

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

WRIT PETITION NO. 3049 OF 2004

Ashok s/o Chaburao Kotkar,
Age : 28 years, Occupation : Nil,
R/o Nimbal, Tq.Ahmednagar,
District Ahmednagar.

...PETITIONER

-VERSUS-

Videocon India,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.

...RESPONDENT

WITH
WRIT PETITION NO.3723 OF 2004

Ashok s/o Kisan Dalvi,
Age : 38 years, Occupation : Nil,
R/o Sonewadi, District Ahmednagar.
Now C/o Bhartiya Mazdoor Sangh,
Nirmal Chamber, Lal Talki Road,
Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Videocon India,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.
- 2 Dhoot Electro Mechanical,
Plot No.1, Pune Road,
Ahmednagar.
(Deleted as per leave granted by
Court's order dated 14.02.2005).

- 3 Personal Manager,
Videocon India, Gangapurwala
Gin Compound, Station Road,
Ahmednagar.
- 4 Shri C.S.Jyoti @ Jyotishaker,
Office at Gangapur Gin Compound,
Station Road, Ahmednagar.

...RESPONDENTS

WITH
WRIT PETITION NO.3825 OF 2004

Vithal Baban Lokhande,
Age : 32 years, Occupation : Nil,
R/o Padole Chall, Burudgaon Road,
District Ahmednagar.

...PETITIONER

-VERSUS-

Videocon India,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.
Through Personnel Manager.

...RESPONDENT

WITH
WRIT PETITION NO.3826 OF 2004

Sanjay s/o Yashwant Sabale,
Age : 33 years, Occupation : Nil,
R/o Londhe Mala, Kedgaon Deviche,
Tq.Ahmednagar, District Ahmednagar.

...PETITIONER

-VERSUS-

Videocon India,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.

...RESPONDENT

WITH
WRIT PETITION NO.3827 OF 2004

Miss Sangita Motilal Dewang,
Age : 32 years, Occupation : Nil,
R/o Nalegaon, Tq.Ahmednagar,
District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Videocon India,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.
- 2 Personnel Manager,
Videocon India,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.

...RESPONDENTS

WITH
WRIT PETITION NO.3830 OF 2004

Rameshkumar Kishanlal Pachar,
Age : 37 years, Occupation : Nil,
R/o C/o Bhartiya Mazdoor Sangh,
5/101, Nirmal Chambers, Lal Talki Road,
Ahmednagar, District Ahmednagar.

...PETITIONER

-VERSUS-

Videocon India,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.
Through it's Personnel Manager.

...RESPONDENT

WITH
WRIT PETITION NO.4116 OF 2004

Arun s/o Shivaji Mehatre,
Age : 35 years, Occupation : Nil,
R/o At Post Kedgaon,
Tq.Ahmednagar, District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Videocon India,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.
- 2 G.A.Waval,
Personnel Manager,
Videocon India,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.
- 3 S.C.Electronics System,
Block No.1, Front Side Plot No.28/29,
Industrial Cooperative Society Limited,
Ahmednagar Pune Road, Ahmednagar.

...RESPONDENTS

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Advocate for the Petitioners : Shri L.V.Sangit.
Advocate for the Respondents : Shri Ashok Patil h/f Smt.Renuka Ghule
Palve.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th May, 2018

Oral Judgment :

- 1 All these Petitioners are the original Complainants before the

Labour Court. The Respondent/ Management is the same Industry. Hence, all these Petitions are being heard together by the consent of the parties.

2 The Petitioners are aggrieved by the judgment of the Industrial Court dated 03.05.2003 passed in Review Application No.7/2003.

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

4 These Petitioners, after approaching the Labour Court on account of their termination by the Respondent Establishment, had partly succeeded. The Labour Court partly allowed their complaints and issued the following directions :-

"Complaint is partly allowed.

It is hereby declared that the respondents have followed unfair labour practice under Item 1 (a) and (c) of MRTU & PULP Act.

The respondents are directed to desist from it permanently by paying the backwages to the complainant from the date of his termination till 31.12.1992 at the rate of his last drawn wages.

The respondent is directed to pay further backwages for the period from 01.01.1993 till the date of closure to the complainant at the rate of his last drawn wages, but after deducting Rs.572/- per month from the said last drawn wages.

Respondents are also directed to pay the closure compensation to the complainant as if he was in the employment on 15.09.1993.

In the circumstances, both the parties are directed to bear their own costs."

5 Pursuant to the above directions, each of these Petitioners was entitled for various amounts of closure compensation. Since they were not paid their wages till their initial termination on 31.12.1992, they were granted the back wages and as the Respondent Industry was permanently closed down on 15.09.1993, they were granted closure compensation as well as the wages payable till the date of actual closure on 15.09.1993.

6 These Petitioners preferred a group of Revision Petitions in 1997 before the Industrial Court under Section 44 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU & PULP Act"). By the judgment dated 27.03.2003, the Revision Petitions were allowed, the judgments of the Labour Court were quashed and set aside and these Petitioners were granted reinstatement with continuity and 50% back wages from the date of their termination 31.12.1992. The counter revision petitions filed by the Respondent Establishment were dismissed. Some cases were remitted to the Labour Court for a decision afresh.

7 The Respondent Establishment then filed Review Petition No.7 of 2003 before the Industrial Court with regard to those Revision Petitions filed by the Workers that were allowed granting them reinstatement in service with continuity and 50% back wages. By the impugned judgment dated 03.05.2003, the Review Application was

allowed, the judgment of the Industrial Court dated 27.03.2003 was recalled and the judgment of the Labour Court was maintained.

8 It requires no debate that the MRTU & PULP Act, 1971 does not specifically provide for entertaining a review petition against the final judgment of the Labour Court or Industrial Court. The proviso below Section 30(2) of the MRTU & PULP Act, 1971 entitles any aggrieved party to make an application for seeking a review of an interim order passed by the Court. As such, strictly speaking, the said Act does not prescribe the filing of a review petition against a final judgment of the Labour or Industrial Court.

9 The Petitioners placed reliance upon the judgment of this Court in the matter of Ahmednagar Municipal Council vs. Pandit Rambhau Ausarkar and others, 2016 (1) Mh.L.J. 178.

10 At this juncture, both the learned Advocates frankly state that as the litigation between the parties dates back to December, 1992 and since they are in litigation for the past almost 26 years, the litigating sides are inclined to have a final resolution of their dispute and pray that this dispute be brought to an end so that there would be a conclusion to the litigation.

11 The learned Advocate for the Respondent Establishment has placed on record a chart (four pages), which is marked as "X" for identification. It is submitted that all the Petitioners and similarly situated

workmen have been paid their entire back wages and their legal dues towards closure compensation as the Respondent Establishment was permanently closed down w.e.f. 15.09.1993. It is, therefore, contended that the amounts of money due to the concerned workmen, who were discharged from employment on account of the closure or for any other reason, have been paid to them.

12 The learned counsel for the Petitioners submits that as this litigation is quite old and the Petitioners are also in advancing age, he has not been fully instructed as to whether, they have received their entire arrears as directed by the Labour Court. He, however, frankly states that this issue may be left open to these Petitioners to consider whether, they have been paid all arrears of money so that they may approach an appropriate forum for the recovery of unpaid amounts.

13 I find that the said request of Shri Sangit is acceptable.

14 At this juncture, Shri Patil, learned Advocate for the Respondent, makes a statement that the Respondent Establishment, in order to bring the entire litigation to an end, keeping in view that the particular factory at Ahmednagar has been permanently closed down on 15.09.1993, makes a further offer of Rs.30,000/- to each of these Petitioners over and above their legal dues, without laying down a precedent as these Petitioners have been litigating in this Court for the past 14 years. This offer is not available to any other workmen, who have

already received all legal dues and have put the litigation to an end by not approaching this Court or any other Court.

15 I find that the said statement of Shri Patil is appreciable and is accepted. The said offer would not apply to other workmen, who are not before this Court after the judgment of the Industrial Court.

16 I find that the Respondent had relied upon paragraph 18 of the judgment of the Honourable Supreme Court in the matter of S. Nagaraj and others vs. State of Karnataka and others, 1994 (1) LLJ 851 : 1993 Suppl. (4) SCC 595, while preferring its review application before the Industrial Court. It would be apposite to reproduce paragraph 18 of the S.Nagaraj judgment (supra) hereunder :-

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered to for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where

the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue."

17 It cannot be ignored that the factum of closure of the Respondent Factory from 15.09.1993, has neither been disproved before any Court, nor has it been proved that the said factory was subsequently reopened by the Respondent. It is settled law that if an industrial establishment is permanently closed down and the factum of closure is established, the Court could not direct the Management to reopen/ restart the factory per-force merely because there is a shortfall in the payment of retrenchment compensation while discharging the employment of the workers post closure. It is only in a case where the law of retrenchment has been violated and the factory or establishment is in operation, that the deficiencies in causing retrenchment can not be cured and the concerned employee in a given set of facts, may be reinstated.

18 There is no dispute as regards the permanent closure of the present Respondent Factory. Naturally, the judgment of the Industrial

Court, granting reinstatement with continuity and 50% back wages in a permanently closed down factory, is an unsustainable order. The Industrial Court could not have granted such a relief as it would amount to travesty of justice since these Petitioners can not be reinstated in a factory which is permanently closed down and manufacturing has been brought to an end.

19 It is equally settled that until an employer formally declares a closure of the establishment or a section thereof by way of a part closure, by following the due procedure of law, the workers working in that establishment or that particular section which is proposed to be closed down, would be entitled for full wages till the date of actual closure and for closure compensation on the date of such closure in the light of Section 25-F or Section 25-O of the Industrial Disputes Act, 1947, as the case may be. The Labour Court was, therefore, justified in directing the payment of full wages till the date of closure and the closure compensation on account of the closure.

20 Considering the above, I deem it appropriate to partly allow these Writ Petitions and in order to ensure that the ends of justice are met and the litigation is brought to an end, the impugned judgment of the Industrial Court could be modified in the light of the statement of the Respondent recorded above.

21 As such, these Writ Petitions are, therefore, partly allowed. The impugned judgment of the Industrial Court dated 03.05.2003 is

modified. Consequentially, the judgment of the Labour Court dated 07.05.1997 stands sustained and the Respondent is directed to pay the entire closure compensation and unpaid wages, if not already paid, to the Petitioners within a period of EIGHT WEEKS from today. The amount of Rs.30,000/- (Rupees Thirty Thousand), which shall be paid by the Respondent Establishment to each of these Petitioners, would be deposited in this Court within a period of TWELVE WEEKS from today. After deposit of the said amount, the Petitioners shall withdraw the said amount of Rs.30,000/- each from this Court, subject to an application for withdrawal duly signed and identified by the learned Advocate along with a recent photograph of the Petitioner and a copy of the Election Commission's Voter Identity Card.

22 Rule is, therefore, made partly absolute in the above terms.