

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

**WRIT PETITION NO. 8306 OF 2005
WITH
CIVIL APPLICATION NO. 1608 OF 2008**

Gangabhishma s/o Irappa Kalwane,
Age 52 years, Occu : Nil,
R/o : Handarguli, Tq. Udgir,
Dist. Latur.

... PETITIONER
(Orig. Complainant).

VERSUS

1. Divisional Controller,
Maharashtra State Road Transport
Corporation, Division, Latur.
2. The Depot Manager,
Maharashtra State Road Transport
Corporation Depot. Udgir,
Dist. Latur.
3. Divisional Controller,
Maharashtra State Road Transport
Corporation, Division, Osmanabad.

...RESPONDENTS

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Advocate for the Petitioner : Shri R. K. Ashtekar
Advocate for Respondent Nos. 1 and 2 : Smt. R. D. Reddy
Advocate for Respondent No. 3 : Shri A. B. Dhongade

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 24th NOVEMBER, 2018.

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ORAL JUDGMENT :

1. This petition was admitted by the order of this Court

dated 14/12/2005 and the hearing was expedited.

2. The petitioner is aggrieved by the order dated 23/12/2004 passed by the Industrial Court, Latur, by which, complaint (ULP) No. 427/2004 (old No. 88/1995) has been dismissed on account of two reasons. Firstly, that the complaint which was earlier dismissed in default, was ordered to be restored by paying costs of Rs. 111/- and the petitioner has belatedly deposited the amount and secondly, that the petitioner did not array the Maharashtra State Road Transport Corporation, Division Osmanabad through the Divisional Controller at Osmanabad as respondent No.3.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides, who have graciously addressed the Court on the merits of the order, though the case is shown under 'Due Orders Category'.

4. There is no dispute that the original complaint was dismissed in default on 24/12/1996. Written statement was not filed by the two respondents viz. MSRTC, Latur through

the Divisional Controller and MSRTC Udgir through the Depot Manager. The case proceeded ex-parte and an order was passed on 10/06/1996 and since the complainant, thereafter, remained absent, the complaint was dismissed in default on 24/12/1996.

5. Misc. Application (ULP) No. 1/99 praying for restoration of the ULP complaint was filed. By order dated 20/11/2003, the Industrial Court, Solapur allowed the Misc. Application and subject to costs of Rs. 111/- to be paid by the petitioner, condoned the delay and restored the complaint. The order of the Industrial Court indicates that the complaint was restored and taken on board on 20/11/2003. The costs were, therefore, expected to be deposited on or before the said date. The petitioner failed to do so and deposited the costs on 01/02/2004 without obtaining prior permission from the Industrial Court, Solapur.

6. In the above set of facts, the ULP complaint was transferred to the Industrial Court, Latur owing to the creation of the new Industrial Court and was re numbered as

427/2004. By the impugned judgment, the Industrial Court has dismissed the complaint for the reason that the costs were deposited belatedly and the MSRTC, Osmanabad was not arrayed as a party.

7. I find from the record that there was no formal order passed by the Industrial Court at Solapur disposing of the complaint on account of non compliance of its order dated 20/11/2003. Had the complaint been disposed of, the office of the Industrial Court, Solapur would not have accepted the costs of Rs. 111/-, which was deposited on 01/02/2004. Once the Industrial Court, Solapur accepted the costs and then transferred the complaint to the Industrial Court, Latur, it cannot be sustained that the Industrial Court, Latur could go behind the order of the Industrial Court, Solapur and conclude that the amount was deposited belatedly and hence, the complaint could not have been considered. On this Count, the view taken by the Industrial Court in the impugned order cannot be sustained.

8. There is one more aspect in this case, which was not

pointed out to the Industrial Court, Solapur that Section 31 of the MRTU and PULP Act, 1971 permits the Court to restore a complaint if an application is made within 30 days from the date of the order. There is no provision for condonation of delay and hence, a complaint dismissed in default, could be considered or restored only within 30 days and there beyond, the Court would practically be rendered functus officio.

9. This issue was considered by the Appeal Bench of this Court in LPA No. 3/2004 in Writ Petition No. 631/2003. The learned Single Judge had dismissed the petition concluding that the Industrial Court would have no jurisdiction to restore the complaint after 30 days. The said order dated 19/08/2003 was considered by the LPA Bench and it was concluded that the Industrial Court does not have the power to condone the delay. Only if a restoration application is filed within 30 days from the date of the dismissal in default, that the Industrial Court could exercise its jurisdiction. This view taken by the Appeal Bench was followed by this Court in *Dilip Vithalrao Jogdand Vs. Vaidyanath Urban Co-op.Bank Ltd., Parali, Dist. Beed & ORS., 2007, II CLR page 78.*

10. In view of the above, the Industrial Court could not have restored the ULP complaint by its order dated 20/11/2003 which is after the Single Judge of this Court took a view on 19/08/2003, dismissing Writ Petition No. 61 of 2003, concluding that the Industrial Court does not have the power to restore a complaint after 30 days.

11. At this juncture, the learned Advocate for the petitioner submits that as the law was not cited by either of the parties, the Industrial Court has allowed the restoration application and that order has not been challenged by the respondents before this Court. He, therefore, submits that in the absence of a challenge by the respondents the order of restoration by the Industrial Court, Solapur dated 20/11/2003 has attained finality.

12. Considering the above, the learned Advocate for the petitioner has rightly contended that when the said order of the Industrial Court is not challenged, this Court would not consider its legality after it has attained finality 15 years ago.

13. I find from the impugned order that the Industrial Court, Latur has dismissed the complaint on the ground that the Depot Manager of the MSRTC, Osmanabad was not arrayed as a respondent. The learned Advocate for the petitioner submits that he has already arrayed the said MSRTC, Osmanabad as respondent No.3 in this petition and would carry out the amendment before the Industrial Court if the complaint is restored.

14. The learned Advocates for the Corporation have vehemently opposed the said request. It is further informed that the petitioner was working as a bus conductor from 1965. He suddenly started remaining absent without leave or prior permission from 1978 till 1987, continuously. It is his case that he was not allowed to join on 07/05/1987 when he approached with a Medical Fitness Certificate. He is now 65 years of age.

15. The learned Advocate for the petitioner submits that his case is that he was absent due to illness for almost 9 to 10

years and when he attempted to join duties on 07/05/1987, he was restrained and hence, he filed his ULP complaint on 10/05/1995. In these last 23 years, he is litigating on the peripheral issues and the core issue of he being deprived of work, has not even been adjudicated upon by the Industrial Court. Considering the above, I find that the Industrial Court could have called upon the petitioner to add the MSRTC, Osmanabad as a respondent.

16. Issues have not been cast by the Industrial Court and the ULP complaint has been dismissed on the ground that Rs. 111/- was belatedly paid and the MSRTC, Osmanabad was not arrayed. I find that all these circumstances would render the impugned order perverse and erroneous.

17. Considering the above, this petition is partly allowed. The impugned order dated 23/12/2004 is quashed and set aside. The complaint ULP No. 427/2004 (Old No. 82/1995) is restored to the file of the Industrial Court, Latur, with liberty to the petitioner to forthwith add MSRTC, Osmanabad Division through the Divisional Controller as respondent No.3. A

suitable amendment be carried out in the complaint.

18. All the litigating sides shall appear before the Industrial Court at Latur on 15/12/2018. Formal notices need not be issued. Added respondent No.3 would be at liberty to enter its written statement. Application for interim relief Exhibit U-2 shall stand disposed off as the complaint is 23 years old and the Industrial Court, Latur shall proceed to frame appropriate issues and decide the complaint on its merits alongwith all objections, other than those put to rest in this order, as expeditiously as possible and in any case, on or before 30/06/2019.

19. Rule is made partly absolute.

(RAVINDRA V. GHUGE, J.)

shp/-