

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.5025 OF 2019
IN
REVIEW APPLICATION (STAMP) NO.11602/2017
WITH
REVIEW APPLICATION (STAMP) NO.11602/2017
IN
WRIT PETITION NO.3644 OF 1996

BABULAL CHHAGANLAL CHOUDHARI DIED LRS JAMNABAI BABULAL
CHOUDHARI AND OTHERS
VERSUS
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION,
AURANGABAD

...
Advocate for the Applicants/ Review Petitioners : Shri Shahane Pradeep L.
Advocate for the Respondent : Mrs.R.D.Reddy
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th March, 2020

Per Court:

1 I have heard the learned advocates for the respective sides on the Civil Application vide which, the applicants/ legal heirs of the deceased employee, pray for condonation of 199 days delay caused in filing the Review Application.

2 The learned advocate for the respondent/ MSRTC has entered an affidavit in reply and has opposed the application. The contention is that the delay has not been properly explained. This is not a regular case

to consider the condonation of delay liberally so as to enable the litigant to knock the doors of the court. In this case, delay is enormous as the Review Application is filed on 04.04.2017 after the Honourable Supreme Court has rejected the Special Leave Petition No.33803/2016 filed by the legal heirs of the deceased employee, on 25.11.2016.

3 Having considered the submissions of the learned advocates and the contents of the affidavit in reply filed by the respondent/ MSRTC, I do not find that the delay can be said to be deliberate or inordinate. No doubt, the Civil Application has been filed for seeking condonation of delay in filing the Review Application after the case of the employee has been scrutinized upto the Honourable Supreme Court. Keeping in view the law laid down by the Honourable Supreme Court in the matters of the *Collector, Land Acquisition, Anantnag v/s Mst.Katiji, AIR 1987 SC 1353* and *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649*, I find that the delay could be condoned by imposing costs of Rs.1000/-.

4 This Civil Application is, therefore, allowed. Delay of 199 days is condoned by imposing costs of Rs.1000/- (Rupees One thousand), which shall be utilized for a public cause in the light of the consent of the learned advocate for the respondent/ MSRTC.

5 Since both the learned advocates are prepared to address the Court on the Review Application, I have considered their strenuous

submissions and have gone through the grounds set out in the Review Application.

6 The learned advocate for the respondent/ MSRTC submits that the applicants will have to point out the error apparent on the face of the judgment delivered by this Court on 18.08.2016. The applicants cannot be permitted to address the Court in the Review Application as if the writ petition is being argued. The deceased employee had not led evidence before the Labour Court to indicate that he was unemployed from 22.12.1988 till he was reinstated on 24.08.1996.

7 The learned advocate for the deceased employee has placed reliance upon the judgment delivered by the Honourable Supreme Court on 21.08.2019 in the matter of *Jayantibhai Raojibhai Patel vs. Municipal Council, Narkhed and others, 2019 III CLR 632*. He submits that the facts in the *Jayantibhai case (supra)* are practically identical to the facts involved in the case in hand. The law laid down in *Jayantibhai (supra)* is that the denial of back wages to the employee, who has suffered due to an illegal act of the employer, would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages.

8 A ready reference chart has been prepared by the learned advocate for the deceased employee on instructions from the legal heirs and the record available. It is pointed out that 100% back wages would

amount to Rs.2,38,968.32 paise. The deceased employee has left behind a widow, three married daughters and one son, who operates a laundry in Aurangabad. The employee has been litigating before the Labour Court since 1992 and spent about 11 years in litigation till his demise in 2003. The legal heirs have been litigating for the last 17 years.

9 The learned advocate for the deceased employee further submits that he had challenged the fairness of the enquiry and also the findings of the Enquiry Officer. This is evident from paragraph 2G in the memo of the ULP complaint before the Labour Court. He, however, concedes that the Labour Court has observed in paragraph 5 of its judgment dated 30.08.1994 that the complainant/ employee admitted the enquiry papers and did not challenge the enquiry. This may have happened at the stage of recording of oral evidence. He further submits that the Industrial Court scanned through the record and proceedings of the enquiry and concluded that the enquiry was unfair and vitiated and the findings of the Enquiry Officer are perverse.

10 It requires no debate, in view of the law laid down by the Honourable Supreme Court in 1965 in the matter of *Workmen of the Motipur Sugar Factory Pvt.Ltd. Vs. The Motipur Sugar Factory*, AIR 1965 SC 1803, that the moment the enquiry is held to be vitiated including for the reason that the findings of the enquiry officer are perverse, the enquiry stands watered down. This law has been consistently

followed for the last 55 years and was considered in the matters of *Delhi Cloth and General Mills Company Limited v/s Ludh Budh Singh*, 1972 (1) SCC 595, *Workmen of M/s Firestone Tyre & Rubber Company of India v/s Management*, AIR 1973 SC 1227 : 1973 SCR (3) 587, *Shambhu Nath Goyal v/s Bank of Baroda*, 1984(4) SCC 491 and *Bharat Forge Company Ltd. v/s A.B.Zodge*, 1996 (73) FLR 1754 : AIR 1996 SC 1556. In *Bharat Forge Company (supra)*, the Honourable Supreme Court concluded that the moment the enquiry is quashed and set aside upon being held to be vitiated, the case stands on a footing of no enquiry. The Management would then have the liberty of conducting a de-novo enquiry subject to the strict limitations prescribed by the Honourable Supreme Court (five Judges Bench) in the matter of *KSRTC v/s Lakshmiddevamma*, 2001 (2) CLR 640.

11 Since the above legal exercise was not followed by the Industrial Court, I had concluded in my judgment under review dated 18.08.2016 that the matter will have to be remitted to the Labour Court for framing of two issues so that the Labour Court could scan through the record and proceedings of the enquiry and conclude as to whether, the findings of the enquiry officer were perverse or whether, the enquiry was vitiated. If the Industrial Court has delivered the verdict that the enquiry is vitiated, then the Labour Court will have to proceed with the matter

within the framework of *Lakshmiddevamma* (supra). The Management would then have the liberty to conduct a de-novo enquiry as may be permissible in law.

12 When I decided the writ petition, a request was made before me on behalf of the legal heirs that as the employee concerned has passed away, the exercise of de-novo enquiry would be unfruitful and would be an empty formality. The learned advocate for the deceased employee through the legal heirs had prayed for giving a "quietus" to this matter. It was in this backdrop and upon considering that the employee was reinstated and was in service from 1996 till he passed away in 2003, I had deprived the legal heirs of the back wages since the misconduct held to be proved against the deceased employee was of repeatedly slapping a co-worker.

13 The Industrial Court set aside the judgment of the Labour Court by vitiating the enquiry and in the same judgment, had concluded that once the enquiry is vitiated, the employee has to be reinstated in service with continuity and full back wages. It is quite apparent that the Industrial Court completely lost sight of the law laid down in catena of judgments by the Honourable Supreme Court that once an enquiry is vitiated, there cannot be an automatic reinstatement with continuity and full back wages. Even if the Industrial Court sets aside the enquiry for being unsustainable, in its revisional powers under Section 44 of the

MRTU & PULP Act, 1971, it was obliged to send back the record and proceedings to the Labour Court to enable the employer to conduct a de-novo enquiry and prove the charges.

14 I had not resorted to the above referred legal path and procedure only because the legal heirs of the deceased employee had pleaded before this Court that a "quietus" to the matter may be granted and the matter may not be remitted to the Labour Court though the legal procedure would mandate such a course.

15 It is in the above backdrop that I find that an incorrect statement was made by the learned advocate for the legal heirs before the Honourable Supreme Court on 25.11.2016 by contending that the employee had never challenged the enquiry and this Court (Coram : Myself) had wrongly recorded this fact. It is only on this ground that the Honourable Supreme Court dismissed the Special Leave Petition and permitted the legal heirs to file the Review Application before this Court by observing that "*If that be so, it would be open for the petitioners to move an application for review.*" The learned advocate for the legal heirs has frankly stated, on the basis of the pleadings before the Labour Court, that the employee had challenged the legality of the enquiry and the fairness of the findings of the Enquiry Officer. He submits that he is unable to comment upon the statement made by the learned advocate before the Honourable Supreme Court.

16 Considering the above, as I have interfered with the findings of the Industrial Court and the course available to the employer was to prove the charges before the Labour Court, which has not been done on the request of the learned advocate for the legal heirs, the charge of repeatedly slapping the co-worker cannot be said to be of a minor or technical character in view of the law laid down by the Honourable Supreme Court in the matter of *Colour Chem Limited and others vs. A.L. Alaspurkar and others, 1998 (I) CLR 638*.

17 The learned advocate for the legal heirs submits that the passing away of the employee 17 years ago and continued litigation by his legal heirs, may be considered sympathetically and the Court may award any quantum of back wages so as to soften the financial rigours of litigation suffered by the legal heirs. He further submits that the total back wages would be only Rs.2,38,968.32 paise and this Court may grant any quantum as back wages to the legal heirs.

18 The learned advocate for the respondent/ MSRTC submits that a quietus was given to the matter only on the request of the legal heirs when this Court delivered it's judgment on 18.08.2016. By filing the SLP before the Honourable Supreme Court in this backdrop, is actually a dishonest conduct of the legal heirs, who have unscrupulously taken advantage of the quietus given by this Court and then, approached the Honourable Supreme Court for back wages.

19 The learned advocate for the respondent/ MSRTC further submits that the distinguishing feature in the case of ***Jayantibhai's case*** (supra) and the case in hand is that Jayantibhai was out of employment for 18 years and hence, was granted portion of the back wages by the Honourable Supreme Court. In the instant case, the deceased employee (Babulal) was reinstated in service in 1996 and he continued till 2003 when he passed away.

20 I find that the submissions of the learned advocate for the MSRTC are correct to the extent that I had given a quietus to this litigation only on the request of the legal heirs and by suppressing this fact, they had approached the Honourable Supreme Court. Moreover, the pleadings set out by the deceased employee before the Labour Court were twisted before the Honourable Supreme Court. Yet, considering that even the widow is now about 58 years of age, I find that, by way of a sympathetic gesture, granting Rs.75,000/- to the widow, would meet the ends of justice. Three daughters are already married and settled in their marital homes and the son is operating a laundry.

21 In view of the above, this Review Application is partly allowed and the respondent/ MSRTC is directed to pay Rs.74,000/- (Rupees Seventy Four Thousand) to the widow Smt.Jamnabai Babulal Choudhari within EIGHT WEEKS from today. Rs.1,000/- (Rupees One Thousand), which the widow has to deposit as costs for condonation of

delay, would instead be donated by the respondent/ MSRTC to the Ghati Hospital, Aurangabad (Government Medical College and Hospital, Aurangabad), to be deposited with the Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft, to be drawn in the name of "Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad".

kps

(RAVINDRA V. GHUGE, J.)