

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.257 OF 2018
(Sarangdhar Narayan Bairagi, through LR's and others Vs. Executive
Director and another
WITH
CIVIL APPLICATION NO.15214 OF 2018
IN
WRIT PETITION NO.3209 OF 2000

Mr.V.Y.Patil, learned Advocate for the applicants.
Mr.S.T.Shelke, learned Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 22/02/2019

PER COURT :

1. By this application, the applicants pray for condonation of delay of 325 days in filing the review application.
2. Mr.Shelke, learned Advocate appearing on behalf of the respondents submits that appropriate costs may be imposed and the amount be donated for the treatment of poor patients.
3. In view of the above and since the litigating sides are willing to work out the review application forthwith, the delay is condoned. Costs are not imposed as the applicant has superannuated about 24 years ago.

4. Learned Advocate for the review applicant has canvassed a host of factors. He admits that he received the notice for superannuation on 25/11/1993 as he was said to have completed 58 years of age. He has then received another notice dated 06/01/1994 of retirement. Then, on 06/05/1995, the Executive Director (Admn.) opines that he completes 60 years on 26/11/1995. The documents indicate that there is a serious dispute in the understanding of the Officers of the respondents as to whether a Watchman would retire at the age of 58 years or 60 years.

5. The review applicant desires that the Labour Court should decide such a dispute u/s 33-C(2) of the I.D.Act. This Court has concluded in paragraph Nos.6 to 8 of its order dated 22/06/2017 which is sought to be reviewed, as under :-

“6. The respondent was superannuated on 25.11.1993 after working hours, having completed 58 years of age. He received another retirement order on 6.1.1994, when he had actually retired from 26.11.1993. Thereafter, he again received a retirement notice dated 1.7.1994. Contention is that in between 26.11.1993 till 6.1.1994, the respondent was temporarily taken into service post retirement as he was physically and mentally fit.

7. A claim was put-forth under Section 33-C(2) alleging that he should be paid wages for the periods 26.11.1993 till 6.1.1994, 7.1.1994 to 15.2.1994 and 2.7.1994 till 11.5.1995 as he was sitting idle at home. Based on the said claim, he demanded leave encashment, bonus and medical reimbursement. The Labour Court has partly allowed the claim on the ground that the respondent was unauthorizedly retired, since he could have worked till 26.11.1995 and could have been retired on completion of 60 years of age.

8. It is trite law that Section 33-C(2) provides for entertaining claims of money, based on preexisting rights. Assessment of such money on existing rights and arithmetical calculations can also be undertaken under Section 33-C(2). However, seriously disputed and contentious issues like, whether the retirement age is of 58 years or 60 years and whether the claimant was unnecessarily sitting idle and hence entitled for wages and other ancillary claims, cannot be gone into under Section 33-C(2). Moreover, no law or service condition was pointed out before the Labour Court to indicate that the respondent had a vested right to continue in service till the age of 60 years."

6. I have no doubt whatsoever that such disputed aspects as regards the date of retirement, the age of superannuation and whether an employee could be paid wages when he has not worked in

view of such a dispute, cannot be considered u/s 33-C(2) of the I.D.Act.

7. It was in these circumstances that I had kept the remedy of raising an industrial dispute available to the review applicant.

8. In view of the above, the review application is without any merit and stands rejected.

9. Civil Application No.15214/2018 praying for bringing the LR's of the deceased employee on record is rendered infructuous and stands disposed of with liberty to the LR's to raise an industrial dispute.

(Ravindra V.Ghuge, J.)