

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

LETTERS PATENT APPEAL NO. 25/2013 IN WRIT PETITION NO. 1525/2011 (D)

Prabhakar s/o Mahadu Salve,
Aged about 63 years, Occupation : Nil,
R/o Near Bhatkar Boarding, Ward No.21,
Chikhali, Tq. Chikhali, Distt. Buldana.

APPELLANT

.....VERSUS.....

Divisional Controller,
Maharashtra State Road Transport Corporation,
Buldana Division, Tq. And Distt. Buldana.

RESPONDENT

Shri F. Khan with Shri B.M. Khan, counsel for the appellant.
None for the respondent.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 17TH NOVEMBER, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

This letters patent appeal filed under Clause 15 of the letters patent takes exception to the judgment of the learned Single Judge dated 09.08.2011 passed in Writ Petition No.1525 of 2011. By the said judgment the writ petition preferred by the appellant under Articles 226 and 227 of the Constitution of India challenging the judgment of the Industrial Court dated 04.09.2007 refusing to grant the relief of back wages came to be dismissed. The challenge in this letters patent appeal is restricted to the denial of back wages to the appellant.

2. The facts in brief are that the appellant was employed as a Driver with the respondent-Maharashtra State Road Transport Corporation. It is his case that he had put in about seventeen years of

satisfactory service. By an order dated 28.09.1991 he was dismissed from service after holding an enquiry on the ground that he had remained absent from duty without any sufficient cause. The aforesaid order of dismissal was challenged by the appellant by filing 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').

3. In the written statement filed by the respondent the averments as made in the complaint were denied. It was stated that the appellant had been paid an amount of Rs.50/- (Rupees Fifty) by way of advance to enable him to go to Nagpur for his medical check-up on 27.10.1990. The appellant did not go to Nagpur on the said date. He also remained absent from duties from 26.10.1990 to 08.11.1990 without permission. The enquiry held on the aforesaid two charges was after giving due opportunity to the appellant and as the charges were proved the punishment of dismissal from service came to be issued.

4. The Labour Court after considering the evidence on record answered the preliminary issue as regards fairness of the departmental enquiry and held the same to be conducted in a fair and proper manner by its order dated 10.12.2004. The Labour Court then held that the findings of the Enquiry Officer were perverse since necessary explanation

was furnished by the appellant and the advance of Rs.50/- had been repaid by him. The appellant was also paid salary up to 31.10.1990 which indicated that the leave sought by him was sanctioned. On that premise, the Labour Court allowed the complaint and directed reinstatement of the appellant with continuity in service and payment of 50% back wages by its judgment dated 03.02.2005. Both the parties being aggrieved by the aforesaid judgment preferred separate revision applications. The respondent sought dismissal of the complaint in its revision application while the appellant sought grant of 50% back wages that were denied by the Labour Court. The Industrial Court *vide* its common judgment dated 04.09.2007 allowed the revision application preferred by the respondent and dismissed the revision application preferred by the appellant. The appellant then sought review of the judgment of the Industrial Court dated 04.09.2007. According to the appellant in paragraph 44 of the said judgment the Industrial Court had been pleased to confirm the order passed by the Labour Court insofar as grant of relief of reinstatement with continuity was concerned. However, the operative part of the order had been wrongly recorded. The Industrial Court therefore on 15.03.2008 clarified its earlier judgment and maintained the order of the Labour Court to the extent the relief of reinstatement with continuity of service was granted. The grant of 50% of back wages came to be set aside.

Being aggrieved by the denial of 50% back wages, the appellant preferred Writ Petition No.1525 of 2011. The learned Single Judge by his judgment dated 09.08.2011 was pleased to observe that though the Industrial Court had decided the proceedings on 04.09.2007 the writ petition challenging that order had been filed on 10.02.2011 and hence there was a delay of almost four years. It was further observed that no case was made out to interfere in writ jurisdiction and thus the writ petition came to be dismissed. This judgment is the subject matter of challenge in the present appeal.

5. Shri F. Khan, learned counsel for the appellant submitted that the learned Single Judge erred in refusing to grant the relief of back wages by not entertaining the writ petition on the ground that there was delay in filing the same. He submitted that after the Industrial Court was pleased to decide both the revision applications on 04.09.2007 the appellant had filed a review application which came to be partly allowed on 15.03.2008. By the said order the relief of reinstatement and continuity of service was restored. The learned Single Judge was not correct in observing that exception was taken only to the order dated 04.09.2007. A challenge had also been raised to the order passed in exercise of review jurisdiction on 15.03.2008 since the relief of back wages had been refused. It was true that the writ petition was filed on

10.02.2011 which was within a period of three years from the adjudication of the review application. The appellant had retired from service in the year 2005 and being out of employment till that date had put the appellant in financial distress. Assuming that the writ petition had been belatedly filed, the Court could have considered modifying the relief that could be granted to the appellant in these facts. There was no reason whatsoever to refuse to entertain the writ petition on that ground. In support of this contention, the learned counsel placed reliance on the decision in *Krishi Utpadan Mandi Samiti Through Its Secretary, Anand Nagar Versus Arvind Chaubey & Another* [(2002) 9 SCC 549].

It was then submitted that since both the Courts had held that the order of dismissal passed by the respondent was bad in law and the appellant in his deposition had clearly stated that he was not gainfully employed during the interregnum, there was no justifiable reason to deny the relief of back wages. The Industrial Court having confirmed the findings recorded by the Labour Court was not justified in setting aside that part of the order granting 50% back wages. In that regard, reliance was placed on the decision in *Vithal Gatlu Marathe Versus Maharashtra Road Transport Corporation & Others* [1995 (I) CLR 854]. The order of the Industrial Court was in breach of the jurisdiction conferred under Section 44 of the Act of 1971. The learned counsel also placed reliance on the decisions in *Shiv Dass and Union of India & Others* [2007(112)

FLR 877], *Shri Bhagwan Lal Arya Versus Commissioner of Police, Delhi & Others* [(2004) 4 SCC 560] and *P.V.K. Distillery Limited Versus Mahendra Ram* [(2009) 5 SCC 705]. He therefore submitted that the appellant was entitled for the relief of back wages that were wrongly denied to him.

6. There was no appearance on behalf of the respondent on 16.11.2021. Hence, the hearing of the appeal was deferred to 17.11.2021. Today also, there is no appearance on behalf of the respondent.

7. With the assistance of the learned counsel for the appellant, we have perused the records of the case and we have given due consideration to his submissions. At the outset, it may be noted that the writ petition preferred by the appellant for challenging the judgment of the Industrial Court dated 04.09.2007 was under Articles 226 and 227 of the Constitution of India. Amongst various grounds raised it was pleaded in the writ petition that the Industrial Court while interfering with the discretion exercised by the Labour Court of awarding 50% back wages exceeded its jurisdiction. Another ground raised was that the material on record in the form of deposition of the appellant had been ignored by the Industrial Court while recording a finding that the appellant had failed to

prove that he was out of employment after dismissal from service. The finding of the Industrial Court was challenged as being perverse. In the letters patent appeal a ground has been raised that though the appellant had challenged the judgment of the Industrial Court dated 04.09.2007 as well as the order passed by the Industrial Court on the review application dated 15.03.2008, the learned Single Judge only by considering the challenge as raised to the judgment passed by the Industrial Court on 04.09.2007 failed to take into consideration the modification as made by the Industrial Court while reviewing its own judgment on 15.03.2008.

From the aforesaid it can be seen that the appellant had prayed for issuance of writ of certiorari in the writ petition that was preferred under Articles 226 and 227 of the Constitution of India. It would be sufficient for the present purpose to refer to a recent decision of the Hon'ble Supreme Court in *General Manager, Electrical Rengali Hydro Electric Project, Orissa & Others Versus Giridhari Sahu & Others* [(2019) 10 SCC 695] wherein in paragraph 28 it has been observed as under:-

“28.An error of law which becomes vulnerable to judicial scrutiny by way of certiorari must also be one which is apparent on the facts of the record. As held by this Court in *Hari Vishnu Kamath Versus Ahmad Ishaque* AIR 1955 SC 233, as to what constitutes an error apparent on the fact of the record, is a matter to be decided by the Court on the facts of each case. A finding of fact which is not supported by any evidence would be

perverse and in fact would constitute an error of law enabling the writ Court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amenable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down in Parry & Co. Ltd. Versus P.C. Pal, AIR 1970 SC 1334.”
(emphasis supplied by us).

8. Coming to the challenge raised to the judgment of the learned Single Judge it can be seen from the record that after the Industrial Court decided both the revision applications preferred by both the parties on 04.09.2007 and allowed the revision application preferred by the respondent resulting in rejection of the complaint filed by the appellant, the appellant had filed a review application before the Industrial Court on 15.10.2007. The Industrial Court after hearing both the parties decided the review application on 15.03.2008 and partly reviewed its judgment dated 04.09.2007. The Industrial Court restored the relief granted by the Labour Court in the complaint as regards reinstatement of the appellant with continuity in service from 30.09.1991. The direction to grant 50% back wages to the appellant was however set aside. It is thus clear that by exercising review jurisdiction, the learned Judge of the Industrial Court partly modified the earlier judgment dated 04.09.2007. Writ

Petition No.1525 of 2011 challenging both aforesaid orders was preferred by the appellant on 10.02.2011. This is within a period of three years from 15.03.2008 when the Industrial Court partly modified its earlier judgment. The learned Single Judge while refusing to interfere in writ jurisdiction has held that since there was a delay in approaching this Court of almost four years from 04.09.2007 when the Industrial Court decided the review applications, there was no reason to entertain the challenge as raised. It appears that the fact that the review application preferred by the appellant was entertained and partly allowed by the Industrial Court on 15.03.2008 has missed the attention of the learned Single Judge. The prayers made in the writ petition indicate a challenge even to the order dated 15.03.2008. It is thus clear that when the writ petition was filed on 10.02.2011 it was within a period of three years from 15.03.2008.

9. In this regard we may refer to the judgment of the Constitution Bench in *State of Madhya Pradesh & Another Versus Bhailal Bhai & Others* [AIR 1964 SC 1006] where the aspect of reasonable period for preferring a writ petition and the aspect of unreasonable delay has been considered. The observations in paragraph 21 are instructive and the same read as under:-

“21. Learned counsel is right in his submission that the provisions of the Limitation Act do

not as such apply to the granting of relief under Art. 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.”

In the light of the aforesaid decision we find that since the writ petition was filed within a period of three years from 15.03.2008 it ought to have been entertained on merits and there was no unreasonable delay in filing the same. Besides it is an admitted position on record that the appellant had attained the age of superannuation when the proceedings were pending before the Industrial Court.

10. Having found that the writ petition was liable to be entertained on merits, the same would not mean the period of almost three years taken for approaching this Court ought to be totally ignored. It is a settled position of law that even if there is some delay in seeking legal redress, instead of shutting out a genuine claim the relief if granted can always be suitably modified. This would depend upon the facts of the case. The learned counsel for the appellant is justified in placing reliance

on the decisions in *Krishi Utpadan Mandi Samiti* and *Shiv Dass* (supra). This aspect will therefore have to be kept in mind while considering the nature of relief to which the appellant is found entitled in law.

11. As stated above, the challenge to the order of the Industrial Court is restricted to the refusal of grant of back wages. The Labour Court had granted 50% back wages from 30.09.1991 till reinstatement of the appellant. The Labour Court while granting such relief considered the deposition of the appellant in which he clearly stated that since his dismissal from service he was not engaged in any employment though he had tried to search for the same. He was not provided the work by anybody on the ground that he had been dismissed from service. There is no specific cross-examination by the respondent on this aspect. It is on this premise that the Labour Court proceeded to grant the relief of 50% back wages. The Industrial Court however interfered with that part of the order on the ground that there was delay in filing the complaint and that the observation by the Labour Court that the Corporation had not proved gainful employment of the appellant was incorrect as there was no such pleading by the Corporation in its written statement. The Division Bench in *Vithal Gatlu Marathe* (supra) has in clear terms held that the Industrial Court in exercise of revisional jurisdiction under Section 44 of the Act of 1971 cannot re-appreciate the evidence on record and overturn findings of the Labour Court.

The appellant having clearly deposed as not being in gainful employment after dismissal from service, he ought to have been cross-examined on that aspect. Though the Corporation may not have taken a specific stand that the appellant was in gainful employment, in the absence of any cross-examination by the Corporation the deposition of the appellant in that regard remained unchallenged. It cannot be lost sight of that both the Courts have concurrently held that the punishment of dismissal was shockingly disproportionate with the alleged misconduct. Though the enquiry conducted was held to be fair and proper the findings of the Enquiry Officer were held to be perverse. It can thus be said that these findings and a clear statement of the appellant that he was not in gainful employment did make out a case for grant of relief of back wages. The Industrial Court was thus not justified in interfering with that part of the order of the Labour Court awarding 50% back wages.

12. It is true that the order of dismissal issued to the appellant is dated 28.09.1991. There was a delay in filing the complaint as it was filed on 14.04.1994. For the time taken in filing the complaint before the Labour Court it can be said that the appellant is liable to be deprived of back wages for that period. The Labour Court infact had granted 50% back wages from 30.09.1991 onwards ignoring

the delay in filing the complaint. On the quantum of back wages the Labour Court was pleased to award 50% thereof. We find the same to be reasonable. However since the appellant preferred the writ petition on 10.02.2011 which is just short of a period of three years from 15.03.2008 when the Industrial Court partly reviewed its order, the said aspect also cannot be ignored. Hence, for the period taken by the appellant to file the aforesaid writ petition he can be deprived of 10% back wages from the 50% back wages to which he is found eligible. In these facts therefore we are inclined to restore the relief of grant of back wages which was so granted by the Labour Court but to the extent of 40% from 14.04.1994 which is the date of filing of the complaint till the superannuation of the appellant. The aforesaid direction in our view would meet the ends of justice.

13. Hence, the order passed by the learned Single Judge on 09.08.2011 in Writ Petition No.1525 of 2011 is set aside. The judgment passed by the Industrial Court in Revision Application Nos.84 of 2005 and 120 of 2005 is partly modified. It is held that the appellant is entitled to 40% back wages from 14.04.1994 which is the date of filing of the complaint till his superannuation. Needless to state that if during this period the appellant has discharged duties and has been paid his salary, he would not be entitled for back wages for that period.

The letters patent appeal is partly allowed in aforesaid terms.

No costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)

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