

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION (L) NO.516 OF 2018
IN
COMPANY PETITION NO.521 OF 1992**

V.R. Thorat

....Applicant

Vs.

M/s. Garware Nylons Limited (In Liqn.)

....Respondent

Ms. Molina Thakur for applicant.

Mr. Pankaj Srivastava, Deputy Official Liquidator present.

Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator present.

CORAM : K.R.SHRIRAM, J.

DATE : 12th SEPTEMBER 2018

P.C.:

1 This application is taken out by company paid staff on the ground that he retired on 31st January 2016 and till date the gratuity amount payable to him has not been released/paid. Ms. Thakur, counsel for applicant states that the law requires it has to be paid within thirty days.

2 Official Liquidator has placed nothing on record to explain why this amount was not paid. In effect, applicant is being victimized. Ms. Thakur relies on an order dated 19th December 2013 passed by this Court in company petition no.521 of 1992 with Official Liquidator's Report No.429 of 2013 in which the office of Official Liquidator, the Department of Company Affairs have been, I would say, reprimanded by the Court for their selective harassment of staff. The Court has observed that the Senior Officers are involved and no action has been commenced by Central Bureau

of Investigation against those officers but only the staff who are at clerical or below rank were being victimized. Paragraph 3 and 4 of the said order reads as under :

3. At that time, the concerned Company Paid Staff had made a grievance that similar action is not being taken against the other persons named in the report. By the said order, the Official Liquidator was directed to enquire with the Central Government as to what action is taken against the other persons named in the report of the Central Bureau of Investigation and the matter was taken up again on 24 October 2013 and 28 November 2013. By the order dated 28 November 2013, Mr. B.P. Pant, Dy. Secretary to Government of India was directed to place on affidavit as to why only four company paid staff were singled out and the official liquidator was continuously being directed to seek sanction of the company court against the said company paid staff only and why similar insistence is not shown against the other persons named in the report. The learned counsel for the Ministry of Corporate Affairs states that an affidavit has been signed by Mr. B.P. Pant, however, it is yet to be affirmed and seeks to tender a signed un-affirmed copy. The affidavit shall be filed within a period of one week from today.

4. However, I have gone through the signed and unaffirmed copy of the affidavit tendered by the learned counsel appearing for the Ministry of Corporate Affairs and also heard its learned counsel. There is no satisfactory explanation as to why only four members of the Company Paid Staff were singled out for taking action and it is only stated that it takes time to take action against the serving and retired government servants. It appears from the record and the arguments that none of the other persons named in the report have been placed under suspension let alone proceeded against in a departmental enquiry. It appears that the other persons named in the report are high ranking officers who are either retired or serving. The company paid staff against whom repeated reminders were sent by the Dy. Secretary, are working at the level of Junior and Senior Assistants. Perusal of the report of CBI shows that the role attributed to these four company paid staff is not more serious than the other persons named in the report. It is also not a case that these four company paid staff are the master mind in the entire offence.

3 Mr. Aithe states that the Ministry has appointed an Enquiry Officer for disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 against one Smt. Anuradha B. Athavale and the Inquiry Officer, who is the Under

Secretary to the Government of India has decided to drop the proceedings against the said Smt. Athavale. Still that does not meet with the observations made by this Court in the order dated 19th December 2013. The order notes other officers/staff members of the Central Government. It says officers/staff members, not officer/staff member. There is nothing to show any action has been taken against other officers/staff members of Central Government. Mr. Aithe states that a letter dated 15th March 2018 is written by the Under Secretary to the Government of India to Official Liquidator to commence disciplinary inquiry against applicant. There is no explanation whatsoever as to why after the order of 19th December 2013 for almost five years no action has been taken and no enquiry has been conducted against Mr. Thorat and why it is being commenced now more than 2 years after he has retired.

4 In the facts and circumstances of this case, I am satisfied that this is nothing but victimization of Mr. Thorat and a dishonest attempt of the Ministry of Corporate Affairs only to harass such low ranking staff. Attempt is to make him a scapegoat. Therefore, application is allowed and accordingly disposed.

5 Official Liquidator is directed to release all the dues payable in accordance with law to Mr. Thorat on or before 30th September 2018. Official Liquidator shall also pay a sum of Rs.10,000/- as cost to Mr. Thorat

and any delay will invite strict action by this Court and the Department will have to pay interest at 24% p.a. to Mr. Thorat on the dues pending as on date until payment/realisation.

(K.R. SHRIRAM, J.)

Gauri
Amit
Gaekwad

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signed by
Gauri Amit
Gaekwad
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