

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

WRIT PETITION NO. 563 OF 2017

Jaihind Sahakari Pani Purvatha Mandali Ltd.
Shirdhon, Kolhapur

...Petitioner

vs.

Rajendra Bandu Khot & Ors.

...Respondents

Mr.Kiran Bapat with Jayesh Desai i/b. Desai and Desai for Petitioner.
Ms.Gayatri Singh, Senior Advocate i/b. Manoj A. Patil for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 20 NOVEMBER 2019

JUDGMENT :

Rule. Rule taken up for hearing forthwith by consent of counsel.

2 This writ petition challenges a judgment and order passed by the Industrial Court at Kolhapur on a complaint of unfair labour practice filed by the Respondents under Item Nos.9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 ('MRTU & PULP Act' or simply, 'Act'). The Petitioner, who is a registered co-operative society, involved in the business of supplying water to agriculturists in the vicinity, was a respondent to the complaint.

3 It was the case of the complainants that the Petitioner had employed them in various vacant permanent posts such as junior clerk, pump operator, watchman/peon, skilled labour, etc.; that the employments

were since the year 1977; and that the Petitioner had, on or about 30 May 1990, agreed to a settlement under which the Petitioner agreed to pay to the Respondents various dues including annual increments payable since 1 April 1989. It was the Respondents' case that the dues were actually paid only till 31 March 1999, whereafter the Petitioner deprived them of their monetary entitlements, thus, committing a breach of the settlement. The complaint was in respect of this breach. Reliefs sought by the complainants included a direction to the employer to implement the settlement and pay the dues and differences till date. In its written statement filed before the Industrial Court, the Petitioner raised various grounds of challenge reflecting on the maintainability of the complaint. It was, firstly, submitted that the complaint was barred by limitation. It was also submitted that the Petitioner was a registered co-operative society and not an industry; and that no industrial dispute could, accordingly, have been raised under the Industrial Disputes Act. The parties led their respective oral and documentary evidence. The Industrial Court, by its judgment and order dated 30 April 2016, allowed the complaint. Being aggrieved, the present writ petition has been filed by the Petitioner employer.

4 The main controversy in the petition concerns the issue of limitation. It is submitted by Mr.Bapat, learned Counsel for the Petitioner, that the reference has been made to the Industrial Court at a much belated stage. Learned Counsel submits that where the issue relates to payment or fixation of salary or allowance, though denial of benefits occurs every month when such salary or allowance is not paid, the denial gives rise to a fresh cause of action every time it is made. Learned Counsel submits that though non-implementation of a settlement by refusal to pay salaries and allowances in accordance with it continues, when it comes to grant of

consequential relief of recovery of arrears for the past period, principles relating to recurring/ successive wrongs would apply and accordingly, arrears would have to be restricted to the period of three months prior to the date of the application, which is the usual period of limitation for a complaint of unfair labour practice.

5 Ms.Gayatri Singh, learned Senior Counsel appearing for the Respondents, on the other hand, submits that wherever a wrongful act is of such character that the injury caused by it continues, the act constitutes a continuing wrong. Learned Counsel submits that distinction ought to be made between an injury caused by a wrongful act and what may be described as the effect of such injury. Learned Counsel submits that wherever the injury continues, as opposed to the effect of the injury, the wrong is a continuing wrong, giving rise to a fresh cause of action on each succeeding day. Learned Counsel submits that so far as contravention of the terms of an agreement, settlement or award is concerned, the obligation is continuous, that is to say, from day to day and month to month; and any unfair labour practice on the part of the employer in not honouring such agreement, settlement or award, as the case may be, by refusing to give benefits thereunder, would continue to recur so long as the agreement/settlement/award remains unimplemented and any default in that behalf is a continuing wrong. Learned Counsel submits that her clients' complaint was, accordingly, within limitation.

6 The procedure prescribed under Section 28 of MRTU & PULP Act for dealing with complaints relating to unfair labour practices requires an aggrieved union, employee or employer to file a complaint within ninety days of the occurrence of the unfair labour practice complained of. The

court competent to deal with such complaint is, however, empowered to entertain any complaint even after ninety days, if good and sufficient reasons are shown for late filing of the complaint. The bone of contentions between the rival parties in the present case appears to be the time at which the unfair labour practice complained of can be said to have occurred or, in other words, the cause of action can be said to have accrued. According to the employees, non-payment of their legal dues is a continuous breach; the wrong continues to occur every day during which the breach continues; and the complaint, made anytime within ninety days of such occurrence, is within time. On the other hand, it is the case of the employer that the breach is complete when the salary and other dues are not paid on the due date; and the cause to complain of the unfair labour practice occurs on such due date.

7 The unfair labour practice alleged in the present case is non-implementation of settlement/agreement dated 31 May 1990 with effect from 1 April 1999. It is submitted by the complainant employees that vide settlement dated 31 May 1990, the respondent employer had agreed to pay their dues and annual increments since 1 April 1989; the respondent gave those benefits only upto 31 March 1999; it stopped giving those benefits with effect from 1 April 1999 and deprived the complainants of their monetary entitlements under the settlement. In the first place, salary and other emoluments including increments under a settlement are due for each particular month of service. If these are not paid for any particular month on the due date of such payment, the unfair labour practice of non-implementation of settlement for the particular month is complete on such due date. It is another matter that there is continued non-implementation even for the successive months in the sense that the employees' dues under

the settlement are not paid even for those successive months. The cause of action of non-implementation of the settlement may in that sense continue, but it is not continuation of the same cause of action. It is rather accrual of a fresh cause of action each time the dues payable for the particular wage period are not paid.

8 The Supreme Court has explained the difference between a continuous wrong and recurring or successive wrongs in the case of **Union of India vs. Tarsem Singh**¹. A continuing wrong is a single wrong causing a continuing injury. In case of a continuing wrong, the grievance essentially is about an act which creates a continuous source of injury and renders the doer of that act responsible and liable for continuance of that injury. The injury is not complete when the act is committed; it continues even thereafter; and so long as it does, the cause of action itself continues. A recurring or successive wrong, on the other hand, occurs when successive acts, each giving rise to a distinct and separate cause of action, are committed. Each act, in itself wrongful, constitutes a separate cause of action for sustaining a claim or a complaint. It is important to bear in mind in this context the distinction between an injury caused by a wrongful act and the effect of such injury. What is to be seen is whether the injury itself is complete or is continuous. If the injury is complete, the cause of action accrues and is complete; the clock starts ticking for the purposes of limitation, notwithstanding the fact that the effect of such injury continues even thereafter. For example, let us take the case of an occupant of a house who is driven out of it. The injury is complete with the act of throwing him out, though the effect of that injury, namely, his being unable to use or occupy the house, continues even thereafter. Take, however, the case of a

1 (2008) 8 SCC 648

person who is detained in a house and not allowed to roam about. The act of detention is the one which causes an injury. This injury, however, is a continuing injury, since the injury here consists in being unable to move about. This injury continues and since the injury itself continues, the wrong is a continuous wrong and the cause of action, a continuing cause of action. Take, on the other hand, the case of a person who is barred from entering a house he is entitled to enter. When he is barred for the first time, an injury follows, and a cause of action thereby accrues. Each successive day on which he is so barred gives rise to a fresh and distinct cause of action, making it a case of recurring/successive wrongs.

9 In service jurisprudence, this distinction (i.e. the distinction between a continuing wrong and a recurring one) becomes important particularly from the point of view of relief. In **M.R. Gupta vs. Union of India**², the Supreme Court has explained it succinctly. The appellant before the court in that case was a workman, whose grievance was that his wage fixation was not in accordance with the applicable rules. He asserted that the wrong was a continuous one. The court held that his cause of action was a recurring cause of action rather than a continuous one. Each time he was paid a salary which was not computed in accordance with the rules, a cause of action accrued unto him. The Court held as follows (SCC pp.629-30):

"So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for

2 (1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186

recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time-barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs.”

10 This law has been reiterated and summarised by the Supreme Court in **Tarsem Singh**’s case in the following words (Para 7 @ P.651 of SCC) :

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a

consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

11 The three years’ period considered by the Supreme Court in **Tarsem Singh’s** case was on the basis of a general limitation for recovery of a money claim. What was considered was that since the recovery period being considered by the High Court was in a writ petition, where the case was not covered by any particular article of limitation, the normal rule of limitation for recovery of money dues, i.e. limitation of three years, should apply unless there are extra-ordinary circumstances. Had the case been before an administrative tribunal, it would have been the particular article of limitation which would have applied. In the present case, since we are dealing with an unfair labour practice of not honouring a settlement between the employer establishment and its workmen, the period is of three months. Ordinarily, therefore, salaries and other emoluments payable for three months prior to the complaint can alone be considered for relief as a normal rule. The Industrial Court appears to have disregarded this law. It appears to have proceeded on the footing of a continuous cause of action. It ought to have instead considered each successive act of non-payment as a separate injury and cause of action and proceeded to consider the successive acts as recurring causes of action. Going by that, as per the law stated in **Tarsem Singh’s** case, enforcement of settlement could have always been ordered for future and as for arrears, they could have been ordered only for three months as per the limitation period ordinarily applicable. The court should then have considered whether and to what extent to exercise its discretion to go beyond this ordinarily applicable period, depending on good and sufficient reasons being shown for the delay. This aspect of the matter, however, has not been addressed to at all

by the Industrial Court, since it, as we have seen above, wrongly, treated the cause of action as a continuing one and gave relief on that basis. The impugned order of the court, thus, deserves to be quashed and the complaint remitted to the court for consideration of the period of recovery, that is to say, how far to go back for ordering recovery of arrears.

12 Ms.Singh, learned Counsel for the Respondents, refers to the case of **Life Insurance Corporation of India vs. D.J. Bahadur**³. What this case lays down is that a settlement made between an establishment and its workmen subsists till a new award or settlement takes its place. This proposition does not, in any way, advance the Respondent's case in the present case. It is not that in our case the award is not binding or that it does not continue to be in force, but that each individual act of refusal to implement the award gives rise to a fresh cause of action. The cause of action of non-implementation of the settlement is not a continuous cause of action, but a recurring cause of action, each individual act of non-implementation giving rise to a distinct and separate cause of action. The case of **Jagatjit Industries Ltd. vs. Labour Officer**⁴ referred by Ms.Singh does not state the law of continuing cause of action any differently. The case of **Mahindra & Mahindra Ltd. vs. Sharad Laxman Dalvi**⁵ decided by our court was about an unfair labour practice of not recognising a claim of permanency. What was submitted to the court was that the claim of permanency related to the year 1990 and no complaint in that behalf could have been entertained in the year 1998. The court did not countenance this argument for the reason that the claim being about permanency, its denial gave rise to a cause of action for complaining about adoption of unfair

3 **(1981) 1 SCC 315**

4 **2012 (132) FLR 124**

5 **2005 (2) Bom.C.R. 302**

labour practice by the employer and this was a continuing cause of action. Non-recognition of permanency is indeed a continuing cause of action; the injury caused by such non-recognition cannot be said to be complete when permanency, though due, was not recognised or given effect to for the first time by the employer; the injury continues on each succeeding day when permanency benefits are denied to the employee. None of these judgments, thus, supports the case of the Respondent-employees.

13 Ms.Singh, however, relies on four other cases decided by our Court, where our Court appears to have taken a different view. These cases did involve claims of non-payment of salaries and other monetary dues as a cause of action and our Court does appear to have proceeded on the basis that the claims were within time, though filed beyond the ordinary rule of limitation, without taking into account any distinction between a continuing cause of action and a recurring cause of action.

14 The Division Bench of our court in **Warden & Co. (India) Ltd. vs. Akhil Maharashtra Kamgar Union**⁶ was concerned with a workmen's complaint of unfair labour practice of non-payment of wages from February 1992, and bonus, leave travel allowance, encashment of privilege and causal leave for the years 1990-91 and 1991-92. The complaint was filed on 29-3-1993 under MRTU & PULP Act. Though the main controversy before the court was whether an unrecognised union was entitled to appear and act on behalf of workmen of an industry governed by the Industrial Disputes Act in a complaint relating to unfair labour practice other than those specified by Items 2 and 6 of Schedule IV of the MRTU & PULP Act, the Division Bench did consider the other issue involved in the matter, namely, whether the complaint was barred by limitation. From the

6 **2001 (3) Bom.C.R. 375**

employer's side, the same provision of limitation was pressed into service, namely, Section 28 of the Act, providing for three months' period. The Division Bench observed that the complaint was of an unfair labour practice under Item 9 of Schedule IV of the Act, namely, "failure to implement award, settlement or agreement"; Section 28 enabled a complainant to file a complaint where "any person has engaged in or is engaging in any unfair labour practice" and every time wages were not paid when due, it could be averred that the employer was engaging in an unfair labour practice under Item No.9 of Schedule IV. That was the basis on which the Division Bench did not find merit in the submission of the employer based on limitation of three months. The Division Bench, with respect, correctly held the complaint as not barred under Section 28, but that was on the basis of a recurring cause of action – every time wages were not paid, the employer could certainly be said to have engaged in an unfair labour practice. The Division Bench, however, does not appear to have considered the further question, namely, what should be the period for which arrears of wages should be ordered or in other words, which arrears, calculated on the basis of difference in pay, were recoverable as within time and which were time-barred. The decision of the Supreme Court in **M.R. Gupta's** case (supra) was not brought to the notice of the Division Bench. The Supreme Court in **M.R. Gupta**, as we have noted above, made it clear that so long as an employee was in service, a fresh cause of action arose every month when he was paid his monthly salary on the basis of a wrong computation; if the employee's claim of computation was found to be correct on merits, he would be entitled to be paid according to the properly fixed pay scale "*in the future*" and "*the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated*

on the basis of difference in the pay which has become time barred would not be recoverable". This has now been fully explained and reiterated by the Supreme Court, by making out a clear distinction between a continuing cause of action and recurring causes of action particularly from the standpoint of service jurisprudence in **Tarsem Singh's** case (supra). After this latter decision, it is impermissible to argue that since each time wages are not paid when due there is a resultant unfair labour practice, arrears could be ordered to be paid for any length of time, that is to say, without reference to any time-bar. The judgments of two learned Single Judges of our court in **Indian Smelting & Refining Co.Ltd. vs. Sarva Shramik Sangh**⁷, **Maharashtra State Electricity Board vs. Suresh Ramchandra Parchure**⁸ and **Cipla Ltd. vs. Anant Ganpat Patil**⁹, also, with utmost respect, do not state the law correctly to the extent they allow the claims of arrears of wages without reference to the bar of limitation for claiming past dues. The decisions could be said to be *per incuriam* for not considering the law laid down in **M.R. Gupta's** case (supra) and, in any event, now impliedly overruled by the Supreme Court decision in **Tarsem Singh's** case (supra).

15 Ms.Singh also relies on a Full Bench decision of our court in **Maharashtra State Road Transport Corporation vs. Premlal Khatri Gajbhiye**¹⁰ in support of her submission on limitation. The Full Bench in that case was considering whether a particular clause in an earlier settlement was replaced by another clause of a subsequent settlement, and particularly, whether the two concerned clauses operated in different fields or the same field. The clauses related to time scale of pay. The case of the complainants was that the original clause of the earlier settlement operated

7 2009 (121) FLR 310

8 2005 (1) Bom.C.R. 820

9 2008 (1) Bom.C.R. 78

10 2004(2) Bom.C.R. 338

in a different field and was not replaced by the new settlement. They claimed that the employer should continue to enforce it. One of the objections of the employer (respondent to the complaint) was based on the bar of limitation. It was submitted that admittedly ephemeral time scale was granted to the complainants, but that was prior to three years preceding filing of the complaints. The complainants' answer was based on Section 23 of the Limitation Act providing for a continuous cause of action. The Full Bench held that the obligation of the employer to honour the time scale was a recurring obligation. It held that in the context of such recurring obligation, the term 'making of an illegal change' could never have the same meaning as change made once for all so that what continued was only its effect in the context of recurring obligation to pay month to month the wages or value of such amenities. It held that an illegal change would be made afresh every month when the employer would refuse to carry out that continuous obligation. The Full Bench, accordingly, recognised the principle of recurring causes of action. It held that non-compliance of terms of settlement concerning service conditions of employees amounted to a recurring cause of action, rather than a continuous cause of action. The Full Bench merely decided the point in principle, holding a complaint for enforcement of a settlement as not barred. The question of actual relief, which would include actual grant of benefits under the settlement, was left to the Division Bench to decide. That question was not part of the reference. One does not know how this question was actually decided by the concerned Division Bench. As noted in **Tarsem Singh's** case (supra), it is whilst considering actual relief of past arrears that the question of application of the principle of recurring cause of action would assume importance. The Full Bench decision, accordingly, does not support Ms.Singh's case; it recognises the principle of recurring

cause of action without considering its actual application. So far as actual application is concerned, it does not state the law otherwise that what we have discussed above.

16 Accordingly, for the reasons stated above, the impugned order of the Industrial Court cannot be sustained to the extent of past arrears beyond three months prior to the date of the complaint and will have to be set aside to that extent and the matter remanded to the Industrial Court for considering the claim of past arrears in the light of its discretion to order recovery beyond three months prior to the complaint for good and sufficient reasons.

17 The writ petition is, in the premises, disposed of by quashing and setting aside the impugned order dated 30 April 2016 to the extent it orders recovery of difference of wages beyond the period of three months prior to the date of filing of the complaint and remanding Complaint (ULP) No.16 of 2007 to the Industrial Court at Kolhapur for a fresh hearing for considering the relief of recovery of past arrears on the basis of the difference of wages shown in Annexure – A to D. The rest of the impugned order is sustained.

(S.C. GUPTE, J.)