

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3387 OF 2018**

Maharashtra State Road
Transport Corporation .. Petitioner
Vs.
Vijay Vasudev Kadam & Ors. .. Respondents

Mr.Gopal K.S. Hegde for the petitioner.
Mr.Manoj Patil for the respondent nos.1 to 30.

CORAM : A.K. MENON, J.

DATED : 27TH MARCH, 2018.

P.C. ,

1. By this writ petition, the petitioner challenges the order dated 3rd May, 2014 passed by the Industrial Court, Kolhapur in Complaint (ULP) No.185 of 2012 whereby the complaint was allowed holding that the petitioner had engaged in unfair labour practices under Items 5, 9 and 10 of Schedule IV of the MRTU & PULP Act and the Corporation was directed to grant the pay scale and benefits to the respondents as have been given to other employees in the recruitment process held in 1989.

2. Mr.Hegde, learned counsel appearing on behalf of the petitioner submitted that the impugned order is bad since it proceeds on the basis that the petitioner had discriminated against the respondents by appointing several new candidates in the year 1988 as a part of special drive and in the meanwhile there was total ban on further recruitment put by the State Government. It is also contended that the respondents – complainants have been appointed in the year

1992 and they have approached the Tribunal only after 20 years in the year 2012, therefore, he submitted that the claim of the respondents was barred by law of limitation, despite ban being put in force prior to the appointment of the respondents. The impugned order did not considered this aspect which was raised in the written statement dated 9th April, 2013. He, therefore, submitted that the impugned order cannot be sustained and is perverse.

3. On behalf of the respondents Mr. Patil, learned counsel opposing the petition pointed out that although the petitioner had take up the issue in the written statement, they remained absent at the time of hearing and several opportunities have been granted to the petitioner despite which the petitioner did not adduce the evidence. The matter was then disposed of in the absence of the petitioner. As rightly pointed out by Mr.Patil in paragraph 9 of the impugned order, the Industrial Court held that the petitioner had not given any justifiable reasons for discriminating against the respondents and they were doing the same work and that the petitioner had deliberately not produced relevant documents to rebut the contents of the respondents' complaint and therefore the Court drew an adverse inference to the effect that the petitioner had acted partially in not providing benefits of settlement arrived at between other employees and the petitioner corporation. The impugned order thus highlighted unequal treatment meted out to one set of workers and therefore concluded that the petitioner had engaged in unfair labour practices under Items 5, 9 and 10 of Schedule IV. Considering the fact that there were substantial defences raised by the respondents but which could not be agitated before the Industrial Court for fault of the petitioner in not having remained present to agitate their case, it would be appropriate to remand the matter

for fresh hearing after giving an opportunity to the petitioner corporation to appear before the Court and present its case and if necessary, to lead evidence. However, the petitioner will have to be put to terms considering their indifference and the inconvenience caused to the respondents. Hence I pass the following order :

(a) Subject to payment of costs of Rs.1,50,000/- to the respondents to be deposited in the trial Court within a period of four weeks from today, the impugned order is set aside and complaint (ULP) No.185 of 2012 is remanded for fresh hearing. However, it is made clear that depositions on behalf of the respondents will be read in evidence.

(b) If such deposit is not made the writ petition shall stand dismissed without reference to the Court. If the deposit is made the respondents will be at liberty to withdraw the same from the trial court unconditionally.

(b) If the petitioner corporation wants to lead any evidence and in the event of respondents desires to lead evidence, the same shall be permitted by the Tribunal.

(c) Since the complaint was initially filed in 2012 it would be appropriate that the Industrial Court makes endeavour to dispose of this application within a period of one year from today.

(d) All contentions are kept open.

(e) Writ Petition is disposed in the above terms.

(A.K. MENON,J.)