

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

WRIT PETITION NO. 5297 OF 2018

Ramesh S/o Mahadeo Dable

...Versus...

Ministry of Forest and Environment, through its Secretary, Kamgar and Udhog
Vibhag, State of Maharashtra, Mantralaya, Mumbai and others

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

Court's or Judge's orders

Shri A.V. Lokhande, Counsel for petitioner.
Shri H.D. Dubey, A.G.P for respondent No.1
Shri V.P. Maldhure, Counsel for respondent Nos. 2 & 3

CORAM : AVINASH G. GHAROTE, J.

DATE : 28/02/2020

1. The present petition, is decided along with Writ Petition No. 2003/2018, Writ Petition No. 2007/2018 and Writ Petition No. 5298/2018.

2. In the instant case by an award dated 24/05/2017, in reference IDA No.15 of 2016 passed by the Labour Court, Yavatmal, the reference under Section 10(1)(c) and 12(5) of the Industrial Disputes Act 1947, has been dismissed on account of the same being barred by the provisions of Section 59 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act of 1971"), as well as on account of delay and laches. The undisputed position in the present matter is that the petitioner was appointed as a daily wagger with the respondent No.3. His engagement was terminated on 29/01/2001, w.e.f., 31/01/2001. As against this termination, the petitioner filed Complaint U.L.P

No.31/2001, which came to be dismissed on 20/09/2007. Against this dismissal dated 20/09/2007, the petitioner preferred a revision, which also came to be rejected. The rejection of the revision was not carried further in writ petition before this Court, resultant to which the rejection of U.L.P No. 31/2001 became final.

3. The petitioner, thereafter, did not initiate any proceeding of whatsoever nature. The Government of Maharashtra in the Department of Forest, on 16/10/2012, issued a Government Resolution, whereby, persons in employment, who were employed for 240 days in a year for a continuous period of 5 years or with a break, during the period 01/11/1994 to 30/06/2004, were directed to be considered for employment. The petitioner, in light of this Government Resolution, issued an approach notice on 19/11/2012, and in pursuance thereof, as the conciliation failed, the matter was referred to the Labour Court. Before the Labour Court, the petitioner led evidence. No evidence was led by the respondents.

4. The learned Labour Court by impugned order dated 24/05/2017, dismissed the reference, being aggrieved by which, the present petition has been filed.

5. Mr. Lokhande, learned Counsel for the petitioner, vehemently attacks the order of the Labour Court on all grounds. The first submission is that, the finding recorded by learned Labour Court in paragraph 14, that the proceedings were hit by the provisions of Section 59 of the Act of 1971, was palpably incorrect, as the Government Resolution dated 16/10/2012, gave the petitioner a fresh cause of

action. It is further submitted, that under the Government Resolution dated 16/10/2012, as a fresh cause of action had arisen, there was no issue of any delay or laches. It was further submitted, that the list prepared in pursuance of the Government Resolution dated 16/10/2012, contains the name of the petitioner as eligible, as was reflected from page 82 of the petition.

6. The learned Counsel for the respondents submits that this page was not a part of the record before the Labour court, and has been filed for the first time in these proceedings.

7. Mr. Lokhande, learned Counsel for the petitioner therefore, submits, that in light of the eligibility of the petitioner vis-a-vis the Government Resolution dated 16/10/2012, the petitioner was entitled to the same treatment, as was afforded to other persons, with whom the Department is claimed to have entered into the settlement, though those employees were from a different area.

8. He further places his reliance upon the judgment in the case of Indian Hotels Company Ltd. vs. D.T. Pandey and another, reported in 1991 (1) Mh.L.J. 810 and specifically paragraph 9 thereof, to contend that where an earlier complaint was allowed to be withdrawn, as having become infructuous in view of dismissal of writ petition, the provisions of Section 59 would not be attracted. He further placed his reliance upon the judgment in the case of C.S. Dixit vs. Bajaj Tempo Ltd., Pune, reported in 2000 (4) Mh.L.J. 261, and specifically paragraph 14 thereof, to contend, that if a plea was sought to be raised by amendment in a pending proceedings, and the amendment was not

allowed, it could not be said that the matter was even instituted or entertained, in light of the rejection of the application for amendment.

9. He further placed his reliance upon the order of this Court in Writ Petition No.715/2017, dated 25/02/2019 (The Divisional Manager, Forest Development Corporation Limited, Nagpur and others Vs The Member, Industrial Court (Maharashtra), Bhandara Bench, Bhandara and others) and other connected matters. He also relies upon the judgment in the case of Prabhakar Vs Joint Director, Sericulture Department and another, reported in (2015) 15 SCC 1, and specifically para 42.3 to contend, that if the workman has been able to give satisfactory explanation for the delay and laches and if the issue is still alive, the delay would not come in his way because of the reason that law of limitation has no application.

10. Mr. Maldhure, learned Counsel for respondent Nos.2 and 3, submits, that Section 59 of the Act of 1971, in the facts of the present matter, is applicable with full rigour in as much as the U.L.P.A. (Complaint) No.31/2001, as filed by the petitioner, was dismissed on merits and so also, the revision against it was also rejected on merits. That being the position, he submits, the bar under Section 59 of the Act of 1971 would be attracted.

11. He further submits, without prejudice to the above plea, that even presuming, that any proceedings at the behest of the petitioner were tenable, the delay from 2001 to 2016 of nearly 15 years, is one which is not explained in any manner whatsoever.

12. He submits, that the Government Resolution dated 16/10/2012, was clearly not applicable to the case of the petitioner, for the reason, that the said Government Resolution, was only applicable to those persons who were in employment as on 30/06/2004 and not otherwise. He submits, that since admittedly, the petitioner was not in employment on that day, he cannot have the benefit of the Government Resolution dated 16/10/2012 and the inclusion of the name of the petitioner, in any list, would be of no significance whatsoever. He places his reliance on the judgment of this Court in the case of *Executive Engineer, Public Works Department, Wardha Vs Namdeo Govindrao Nandurkar*, reported in *2011 (4) Mh.L.J. 33* and specifically paragraph No.19 to buttress his submissions.

13. Having heard the learned Counsel for the parties, and perused the record with their assistance, the following position emerges.

Insofar as the plea of Section 59 of the Act of 1971 is concerned, it is necessary to be noted, the admissions by the petitioner, as recorded in paragraph No.7, of the impugned order. The petitioner admits that by an order dated 29/01/2001, his employment was put to an end, w.e.f., 31/01/2001. He further admits, that this termination, was challenged by him by virtue of U.L.P.A. No.31/2001, before the Labour Court, Yawatmal, which was dismissed on merits. It is further admitted, that the revision filed against such dismissal was also rejected. It is an admitted position,

that this rejection was not challenged further, and thus has attained finality.

14. The provisions of Section 59 of Act of 1971 being material are reproduced as under :-

“59. Bar of proceedings under Bombay or Central Act

If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceedings shall at any time be entertained by the Industrial or Labour Court under this Act.”

15. The perusal of the language of Section 59 of the Act of 1971, would categorically demonstrate that it creates an embargo upon the entertainment of any proceedings, by the Courts/Tribunals, under this Act, in case the provisions of this Act have been earlier invoked and proceedings instituted. In the present matter admittedly, U.L.PA No.31/2001 was filed by the petitioner which came to be decided on merits resulting in dismissal of the same. Not only this, the challenge to the same in revision also failed and in absence of any further challenge, thus had become final and binding upon the petitioner. The bar under Section 59 of the Act of 1971, thus clearly applied to the case in hand as found by the Labour Court in paragraph 14 of the

impugned judgment. The reliance in the case of **C.S. Dixit** (Supra) by the learned Counsel for the petitioner, is of no assistance to the case as advanced by him for the reason, that the present case is not one of merely filing of the complaint under the Act, without anything further done in the matter, rather on the other hand, the proceedings have been instituted earlier, as pointed out above, have been decided on merits resulting in its dismissal.

16. The further contention raised by learned Counsel for the petitioner, that the impugned order, insofar as it rejects the claim of the petitioner, on account of delay and laches for the reason that the Government Resolution dated 16/10/2012, gave a fresh cause of action to the petitioner, is required to be mentioned to be rejected for the reasons, that the proceedings as filed on behalf of the petitioner, seek a relief, of setting aside the order of termination dated 29/01/2001, by which the services of the petitioner, came to be terminated, w.e.f., 31/01/2001. This claim of the petitioner, already stood decided and rejected in U.L.P.A. No.31/2001 and the same therefore, could not have been agitated, again using the Government Resolution dated 16/10/2012 as a shield. The reliance placed by the learned Counsel for the petitioner on **Prabhakar** (Supra), does not come to his assistance in any manner whatsoever, as it has to be demonstrated, that there was a satisfactory explanation, coupled with the position that the issue was still alive, which is no longer extant in the present matter, due to rejection of the earlier U.L.P.A. In fact, paragraph No.44 of the judgment in **Prabhakar** (Supra), clearly mandates, that the words “at any time” as used in Section 10(1) of the

Industrial Development Act, though do not admit of any limitation in making an order of reference, however the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed.

17. In fact, the dictum of this Court in the case of **Namdeo Nandurkar** (Supra), categorically mandates that any delay, has to be reasonably explained to the satisfaction of the authorities, which in the present case, has not been done.

18. That takes me to the plea, that under the Government Resolution dated 16/10/2012, the petitioner was eligible to have been considered for appointment. In this context, it is axiomatic to state that the services of the petitioner, stood terminated on 29/01/2001 w.e.f. 31/01/2001, challenge to which was negated by the Courts. Thus, w.e.f. 31/01/2001, the petitioner, no longer remained in the employment of the respondents. A perusal of the Government Resolution dated 16/10/2012, demonstrates that the purpose for which the same was brought into effect, was that persons were working/in employment on daily wages from years together and therefore, it was necessary, to regularize their services. The Government Resolution dated 16/10/2012, categorically uses the expression “regularization”, which naturally would mean the regularization of the employment of a person in service and not otherwise. In fact, the language of the Government Resolution goes further and it specifically mandates, that only those persons, who were in employment between the period 01/11/1994 to 30/06/2004 were entitled for regularization,

provided they complied with the other conditions as mentioned therein, for which purpose, 5089 additional posts were being created. The services of the petitioner already stood terminated on 29/1/2001 and therefore he was not in employment as on 30/6/2004, due to which the Government Resolution dated 16/10/2012, is clearly inapplicable to the petitioner.

19. The reliance by learned Counsel for petitioner, on the order dated 25/02/2019, in Writ Petition No. 715/2017 and connected matters is misplaced as the said order clearly considers the situation that the Government Resolution dated 16/10/2012 was applicable to those employees who were in employment during the period from 2/11/1994 till 30/6/2004, whereas in the instant case, as already observed, the employment of the petitioner already stood terminated on 29/1/2001 and therefore the Government Resolution dated 16/10/2012 would not be applicable to the petitioner.

20. In that light of the matter, I do not see any merit in the writ petition. The same is therefore, dismissed with no order as to costs.

JUDGE