

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.7362 OF 2022**

SHAIKH RAFIQUE GAFUR

..PETITIONER

VERSUS

STATE OF MAHARASHTRA AND OTHERS

..RESPONDENTS

...

Mr. P. V. Barde, Advocate for the Petitioner.

Mrs. V. N. Patil-Jadhav, AGP for Respondents-State.

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CORAM : SANDEEP V. MARNE, J.

DATED : 05th SEPTEMBER, 2022.

PER COURT:-

1. By the present petition, the petitioner challenges Award dated 05.12.2021 passed by the Industrial Court, Ahemadnagar in Reference (IT) No.02/2016, by which the petitioner's Reference seeking absorption in service has been dismissed.

2. One of the reasons why the Reference came to be answered in negative was decision in earlier proceedings filed by the petitioner before the Labour Court challenging his termination from service. By judgment and order dated 04.02.2003 passed in Complaint (ULP) Nos.51 to 54 of 1996, the complaint was not only dismissed but it was held that the employer of the petitioner is not covered by definition of the term 'Industry' under the Industrial Disputes Act. It is a common ground that the said judgment and order dated 04.03.2003 has attained finality.

3. Mr. Barde, learned counsel appearing for the petitioner invites my attention to the Government Resolution dated 16.10.2012, by which a scheme has been formulated for regularization of services of the eligible Forest Labourers. He submits that on account of issuance of the said Government Resolution dated 16.10.2012, a fresh cause of action came to be created in favour of the petitioner on account of which he was justified in filing Reference before the Industrial Court seeking regularization of his services.

4. The learned Industrial Court has dismissed the Reference essentially on two grounds viz. that the Reference was barred by long and inordinate delay of 12 long years and that in the proceedings earlier filed, the employer of the petitioner was not held to be an industry.

5. Mr. Barde, learned counsel for the petitioner submits that the Industrial Court ought not to have rejected the Reference on the ground of delay as it is well settled position that no specific period of limitation applies for raising of industrial dispute.

6. Even if I was to accept this submission of Mr. Barde, learned counsel, the second hurdle coming in the way of the petitioner cannot be perhaps be crossed. Undoubtedly, in the earlier proceedings the Labour Court has held that the

employer of the petitioner is not an industry. The Industrial Court has also accused the petitioner of not disclosing filing of the earlier proceeding in his Reference.

7. I therefore do not find any merit in the present petition. However, it is clarified that only the issue of maintainability of the Reference before the Industrial Court is decided not only by the Industrial Court, but also by this Court. All the points raised by the petitioner on merits are expressly kept open. It will be open to the petitioner to agitate the grievance before the appropriate Court of competent jurisdiction in accordance with law. No opinion is expressed on merits of the matter.

8. With these observations, the petition stands dismissed. No costs.

(SANDEEP V. MARNE)
JUDGE