

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3748/2016

Shri Shankar Jambuvantrao Todkar

Vs.

The President, Pusad Shetki Kharedi Vikri Samiti and another.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Amit M.Kukday, Advocate for petitioner.

Shri M.R.Pillai, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATED : September 04, 2019

The challenge raised in the present writ petition is to the award passed by the Labour Court on 11.08.2015 by which the reference as made under the provisions of Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947') has been answered in negative.

It is the case of the petitioner that he was engaged as a Peon with the respondents-Society since 1973. In the year 1982 a criminal case was registered against him as a result of which his services came to be terminated on 30.06.1982. The petitioner had therefore filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'the Act of 1971'). That complaint was dismissed for want of evidence on 31.08.1983. The petitioner claims that he was acquitted in the criminal proceedings on 05.05.2009. He therefore approached the Conciliation Officer raising a grievance with regard to his illegal termination. Reference was accordingly made to the Labour Court. The Labour Court has proceeded to answer the reference in negative on the ground that

there was a bar under Section 59 of the Act of 1971 to initiate fresh proceedings under the Act of 1947 especially when the complaint filed under Section 28 had been earlier dismissed. The aspect of delay was also taken into consideration as the reference was made on 30.11.2010 after a period of about 28 years.

Shri A.M.Kukday, learned counsel for the petitioner by relying upon the decision in *Hafizullah Khan Vs. Maharashtra State Road Transport Corporation, 1995 (III) LLJ (suppl.) 458* submits that as the complaint under Section 28 of the Act of 1971 was not adjudicated on merits, there was no bar for the Labour Court to have entertained the reference proceedings on merits. Further placing reliance on the decision in *Mahavir Singh Vs. U.P.State Electricity Board and others, 1999(82) FLR 169*, it was submitted that merely on the ground of delay the reference could not have been rejected. He therefore submitted that since the petitioner now stands acquitted by the Criminal Court, he ought to have been reinstated in service.

Shri M.R.Pillai, learned counsel for the respondents by relying upon the provisions of Section 59 of the Act of 1971 submits that there is a bar to entertain the proceedings under the Act of 1971. The complaint under Section 28 of the Act of 1971 was duly instituted and it was dismissed for want of evidence. Hence the bar was clearly attracted. He further submitted that in the reference proceedings the grievance raised by the petitioner was with regard to non compliance with the provisions of Section 25 F of the Act of 1947. On this count, it was not necessary for the petitioner to await adjudication of the criminal proceedings. The delay in that regard was definitely fatal to the case of the petitioner.

On hearing the learned counsel for the parties, I find that the Labour Court was justified in holding that in view of provisions of Section 59 of the Act of 1971, the filing of the subsequent reference was barred. In the complaint filed under Section 28 of the Act of 1971 the petitioner

sought the relief of reinstatement before the Labour Court. The complainant did not intend to lead evidence and hence the Labour Court dismissed the complaint for want of evidence. Under the provisions of Section 59 of the Act of 1971, it is sufficient that effective steps are taken in the complaint as held by the Full Bench in *C.S.Dixit Vs. Bajaj Tempo Ltd., Pune 2000 II CLR 719*. Merely because that complaint was subsequently not prosecuted and came to be dismissed for want of evidence would not render the provisions of Section 59 of the Act of 1971 inapplicable. In the case of *Hafizullah Khan* (supra) relied upon by the learned counsel for the petitioner the complaint was withdrawn even before the written statement was filed. It is in that context that it was held that the reference made subsequently was not barred. Same is not the position in the present case. It is therefore found that the provisions of Section 59 of the Act of 1971 prohibited the Labour Court from adjudicating the reference on merits.

Insofar as the aspect of delay is concerned, though it is true that if the termination is held to be illegal the reference is not liable to be rejected. At the same time the fact that the petitioner was merely raising a grievance with regard to non-compliance with the provisions of Section 25 F of the Act of 1947 indicates that it was not necessary for him to await adjudication of the criminal proceedings. Such grievance could have been made shortly after the termination of his services. Reference however has been made after 28 years from the date of termination of services.

In that view of the matter, there is no case made out for interference in writ jurisdiction. The writ petition is therefore dismissed. No costs.

JUDGE