

**FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR**

WRIT PETITION NO. 7088/2014

(THE CHAIRMAN, THE AKOLA JANTA COMMERCIAL CO-OP. BANK LIMITED AKOLA & OTHERS
VERSUS VILAS FAKIRAJI SARKATE & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.L. Khapre, counsel for the petitioners.
Shri M.G. Rathi, counsel for the R-1.
Shri A.M. Joshi, A.G.P. for the R-2 & 3.

**CORAM : SMT.VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.**

DATE : JULY 11, 2016.

By this writ petition, the petitioners challenge the order of the Additional Labour Commissioner, dated 17.05.2014 making a reference of the dispute between the petitioners and the respondent no.1, to the Labour Court.

The respondent no.1 was employed by the petitioners as a junior clerk and his services were terminated in 2000. On 23.09.2005, the respondent no.1 filed a complaint against the petitioners under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Since there was a delay in filing the complaint, an application for condonation of delay was filed. The application for condonation of delay was pending for years together and was finally rejected by the order dated 24.05.2013. After the application for condonation of delay was dismissed, the respondent no.1 approached the Assistant Labour Commissioner, Akola. Since the Additional Labour Commissioner was of the view that there was an existence of an industrial dispute that was required to be referred to the Labour Court, by the impugned order dated 17.05.2014, a reference of the dispute was made to the Industrial Court. The said order is impugned in the instant petition.

On hearing the learned counsel for the parties and on a consideration of the circumstances of the case, we find that there is no scope for interference with the impugned order in exercise of the writ jurisdiction. It cannot be said that there is a delay of almost thirteen years in approaching the Assistant Labour Commissioner. No doubt, proceedings were initiated by the respondent no.1 under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, in the year 2005 and the same were terminated in view of the dismissal of the application for condonation of delay in the year 2013. The application for condonation of delay was dismissed as the limitation to file a complaint under the Act of 1971 is ninety days. There is no period of limitation prescribed for making a reference to the Labour Court or the Central Government Industrial Tribunal and it would be only necessary for a party to point out that the industrial dispute still exists. In the instant case, the respondent no.1 had admittedly filed the proceedings under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, in the year 2005 and if the said proceedings would have been terminated in the year 2005 only, the respondent no.1 would have approached the Assistant Labour Commissioner, immediately. The proceedings before the Industrial Court, however, lingered for years together and the application for condonation of delay in filing the complaint was dismissed in May-2013. We do not find that there is an inordinate or unexplained delay on the part of the respondent no.1 in approaching the Assistant Labour Commissioner. It would only be required for a party approaching the Labour Commissioner to substantiate that an industrial dispute still exists and in this case, it cannot be said that the industrial dispute cannot exist due to the delay of thirteen years. We find that there is appropriate explanation of

the delay for the period between 2005 to 2013. In the circumstances of the case, the Additional Labour Commissioner was justified in making the reference of the dispute to the Labour Court. The submission made on behalf of the petitioners that the period from the date of termination till the respondent no.1 filed the proceedings under the Act of 1971 in the year 2015 is itself inordinate, does not appeal to us and, is therefore, rejected. The judgments reported in **AIR 2009 SC 120** (*Steel Authority of India Limited & Another Versus State of West Bengal & Others*) and **2015 (10) Scale 114** (*Prabhakar Versus Joint Director Sericulture Department & Another*) and relied on by the learned counsel for the petitioners cannot be made applicable to the facts of this case.

Since there is no reason to interfere with the order of reference, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

APTE