

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8523/2013

Dinkar Ganpati Shinde & Ors.

... Petitioners

V/s.

Executive Engineer,
Mechanical Division, Kolhapur

... Respondent

Mr. Abhijeet Desai i/b. Vrushali Maindad for the petitioners
Mrs. M. S. Bane "B" Panel Counsel for the Respondent.

CORAM: K.K. TATED, J.

DATED : FEBRUARY 20, 2017

PC. :

1. Heard the learned counsel for the parties. By consent of the parties, the matter is taken up for final disposal at the stage of admission itself.

2. By this petition under Article 227 of the Constitution of India, the petitioner challenges the judgment dated 21.03.2013 passed by the Member, Industrial Court, Maharashtra at Kolhapur in Revision (ULP) No.119/2010 quashing and setting aside the judgment and order dated 16.12.2009 passed by the Labour Court, Kolhapur in Misc Application (ULP) No.11/2008 by which the Labour Court condoned the delay of 13 years in filing the complaint of unfair labour practice u/s.28, under Item 1 (a),(b),(c),(d),(f),(g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (said Act).

3. Few facts of the matter are, as under:

The petitioners were in the employment of the respondent as temporary daily rated Majoor/Helper since 1984. The services of petitioner Nos.1 and 2 i.e. Dinkar Ganpati Shinde and Dattatray Hari Patil were terminated on 20.06.1986 and of petitioner No.3 Prakash Pandurang Chaugule on 20.05.1986. Initially, the petitioners, along with other workers filed complaint (ULP) No.312/1999 on 28.9.1999 before the Labour Court at Kolhapur for unfair labour practice u/s.28 under Item 1 (a),(b),(c),(d),(f),(g) of the said Act directing the respondent to reinstate the petitioners with continuity of service and full back wages during intervening idle period and for other reliefs. In that complaint, the petitioner had made an application Exhibit-U-26 for withdrawal of the same on technical ground, which was allowed by the Labour Court, by order dated 11.04.2008 with liberty to file a fresh complaint for the same cause of action.

4. Thereafter the petitioners filed fresh complaint and made an application for condonation of delay under the provisions of section 28 of the Said Act on 16.04.2008. In that application the respondent filed their written statement and say dated 04.07.2008. The Labour Court, Kolhapur allowed the petitioner's application for condonation of delay by order dated 16.12.2009.

5. Being aggrieved by the order passed by the Labour Court allowing the petitioner's application for condonation of delay, the respondent had filed a Revision (ULP) No.119/2010 before the Industrial Court at Kolhapur on 20.08.2010, which was allowed by judgment dated 03.03.2013 setting aside the order dated 16.12.2009

passed by the labour Court condoning the delay in filing the complaint. Hence, the Writ Petition.

6. The learned counsel for the petitioner submits that the Industrial Court erred in coming to the conclusion that the petitioner failed to disclose sufficient ground for condonation of delay in filing fresh complaint for their reinstatement in service with the respondent. He submits that the Industrial Court failed to consider the fact that initially the petitioner had filed a complaint (ULP) No.312/1999 for the same cause of action which was withdrawn by the petitioner because of some technical issue on 11.04.2008. He submits that immediately within five days thereafter i.e. 16.04.2008, the petitioner filed the present complaint and moved an application for condonation of delay. He submits that the Industrial Court ought to have held that the earlier complaint was withdrawn by the petitioner on 11.04.2008 and filed the present complaint on 16.04.2008 i.e. within a span of a week. He submits that instead of considering these facts, the Industrial Court held that there was delay of more than 23 years on the part of the petitioner to file the complaint for reinstatement and other reliefs. He submits that the Labour Court has rightly held that for want of knowledge to the petitioner and as the petitioners are uneducated, the Labour Court has rightly allowed their application for condonation of delay.

7. The learned counsel for the petitioner submits that the delay was not intentional and the same was caused because of the circumstances created by the respondent at that time. He submits that the petitioner had made a representation to the respondent company

for considering their case for reinstatement. He submits that the representation filed by the petitioner in the year 1993 was not decided by the respondent. He submits that the petitioners were waiting for the respondent's decision of their representation. Hence, there was delay on their part to file the complaint immediately.

8. The learned counsel for the petitioner submits that the petitioner has good chance of success in the matter. He submits that if delay is not condoned, irreparable loss and injury will be caused to the petitioner. He submits that this court, in the matter of ***State of Maharashtra Vs. Sayyedal Gani Sayyed 2003 (96) FLR 389*** held that the delay in raising a dispute cannot be a ground to quash a Reference. Paragraph No.4 to 6 thereof read thus:

“4. In Ajaib Singh's case (supra) the Apex Court has categorically held that no reference to the Labour Court can be generally questioned on the ground of delay alone. It is held in the said judgment that even in a case where the delay is shown to be existing, the Labour Court dealing with the case can appropriately mould the relief by deducting the back wages to the workman till the date he raised the demand regarding his illegal termination or dismissal. The law laid down in Sapan Kumar Pandit's case and in Ajaib Singh's case by the Apex Court makes it clear that no reference can be rejected solely on the ground of delay. In the instant case, though there was a delay of about 6 years on the part of the employee in raising the demand, the reference cannot be rejected on the said ground alone. This brings me to the claim made for back wages by the employee. The Labour Court has denied all the back wages to the employee solely because there was delay of about 6 years in making the demand. The learned counsel for the employee submits that his services were illegally terminated in the year 1987 and that he made the demand in the year 1993 and for that period the Labour Court could be said to be justified in denying the back wages. He further submits that the employee is

entitled to full back wages from the year 1993 till the date of judgment and award passed by the Labour Court: The Labour Court has dealt with the question of back wages in a very cryptic manner. Placing reliance on the reported judgment in Ajaib Singh's case the Labour Court has held that the employee is not at all entitled to back wages. I am afraid that, that is not the view expressed by the Apex Court in Ajaib Singh's case. The Apex Court in para 10 of the judgment observed :

"No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages."

The Apex Court has thus, categorically held that the employee will not be entitled to wages for the period commencing from termination of his services till lodging of the claim and it does not say that the employee shall not be entitled to back wages even for the period subsequent thereto till adjudication of the reference by the Labour Court. No doubt, the relief in regard to payment of back wages can be appropriately moulded by the Court having regard to the totality of facts and circumstances. Hence, in the present case I am of the view that the employee will not be entitled to claim the back wages from the date of his termination till the employee filed the statement of claim. The employee is entitled to have his claim for back wages considered from the year 1993 viz., from the date of filing of the statement of claim till the date of the judgment and award passed by the Labour Court. In my considered opinion, the ends of justice would be met by awarding 50% of the back wages to the employee from the date of filing of the statement of claim till the date of judgment and award passed by the Labour Court, viz. December 27, 1999. Hence, I pass the following order:

5. Writ Petition No. 717 of 2001 is dismissed. Rule is discharged with no order as to costs."

6. *Writ Petition No. 4759 of 2001 is partly allowed. That part of the judgment and Award of the Labour Court by which the entire claim of the employee for back wages came to be rejected is quashed and set aside and I direct that the respondent-employer shall pay fifty per cent of the back wages to the petitioner employee from the date of filing of the statement of claim till the date of judgment and award passed by the Labour Court viz. December 27, 1999. Rule is made absolute accordingly, with no order as to costs."*

In that judgment, the delay of six years was condoned.

9. The learned counsel for the petitioner also relies on the judgment in the matter of ***Apinath Waman Waghchaware Vs. .N. Waman Vs. MSEB 1981 (42) FLR 100.*** In this case, this court condoned the delay of 12 months in filing the complaint. In this case, the applicant had made some representation to the other side for considering his case for reinstatement in service.

10. The learned counsel for the petitioner on the basis of the above mentioned submissions and the authorities submits that this Hon'ble Court be pleased to condone the delay in filing the complaint of unfair labour practice u/s.28 of the said Act. He submits that they have good chance of success in the matter. He submits that if the revisional judgment and order dated 21.03.2013 in Revision (ULP) No.119/2010 is not set aside, irreparable loss will be caused to the petitioner.

11. On the other hand, the learned AGP for the respondent vehemently opposed the Writ Petition. She submits that the Industrial Court considered the facts on record, rightly held that the petitioner has failed to make out any case for condonation of more than 23 years

delay in filing the complaint.

12. The learned counsel for the respondent submits that there is no dispute that the petitioner was working with them on daily basis for a particular project only. She submits that though the petitioners' services were discontinued by them in the year 1986, the petitioners filed complaint (ULP) No.312/1999 on 28.09.1999 i.e. after more than 10 years. She submits that there is no explanation in their application for such a huge delay. She submits that the petitioners, in their application only stated that they are illiterate and poor. She submits that except the ground of illiteracy and poverty, the petitioners have not shown any other reason for restoring the complaint filed by them. These facts were considered by the Industrial Court and allowed their revision. She submits that in any case, the petitioners were working on temporary daily wages for a particular project which was already over. Apart from that since 1986, the petitioners are not with them, therefore, there is no question of allowing the Writ Petition.

13. Heard both sides at length. The point for consideration in the Writ Petition is that “whether the petitioners have made out a case for condonation of 23 years delay in filing the complaint”?

14. In the present proceedings, the petitioners were working on temporary daily basis as majoor/helper. All of them were terminated in May and June 1986. Though they were terminated/discontinued from job in the year 1986, they filed the complaint (ULP) No.312/1999 on 28.09.1999 along with other prayers. That complaint was withdrawn by them on 11.04.2008 with liberty to file afresh. It is to be noted that

the first complaint itself was filed by the petitioners after more than 13 years from the date of cause of action i.e. termination/discontinuation from service. Bare reading of the petitioner's application for condonation of delay shows that the petitioners have failed and neglected to show sufficient cause for more than 23 years' delay. Paragraph 2 of the said application reads thus:

“2. The complainants are illiterate and poor and they were employed as a temporary daily rated employees in the respondent's establishment. The complainants approached the respondent with a request to reinstate them in service, but they were given them promises that as soon as ban over the recruitment is removed, then their matter will be considered. The complainants were relied upon the promises but however it is found to be futile.

The complainant submits that when the promises were found to be futile then complaint (ULP) No.312 of 1999 was filed before this Hon'ble Court on 28th September 1999. During the pendency of the complaint (ULP) No.312 of 1999 some of the bona fide technical mistakes were not came the notice of the complainants, however while recording the evidence in the complaint in respect of other complainants it came to their notice. Therefore, the complainants prayed the Hon'ble Court to grant leave to withdraw the complaint and allow them to institute fresh complaint on 11.04.2008. The Hon'ble Court has passed the order below Exhibit U/26 in the complaint (ULP) No.312 of 1999 dated 11.04.2008 and granted leave to withdraw the complaint. It is thus, on account of bona fide sufficient reason as well as bona fide honest mistake the delay has been caused for instituting the present complaint and not due to negligence.”

15. This court, recently, in the matter of **MSRTC and Ors. Vs. Tulsiram D. Pawar 2016(6) BCR 561** dismissed the application for condonation of delay of five years also. In any case, bare reading of the petitioner's application for condonation of delay shows that he failed

and neglected to show sufficient cause for condonation of 23 years delay in filing the complaint.

16. The authorities relied on by the petitioner in the matter of **Sayyedlal Gani Sayyed** (supra) is not applicable in the facts and circumstances of the present case because there was delay of only 6 years and that was also explained by the applicant in his application. That is not a case in hand. Even the authority in the matter of Apinath (supra) is also not applicable in the facts and circumstances of the present case. In that case, the delay was of only 12 months and that was also explained by the applicant. In the case in hand, the petitioner has only stated in their application for condonation of delay that they are illiterate and poor.

17. Considering the above mentioned facts and the law declared by this court in the matter of **Tulsiram D. Pawar** (supra) and the reasons given by the Industrial Court in the impugned judgment dated 31.03.2013, I am of the opinion that the petitioner has failed to make out any case to interfere with the well reasoned order passed by the Industrial Court.

18. Hence, Writ Petition stands dismissed.

19. No order as to costs.

(K.K. TATED, J.)