted for raising an industrial dispute. This issue has been dealt with by the learned Division Bench of this Court in the matter of *Johnson & Johnson Limited vs. Gautam Hari Vedi and others*, 2000 (4) Mh.L.J. 326.

13 Considering the peculiar facts in this case and as the Petitioner has opted for a departmental appeal by withdrawing his complaint since the Department would not have considered his appeal during the pendency of the complaint, I find that the impugned award on both the counts deserves to be quashed and set aside.

14 In the light of the above, this Writ Petition is partly allowed. The impugned award dated 30.08.2013 is quashed and set aside and Reference (IDA) No.28/2007 is remitted to the Labour Court, Ahmednagar on the following conditions:-

- (a) The litigating sides shall appear before the Labour Court on 03.12.2016 and formal notices need not be issued by the Labour Court.
- (b) The Labour Court shall consider the said reference on its own merits since the issue of delay and bar of Section 59 has been dealt with and decided by this Court.
- (c) The litigating sides shall extend their cooperation to the Labour Court for the expeditious disposal of the reference proceedings.

15 Rule is made partly absolute in the above terms.