

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5539 OF 2019

Mumbai Mahanagarpalika Karyalayeen
Karmachari Sanghatana .. Petitioner

Vs.
Municipal Corporation of Greater
Mumbai and ors. .. Respondents

Mrs.Vidula Patil I/b Mr.Prakash Devdas, for the Petitioner.
Mr.Vinod Mahadik, for MCGM.

CORAM : M.S.KARNIK, J.

DATE : 26th APRIL, 2019

P.C. :

. Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

2. Heard learned Counsel for the parties. By this Petition filed under Articles 226 & 227 of the Constitution of India, the petitioner challenges the order dated 05/04/2019 passed by the Industrial Court, Mumbai dismissing the

Complaint (ULP) No. 77 of 2019 on the ground of limitation. The workmen filed Complaint of unfair labour practice under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 aggrieved by the action on the part of the Corporation discontinuing Incentive Allowances payable to the Junior System Analyst. When the matter came up before the Industrial Court, a query was put up as to what is the date of cause of action. According to the workmen, cause of action is 01/04/2019 as the Corporation is going to implement the circular of 01/04/2019. There is some dispute as to whether cause of action is 01/04/2019 or 01/10/2018. In paragraph 6 of the order passed by the Industrial Court, it is noted that it is a specific stand of the workmen that cause of action is dated 01/04/2019 but reliance is placed on circular dated 01/10/2018. In the opinion of the Industrial Court, cause of action will start from 01/10/2018 and not from 01/04/2019. The Industrial Court therefore found that the Complaint should have been filed within 90 days from 01/10/2018 and/or the workmen

concerned should have filed application for condonation of delay. In these circumstances, the Industrial Court was of the opinion that the Complaint is beyond limitation. Learned Counsel for the Petitioner would submit that they would have filed application for condonation of delay or made amendment to the Complaint for explaining the delay if an opportunity to that effect was granted. Even now they are willing to make application for condonation of delay.

3. In this view of the matter, it would be in the interest of justice if an opportunity is granted to the petitioner to file an application for condonation of delay if at all they are advised that the cause of action will start from 01/10/2018. In my opinion, instead of rejecting the Complaint itself on the ground of limitation, adequate opportunity should have been granted by the Industrial Court to the petitioner to file appropriate application explaining the delay or otherwise. Even otherwise, the delay is not so inordinate that the Complaint deserved to be dismissed at the threshold on the ground of limitation.

4. In this view of the matter the impugned order is set aside.
5. The matter is remitted back to the Industrial Court for deciding the same afresh and in accordance with law.
6. Rule is made absolute in the above terms. Writ Petition is disposed of.

(M.S.KARNIK, J.)