

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11078 OF 2015

Sadashiv Yashwant Kumbhar ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2257 OF 2017**

Vasant Rangrao Powar ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2258 OF 2017**

Tukaram Sadashiv Madiwal ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2259 OF 2017**

Mohan Dattatray Chougule ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2260 OF 2017**

Sunil Rangrao Lohar ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2261 OF 2017**

Sarjerao Kundalik Patil ... Petitioner

Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2264 OF 2017**

Vishnu Yashwant Patil ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2265 OF 2017**

Prakash Anand Nerlekar ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2266 OF 2017**

Rajendra Shivaji Mali ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2267 OF 2017**

Sanjay Shamrao Patil ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2268 OF 2017**

Jaypal Pirappa Goture ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2269 OF 2017**

Bhanudas Shripati Kadam ... Petitioner

Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2270 OF 2017**

Dastgir Balaso Mulla ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2615 OF 2017**

Bajirao Baburao Atigre ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.2616 OF 2017**

Ramesh Ganapati Kapase ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.10588 OF 2017**

Shivaji Ramchandra Shinde ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.11076 OF 2015**

Hambirrao Rangrao Raut ... Petitioner
Versus
M/s. S.J. Iron and Steel Pvt. Ltd. ... Respondent

**ALONG WITH
WRIT PETITION NO.11079 OF 2015**

Sanjay Dattu Patil ... Petitioner
Versus

M/s. S.J. Iron and Steel Pvt. Ltd.

... Respondent

**ALONG WITH
WRIT PETITION ST. NO.29547 OF 2015**

Shrikant Bhivase

... Petitioner

Versus

M/s. S.J. Iron and Steel Pvt. Ltd.

... Respondent

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Shri R.M. Haridas I/b. Shri D.B. Shinde for petitioners in all Petitions.

Shri M.S. Topkar for respondents in all Petitions.

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CORAM : M. S. KARNIK, J.

DATE : 25th APRIL, 2019.

ORAL JUDGMENT :

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

2. Since the issue involved is common, all these Petitions can be disposed of by a common order.

3. By these Petitions filed under Articles 226 and 227 of the Constitution of India, the petitioners are challenging the judgment and order passed by the Presiding Officer, Labour Court No.1, Kolhapur, dated 20th March, 2015 in Reference (IDA) No.6 of 2009.

4. For convenience, the facts in Writ Petition No. 11076 of 2015 are referred.

5. The petitioner was working as a Core Maker from 26/7/1983 with the respondents on monthly wages of Rs.3500/-. It is petitioner's case that he was made to forcibly resign with effect from 1/12/2002. Terminal dues were calculated in wrong manner and petitioner was illegally terminated from the services. According to petitioner, the said termination was effected on false pretext that the Company is going to close down. The petitioner's signature was obtained without explaining the terms, conditions and all that was written on the resignation letter. The petitioner also disputed the calculation of the amount of gratuity. According to petitioner, 15% illegal deduction was made from the amount that was paid to the petitioner as and by way of final settlement. The petitioner therefore approached the Conciliation Officer under Industrial Disputes Act, 1947 (hereinafter referred to as 'the said Act of 1947' for short) sometime in the year 2007. The Conciliation Officer referred the dispute to the Labour Court under Section 10(1)(c) read with Section 12 (5) and 39 of the

said Act of 1947 for adjudication of dispute. The Labour Court by the impugned award dated 20th March, 2015 was pleased to reject the Reference on the ground that there is a delay of five years in approaching the authorities. The Reference is also rejected on merits in as much as according to the Labour Court, there was a settlement dated 12/7/2004 entered into by recognised Union under which all the employees had received benefits towards full and final settlement of their claims.

6. Learned Counsel for the petitioners firstly urged that under Section 10(1) of the Act of 1947, an employee can approach the authorities under the Act of 1947 any time. No limitation is stipulated. He would submit that the resignations were obtained forcibly in the year 2002. Thereafter the settlement which is not binding on the petitioner was entered into by recognised Union on 12/7/2004. According to him, the Labour Court has wrongly considered the delay to be of five years. He submitted that the Labour Court has adopted a hyper technical approach while refusing to condone delay. Relying on the decision of the Apex Court in the case of **Raghubir Singh vs. General**

Manager, Haryana Roadways, Hissar reported in **(2014) 10 SCC 301**, learned Counsel would submit that the delay need not come in the way of the employees as in any case the ultimate reliefs can be moulded suitably. He would further submit that the settlement is not binding as the same is not in accordance with law. Learned Counsel, relying upon the judgment and order of the Industrial Court in respect of similar situate employees, would contend that the Labour Court having allowed the claim of similar situate employees in Reference (IDA) Nos.89 to 95, 97 to 122, 146 and 148 of 2003, even these applications deserve to be allowed.

7. In the course of challenge raised by Management to the exparte award of Labour Court in respect of similar situated employees in this Court, it is pointed out that the Management entered in out of Court settlement with similar situate employees and paid the employees 50% of the back-wages as awarded by the Labour Court. He would therefore submit that even the petitioners are entitled to similar reliefs.

8. Learned Counsel for respondents on the other hand would submit that the claim of the petitioners is hit by delay and

laches. He would invite my attention to the statement of claim where the petitioner has come with the case that he resigned in the year 2002. Furthermore the settlement of the year 2004 is not a subject matter of the reference and therefore, according to him, the Labour Court is justified in calculating the delay from the year 2002 onwards. He would submit that no doubt, limitation is not prescribed for making a claim, but nonetheless the employee concerned has to approach for redressal of his grievance within a reasonable time. Learned Counsel would rely upon the decision of the Apex Court in the case of **Prabhakar vs. Joint Director, Secriculture Department & anr.** reported in **2016 (1) ALL MR 486 (S.C.)**, to contend the parameters to be kept in mind while considering the aspect of delay.

9. Learned Counsel would also rely upon the decision of the Apex Court in the case of **State of Uttar Pradesh & ors. vs. Arvind Kumar Srivastava & ors.** reported in **(2015) 1 SCC 347** in support of his submission that the petitioners have to be treated as fence-sitters, as they approached the Labour Court only after their counterparts succeeded in the efforts in a claim made by

them before the Labour Court. According to learned Counsel, the present is a fit case where laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. He would moreover submit that the evidence on record would clearly indicate that the petitioners have even received the provident fund dues on the premise that the petitioners have tendered resignations.

10. I have heard learned Counsel for the parties. I have gone through the Memo of Petition, annexures to the Petition and the impugned order.

11. It is the case of the petitioner that he tendered his resignation in December 2002. Thereafter, recognised Union entered into settlement in the year 2004 in terms of which the terminal dues of all the employees were settled. Some of the similar situate employees had approached the Labour Court in the year 2003 itself by filing Reference IDA Nos.89 to 95, 97 to 122, 146 and 148 of 2003 for the similar reliefs as claimed by the petitioners. By a common award dated 28/2/2006 the claim of

those workmen was allowed and the similar situate workmen were directed to be reinstated with continuity of service and with full back-wages. This according to the Management was an exparte award. The respondent – Company filed Miscellaneous Application for setting aside the exparte award. The same came to be rejected by the Labour Court on 27/2/2007. Thereafter, the Management filed Writ Petition No. 1708 of 2007 in this Court challenging the exparte order. In this Court a settlement was arrived at between the Management and the workers in the said Writ Petition No. 1708 of 2007 where the company agreed to pay 50% back-wages awarded by the Labour Court.

12. It is thus apparent that it is only after the similar situate workers succeeded in the Reference before the Labour Court and after the application for setting aside the exparte order was rejected by the Labour Court, that the petitioners approached the Conciliation Officer only in the year 2007. In this view of the matter, this case would stand squarely covered by the decision of the Apex Court in the case of **State of Uttar Pradesh & ors.** (*supra*). In paragraph 22.2, their Lordships observed thus :

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

13. The petitioners in the statement of claim clearly made out a case that they resigned with effect from 2002. According to them, the resignation is forced. In my opinion, the fact that the petitioners approached the Labour Court raising the demand only after their counterparts succeeded in their efforts compels me to come to a conclusion that the reference suffered laches and delay which was valid ground to dismiss the petitioners' claim. It would also be pertinent to mention that though no limitation is prescribed for making a claim under the Act of 1947, this is a fit case to dismiss the claim raised by the petitioners on the ground of delay. The petitioners by not challenging the wrongful claim in their cases and having acquiesced into the same, woke up after long delay only because of the reason that their counterparts succeeded in their efforts, then these petitioners cannot claim the

benefit of the judgment rendered in the case of similarly situated persons be extended to them.

14. A profitable reference can be made to the observations of the Apex Court in the case of **Prabhakar** (*supra*) in paragraph 26 which reads thus :-

26. The aforesaid case law depicts the following :
- (a) Law of limitation does not apply to the proceedings under the Industrial Disputes Act, 1947.
 - (b) The words 'at any time' used in Section 10 would support that there is no period of limitation in making an order of reference.
 - (c) At the same time, the appropriate Government has to keep in mind as to whether the dispute is still existing or live dispute and has not become a stale claim and if that is so, the reference can be refused.
 - (d) Whether dispute is alive or it has become stale/non-existent at the time when the workman approaches the appropriate Government is an aspect which would depend upon the facts and circumstances of each case and there cannot be any hard and fast rule regarding the time for making the order of reference."

15. It would also be material to refer to paragraph 38 of the said decision which reads thus :

38. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong."

16. In my opinion the view of the Labour Court in rejecting the claim on the ground of delay, laches and acquiescence cannot be said to be perverse or erroneous.

17. Though learned Counsel for the petitioners would contend that the Labour Court was not justified in calculating the delay from 2002 onwards as the settlement is of the year 2004, I find from the statement of claim that the petitioners themselves have made a claim for reinstatement on the basis of the resignation which is submitted in December, 2002 which according to the petitioners was obtained by force and misrepresentation. In the statement of claim there is no challenge to the settlement of the year 2004 nor is the Reference made on the basis of the settlement of 2004.

18. In this view of the matter, I do not find any reason to interfere with the impugned order.

19. Even before the matter was heard I had put it to the learned Counsel for the respondents if some ex-gratia amount

could be offered to each of the petitioner in view of the fact that they had entered into a settlement with the petitioners' counterparts. Learned Counsel for respondents, on instructions, stated that the respondents are willing to pay an ex-gratia amount of Rs.25,000/- to each of the petitioner. Learned Counsel for the petitioners then rejected this offer and proceeded to argue on merits.

20. After the order was dictated, learned Counsel for the petitioners, on instructions, pleaded that they are willing to settle the matter and that they would accept Rs.50,000/- each towards full and final settlement of their claim. Learned Counsel for the respondents in all fairness submits that despite dismissal of these Petitions, he is still willing to stand by his earlier offer of Rs.25,000/-. Learned Counsel for the respondents in his usual fairness submitted that though he has no instructions to increase the offer, he would leave it to this Court to determine the ex-gratia amount payable to the petitioners which he assures the respondents would abide by. In the interest of justice I am inclined to accept the proposal made by the learned Counsel for the

petitioners. As agreed by learned Counsel for petitioners, this ex-gratia amount of Rs.50,000/- payable to each of the petitioner by the respondents is towards full and final settlement of their claim. The respondents to pay the ex-gratia amount of Rs.50,000/- to each of the petitioners within a period of 8 weeks from today.

21. The Writ Petitions are dismissed.

22. Subject to above Rule is discharged with no order as to costs.

(M. S. KARNIK, J.)