

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**WRIT PETITION NO. 5531 OF 2016
WITH
WRIT PETITION NO. 5529 OF 2016**

The Uran Municipal Council	... Petitioner
V/s.	
Mr. Jagdish M. Mhatre & Ors.	... Respondents

Mr. G. H. Keluskar for the Petitioner.
Mr. M.S. Topkar for the Respondent No.1.

**CORAM : K. K. TATED, J.
DATED : 28/11/2016**

PC.:

. Heard learned Counsel for the parties.

2 Both the Writ Petitions can be disposed of by common order as the facts in both the matters are similar.

3 By these petitions under Article 227 of the Constitution of India, the Petitioner challenging the order passed by the Industrial Tribunal, Thane under Application filed by the Respondents Workmen for recovery of money under Section 50 of M.R.T.U & P.U.L.P Act, 1971 (hereinafter will be called as 'the said Act').

4 In the present proceeding, initially the Respondents filed Complaint (ULP) Nos. 380 of 1995 and 229 of 1995 under Item 5,6 & 9 of Schedule IV of the said Act. That complaint was allowed by the Industrial Court by Judgments dated 19.12.1996 and 22.03.1996

directing the Petitioner to issue an order of permanency to the Respondents complainants with effect from date on which they have completed 240 days from the date of their initial appointment. The Industrial Court also directed the Petitioner to pay all the consequential monitory benefits to the Respondents arisen out of permanency with retrospective effect forthwith. Thereafter, the Petitioner partly complied the said order except payment of all consequential benefits to the Respondents. Hence, the Respondents workers filed the Application under Section 50 of the said Act for the recovery of amount due and payable as per order passed by the Industrial Court and also for condonation of delay. In that application, the Respondent/complainant given explanation for delay in preferring the application under Section 50 of the said Act. The Petitioner filed their reply to the Application under Section 50 of the said Act and opposed the same on the ground of limitation.

5 Considering the facts on record and the objection raised by the Petitioner, the Industrial Court by impugned order dated 21.04.2016 allowed the application filed by the Respondents and directed office to issue recovery certificate in the name of the Collector to recover the amount due and payable by the petitioner. Hence, the Petitioner preferred these two writ petitions challenging the order passed by the Industrial Court under Section 50 by which the recovery certificate was issued.

6 The learned Counsel for the Petitioner submits that the Court below i.e. Industrial court failed to consider that the Respondents filed

their application under Section 50 of the said Act after more than 14 years. He further submits that as per Section 50 of the said Act, it is mandatory on the part of the Respondents to file separate application for condonation of delay if the application is not filed within one year. He relied on Section 50 of the said Act, which reads thus:

“50. Where any money is due to an employee from an employer under an order passed by the Court under Chapter VI, the employee himself or any other person authorised by him in writing in this behalf, or in the case of death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the Court for the recovery of money due to him, and if the Court is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector, who shall, proceed to recover the same in the manner as an arrear of land revenue :

Provided that, every such application shall be made within one year from the date on which the money became due to the employee from the employer :

Provided further that, any such application may be entertained after the expiry of the said period of one year, if the court is satisfied that the applicant had sufficient cause for not making the application within the said period.”

7 The learned Counsel for the Petitioner submits that though the Respondents failed and neglected to file the separate application for condonation of delay, the Industrial Court entertained the Respondents' application and issued the Recovery certificate. He submits that even the Industrial Court has not given any findings on delay on the part of Respondents in filing the application under Section 50 of the said Act. Hence, the impugned judgments passed by the Industrial Court in both the matters dated 21.04.2016 is required to be set aside on this ground only.

8 The learned Counsel for the Respondent No.1 vehemently opposed both the matters. He submits that Respondents at the time of filing the Application under Section 50 of the said Act made specific averments in their application about the delay. Not only that, they also made prayer for condonation of delay. He submits that the Industrial Court by considering the judgment in the complaint filed by the Respondent under item 5,6 9 of Schedule IV of the said Act and averments made by the Respondents in application under Section 50 of the said Act condoned the delay and directed office to issue the recovery certificate for the amount due and payable by the petitioner.

9 The learned Counsel for the Respondent No.1 submits that in similar situated matters this Court by order dated 27.03.2012 in Writ Petitions Nos. 2356 of 2012, 2358 of 2012 and 2359 of 2012 dismissed the petitioner's Writ Petitions. He relies on the said Judgment which is Exh.A to their affidavit in reply on page 63.

10 On the basis of these submissions, the learned Counsel for the Respondent No.1 submits that there is no substance in both the petitions and same to be dismissed with costs.

11 I heard both the sides at length. It is to be noted that in the present proceeding, the Industrial Court by Judgments dated 19.12.1996 and 22.03.1996 held that Respondents were entitled to consequential monetary benefits arisen out of permanency with retrospective effect. Pursuant to the said Judgments, the Respondents filed application under Section 50 of the said Act. They made

averments about the delay in preferring the application and those grounds were considered by the court at the time of passing the impugned order. The objection raised by the Petitioner about limitation under Section 50 of the said Act for filing separate application for condonation of delay is not according to law because the Respondents made the averments as well as prayers in their application.

12 Considering these facts, I do not find any substance in both the Writ Petitions.

13 Hence, both the Writ Petitions stand rejected.

(K.K.TATED, J.)