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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14406 OF 2016

Dwarkanath Vishwanath Kulkarni	... Petitioner
vs.	
Maharashtra State Electricity Board & Anr.	... Respondents
.....	
Mr Sandeep S. Koregave for the Petitioner.	
Ms. Anjali R. Shiledar for Respondent nos. 1 and 2.	
.....	

CORAM : A.K. MENON, J.

DATE : 16th JANUARY, 2018

P. C.

1. By this Writ Petition the petitioner calls into question judgment dated 30th January, 2016 passed in Complaint (ULP) No. 169 of 2010 in the Industrial Court No. 2, Kolhapur by which the petitioner's complaint has been dismissed only on the ground of delay. The issue of maintainability, jurisdiction and limitation have also been decided against the petitioner and in the circumstances the issues pertaining to alleged unfair practices, non grant of promotion and consequential benefits since 13th June, 1997 were held to be non-eligible.

2. The learned Counsel for the petitioner submitted that the only ground on which the complaint was dismissed is delay in approaching the Court. He submitted

that the Court had declined to consider his case on merits although he had a good chance of success. The impugned order records that the delay has not been explained and the complaint was not entertained. It also records the fact that the complainant did not lead evidence to prove his claim. The complaint therefore came to be dismissed.

3. The Industrial Court has observed that the complainant has examined himself, as also one Mr. Chandrashekhar Moghe . It is admitted that the complainant did not pass the departmental examination and that he was entitled to get benefits of promotion after completion of 45 years, but the respondent did not pay heed to his request and therefore committed an unfair labour practice. According to him, he had issued a letter claiming such benefits on 25th September, 2009 to the Human Resource Manager and once again a letter was sent on 15th September, 2010. The petitioner retired on 30th June, 2010 and was paid his final settlement dues which according to him was accepted under protest. The complaint is filed on 27th September, 2010 i.e. three months after retirement. In any event he claims that he was deprived of benefits since 13th June, 1997. Thus for thirteen long years the petitioner did not seek an appropriate remedy.

4. The impugned order found there is no explanation in the entire complaint about the delay. Mr. Koregave submitted that promotion was probably not granted due to some adverse remarks in the Annual Confidential Report. According to him, during the entire tenure there was no occasion to make any adverse remarks and in

any event such Annual Confidential Report was not communicated to him. Mr. Koregave has vehemently argued that without communication of the Annual Confidential Report the case against the petitioner could not have been rejected.

4. He relied upon judgment of the Supreme Court in the case of ***Indu Bhushan Dwivedi vs. State of Jharkhand & Anr. [2010 DGLS (SC) 413]*** submitting that if adverse remarks were not communicated and formed the foundation of the reason to deny promotion, then the petitioner would be seriously prejudiced since he had no opportunity explain away the cause for the adverse remarks and could not seek to have the same expunged on the record. He also relied upon judgment of the Supreme Court in the case of ***Dev Dutt vs. Union of India & Ors [2008 AIR (SC)2513]*** and submitted that in the instant case no such remarks were communicated to him and therefore could not take any action to have them expunged.

5. In the aspect of delay Mr. Koregave relied upon judgment of the Supreme Court in ***Raghubir Singh vs. General Manager, Haryana Roadways, Hissar [2015(2)Mh.L.J. 107]*** and submitted that the delays arising in industrial dispute did not debar workmen from claiming rightful dues. He relied upon paragraphs 13 to 18 of the judgment in support of his case and submitted that in the present case the complaint has been rejected only on the ground of delay. Such rejection is not sustainable in law because there was sufficient reason for the delay. According to the petitioner he became entitled to the benefits, promotion and consequential

benefits in 1997. I am unable to find any explanation for the delay. In fact the petitioner does not even attempt to explain the delay from 1997, Mr. Koregave had submitted that the respondent corporation had not complied with their internal regulations as far as communication of the confidential report is concerned. This is not an aspect that can be considered adversely since it has not even been raised before the Industrial Court at any stage. Even in the complaint the petitioner has not raised these complaints.

6. Having heard learned Counsel for the petitioner, I am of the view no interference is called for in the present case. The complainant has examined himself and another Mr. Chandrashekhar Moghe. No evidence has been led on the aspect of communication of the Annual Confidential Report or to establish the fact that the respondent had engaged in any unfair labour practice in relation to the respondent in the course of his employment. The complaint was filed on 27th September, 2010 when the cause of action admittedly arose on or about 13th June, 1997. Even in the complaint there is no reference to the letters dated 25th September, 2009 and 15th September, 2010 on which the petitioner sought to place reliance. In the circumstances, the complaint appears to be filed as an after thought. There is nothing perverse about the impugned order that calls for interference. I therefore pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No order as to costs.

(A.K. MENON, J.)