

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

WRIT PETITION NO. 139 OF 2011

Jagdish Vishandas Gursahani ... Petitioner.

V/s.

1. Air India Limited and Anr. ... Respondents.

**WITH
CIVIL APPLICATION (ST.)NO. 28253 OF 2017
IN
WRIT PETITION NO.139 OF 2011**

Jagdish Vishandas Gursahani ... Applicant /
Org. Petitioner.

In the matter between :

Jagdish Vishandas Gursahani ... Petitioner.

V/s.

1. Air India Limited and Anr. ... Respondents.

Mr.Prakash V.Dhopatkar, Advocate for the Petitioner.

Mr. Sudhir Talsania a/with Ms.Kavita Anchan, Mr. Arsh Misra
i/by M.V. Kini & co., Advocate for the Respondents.

Mr.B.V.Samant, AGP for the State.

**CORAM : S. C. DHARMADHIKARI AND
SMT.BHARATI H. DANGRE, JJ.**

DATE : 05th OCTOBER, 2017

PC :

1 To be fair to Mr. Dhopatkar, who says that first we must
consider civil application i.e. C. A. (St.) No. 28253 of 2017,

moved for amendment to the present petition and that he would strenuously submit that let the writ petition be permitted to be amended in terms of relevant paras to this civil application for proper, effective and complete adjudication to the controversy. In other words, that be disposed off first and then the petition be posted for admission at a later date. Meaning thereby, after amendment. In substance, today's bearing be postponed.

2 We do not think that we should accede to the request of Mr. Dhopatkar for the simple reason that even if this petition with writ petition no. 479 of 2011 are allowed to be amended, still there is unexplained and enormous delay amounting to latches in approaching this court. The date of termination of the petitioner is 16th March, 1996 and the writ petition is filed on 14th December, 2010. In these circumstances, we do not think that any useful purpose would be served by allowing the petition to be amended.

3 The Civil Application is dismissed and thereupon the petition is taken for admission.

3 Heard Mr. Dhopatkar, learned Advocate for the Petitioner, who has earlier also filed the petition, seeking same directions for payment of his legal dues and wages upto the date of termination. We find that the same cannot be entertained. The present petition is filed on 18th December, 2010, seeking the very same reliefs which the petitioner has claimed in the earlier writ petition filed in this court. That earlier writ petition has, a reference to which is made in para 22 of the present petition at pages 142 & 143, resulted in the following order been passed by this court (Coram : B.H. Marlapalle & N.D. Deshpande, JJ.), dated 16th September, 2010, which reads thus :

“P.C. :

1 We have heard Mr. Jagdish V. Gursahani, the Petitioner, party in- person. We have also perused the order passed by the Division Bench of this Court on 14.08.2007 in Notice of Motion No. 3295 of 2004 as well as the order dated 3rd March, 2009 passed in Contempt Petition No.65 of 2008. The petitioner states that he has, after the contempt petition was dismissed, collected the cheques and has received an amount of Rs. One lac. The Petitioner claims that he is yet to receive the legal dues from his employer i.e. Air

India Limited. However, the letter dated 10.06.2008 addressed by the Air India Ltd. to the petitioner indicates that the final settlement of the P. F. and gratuity dues of the petitioner has also been done. Thus there is a dispute regarding the legal dues claimed by the petitioner and therefore, the same cannot be gone into in this petition filed under Article 226 and 227 of the Constitution of India. The petitioner's remedy would be to file an application under section 33 C (2) of the Industrial Disputes Act, 1947.

2 The Petitioner, therefore, seeks leave to withdraw the petition with liberty to initiate appropriate proceedings under the Industrial Disputes Act, 1947. Leave granted and the petition is disposed off as withdrawn with liberty as is available in law. We make it clear that we have not gone into the merits of the petitioner's claim."

Thus on 16th September, 2010 the Writ Petition No. 6488 of 2010, seeking identical reliefs, came to be withdrawn by the petitioner with liberty to make an application under section 33 C(2) of the Industrial Disputes Act, 1947. The liberty was specific. It was to make an application under section 33 C (2) of the Industrial Disputes Act, 1947. This withdrawal of the

with liberty was not file to another writ petition, the petitioner has filed another writ petition contrary to the liberty granted by this court and seeks the same relief. We are not obliged to entertain it, nor in law we can, for the simple reason that the above order precludes the petitioner from presenting a writ petition under Article 226 of the Constitution of India. He now cannot wriggle out of his statement made to this court and solemnly recorded in the order reproduced above.

4 Hence we refuse to entertain this writ petition. It is dismissed as not maintainable.

(SMT.BHARATI H.DANGRE,J.)

(S.C.DHARMADHIKARI,J.)

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