

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

909 WRIT PETITION NO. 5463 OF 2003

- 1] Shri. Rameshwar Harichandra Narwade,
Aged : 34 years, Occu. Unemployed,
At/Po : Pimalner (Ganpati),
Tq/Dt : Beed.
- 2] Shri. Kishan Janardhan Navghare,
Aged : 35 years, Occu. Unemployed,
At/Po : Harki Nimgaon, Tq. Majalgaon,
Dt : Beed.
- 3] Shri Laxman Narsingrao Suryawanshi,
Aged : 33 years, Occu. Unemployed,
At/Po : Yetala, Tq. Darmabad,
Dt : Nanded
- 4] Shri Subash Sahebrao Garje,
Aged : 31 years, Occu. Unemployed,
At/Po : Mahaj Dewade,
Tq. Pathardi, Dt: Ahmednagar.
- 5] Shri Kerba Baburao Dhulgande,
Aged : 28 years, Occu : Unemployed,
At : Sangarshnagar, Po : Mukundwadi,
Aurangabad.
- 6] Shri Ashok Kondiram Narwade,
Aged : 39 years, Occu. Service,
N-6, F-4/11, CIDCO, Aurangabad.

.... Petitioners

Versus

M/s. Bajaj Auto Ltd.,
Bajajnagar, Waluj IA,
Aurangabad, through Vice – President

....Respondent

...

Ms Pradnya Talekar, Advocate for the petitioners
Mr. Y. R. Marlapalle, Advocate for respondent

...

AND
CIVIL APPLICATION NO. 13476 OF 2021
IN
WRIT PETITION NO. 5463 OF 2003

Rameshwar Harichandra Narwade & Ors. ... Applicants

Versus

M/s. Bajaj Auto Ltd., Aurangabad.Respondent

...
Ms Pradnya Talekar, Advocate for the applicants
Mr. Y. R. Marlapalle, Advocate for respondent
...

CORAM : BHARATI H. DANGRE, J.
DATE : JANUARY 25TH, 2022

ORAL JUDGMENT : -

1. By the present civil application, the six applicants, who are the petitioners in Writ Petition No. 5463 of 2003 have sought early hearing of the writ petition in the wake of they being governed by the decision of the Apex Court and thereupon on 30.01.2020, this Court had directed the respondents to obtain necessary instructions and to work out the matter.

2. In furtherance of the said directions, the respective Counsel have proceeded to argue the writ petition finally. Hence I have heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

. The learned Counsel for the petitioners Ms Pradnya Talekar has placed heavy reliance on the decision of the Hon'ble Apex Court in the case of **Bajaj Auto Limited v. Bhojne Gopinath D. & Others** reported in (2004) 9 SCC 488 and she submits that the ratio in the said judgment and the benefit conferred on 1197 employees, ought to be extended to the present petitioners, for the reasons which she has put forth. According to her, the sequence of events would reveal that the various complainants, who were employed with the Company, approached the Industrial Court at Aurangabad under Section 28 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the 1971 Act") alleging unfair labour practices enumerated under Item 5, 6, 9 and 10 of Schedule IV appended to the 1971 Act. The complainants, who were appointed as Welder, Fitter, Turner, Machinist, Helper, Grinder etc., and were working since the year 1990, were granted employment in each year for about period of seven years and after expiry of the said term, their services were discontinued, which practice went on for a period of seven years when they filed complaints in the year 1997. The complainants alleged that a rotation system was followed by the appellant-Company whereby different sets of workmen came to be appointed by rotation by displacing the workmen appointed earlier, which was

indicative of the fact that the work of permanent nature was available with the appellant-Company but with a view to deprive them of rights and privileges of permanent employees, the method was adopted.

. The complaints came to be filed by the present petitioners also. On 09.11.2000, the Industrial Court, Aurangabad, decided the complaints under a common judgment and partly allowed the same directing the Company to prepare seniority list of all temporary workers in employment and who are not in employment and give them continuous work and on completion of 240 days, make them permanent in the employment. The Company was restrained from engaging any temporary workers till absorption of the complainants in the employment as per seniority. It was declared that the respondent had committed unfair labour practice under Item 6 & 9 of Schedule IV of the 1971 Act.

. This resulted in two sets of petitions being filed before the high Court, one being filed by the aggrieved workmen and another being filed by the management of the Company challenging the order of reinstatement with 50% backwages. The High Court confirmed the award passed by the Industrial Court in favour of the employees, which constrained the management of the Company to approach the Supreme Court and the decision came to be delivered as mentioned

above in the case of Bhojane Gopinath (supra).

. Pertinent to note that the Apex Court referred to 1197 complainants who had approached the Industrial Court and who had filed five writ petitions before the High Court challenging the directions of the Industrial Court and also one writ petition filed by the respondent-Company, being aggrieved by the permanency and the findings of the Industrial Court to the effect that they had engaged themselves in unfair labour practice. Noting that during the pendency of the said appeal, a compromise was reached between the appellant-Company and 1006 workmen and the entire compensation amount has been paid to them in terms of earlier order passed, the appeals came to be disposed off in the wake of the compromise. As far as the remaining employees out of 1197 are concerned, the direction came to be issued in paragraph no. 17 to the following effect.

“17. In Civil Appeal No. 5003 of 2002, the total number of respondents is 1197, but of which 1006 have compromised the matter as stated above. Now, so far as the remaining workmen are concerned, we are of the view that it would be just and expedient that they are paid a reasonable amount of compensation under Section 30 of the 1971 Act which would be calculated in the manner indicated hereinafter. Each of the remaining workmen shall be paid a lump sum amount calculated at 85 days' salary, inclusive of all allowances, for the number of years each workman had actually worked irrespective of the days a workman may have put in in a year. The calculation would be made on the basis of work during a calendar year and that the calendar year for each workman, the minimum salary that

would be taken into account would be Rs. 8000 per month subject to the condition that if on the date of termination, the salary of any particular workman was more, then the calculation would be made on the actual last-drawn salary. The calculation in the abovesaid manner would be made for the period up to the date of termination i.e. on 9-1-2001. For the period after termination till date, the basis of calculation would be lump sum two years of service on the basis aforesaid, namely, 85 days for each calendar year i.e. salary for 170 days.”

3. As far as the present petitioners are concerned, they are not included in the list of 1197 employees but it is not in dispute that the present petitioners filed Complaint ULP before the Industrial Court invoking Section 28 r/w Section 26 and Item 5, 6 and 9 of the 1971 Act and they were also engaged by the Company in their factories at Aurangabad and Pune. The judgment delivered by the Industrial Court on 09.11.2000 which was a common judgment declaring that the Company had engaged in unfair labour practice also governed them and a declaration was given in their favour to the effect that they had proved the unfair labour practice under Item 6 and 9 of Schedule IV of the 1971 Act and their complaint was also partly allowed and the respondent Company was directed to cease and desist from engaging in unfair labour practice in future. The Company was directed to prepare a seniority list of all temporary workers who are in the employment and who are not in the employment and give them continuous work and on completion of

240 days of service, they were directed to be made permanent. The new employees were permitted to be engaged only on absorbing the complainants as per their seniority.

. The learned Counsel Ms Talekar make a solemn statement that the common judgment delivered by the Industrial Court on 09.11.2000 which ultimately landed before the Apex Court in the case of Bhojne Gopinath (supra), covered the Complaint (ULP) filed by the present petitioners also.

4. The judgment dated 09.11.2000, came to be assailed by the present six petitioners by filing a separate Writ Petition No. 5463 of 2003 seeking a declaration that the impugned order do not grant substantial relief to the petitioners for which they are entitled to and praying for quashing and setting aside of the termination order of the petitioners and seeking their continuation in service. This petition came to be instituted on 08.12.2003 and in the said petition, a specific averment came to be made in paragraph no. 9 to the following effect :

“9. The Petitioners approached their lawyers who conducted the trial for challenging the Order of the Industrial Court. It appears that there occurred some confusion, and their names did not reflect in the group of Writ Petitions filed in this Hon’ble Court. They were also under the bonafide impression that their names are carried forward in the litigations commenced from the Industrial Court, through this Hon’ble Court to the

Supreme Court. In October-2003, when the Petitioners approached the Respondent for ascertaining the position on the compromise proposal, it was revealed that their names are not reflecting in the Writ Petitions Nos. 4715 of 2000 to 4719 of 2000, and also in Writ Petition No. 523 of 2001. The investigation to ascertain the correct position took some time. The Petitioners are required to go to the Industrial Court and this Hon'ble Court to verify the correct position qua-them in the litigation. In view of this situation and circumstances, there occurred a delay of 03 years, 01 month days in filing this Writ Petition. The delay is not deliberate, but accidental. The Petitioners are keen in adjudicating their claim and to get a decision on the points raised by them in this Petition from this Hon'ble Court. Consequently, they believe that they are entitled to condonation of delay and adjudication of their rights in this Hon'ble Court.

5. The petitioners therefore though governed by the common judgment delivered by the Industrial Court, were not included as petitioners inadvertently at the time when the petitions were filed by other employees and though Ms. Talekar submits that the petitioners were party to the writ petitions instituted by the management assailing the judgment of the Industrial Court before the High Court, this fact is denied by Counsel for the respondent Mr. Y. R. Marlapalle.

. The present six petitioners who had approached the Industrial Court along with other complainants and who were granted the same relief by the common judgment delivered by the Industrial Court, however, did not join the petitions as petitioners in the earlier round and the explanation offered is 'inadvertently they were missed out as parties to the petition'. However, they

approached the High Court explaining the delay and in the main writ petition, they claimed that they are entitled for the same relief which was granted in favour of the set of employees who had approached this Court a little earlier to the petitioners and who were respondents in the writ petition filed by the management. The learned Counsel Shri. Y. R. Marlapalle denied the claim of the petitioners by stating that they were not party to the writ petition which was decided earlier and against which the management had approached the Supreme Court.

. In any case, the petitioners were prosecuting their remedy undisputedly before the Industrial Court along with the other complainants and therefore they were held entitled for the same relief which was granted in favour of the set of employees who had approached this Court.

6. The learned Counsel Mr Marlapalle has placed on record a subsequent decision of the Apex Court in the case of **Bajaj Auto Limited Vs. Rajendra Kumar Jagannath Kathar & others**, in Civil Appeal Nos. 2159-2160 Of 2012, dated 04.04.2013, in a matter, taken out by the management to the Supreme Court being, aggrieved by the orders issued by the Industrial Court against the management and the said decision being delivered on 04.04.2013, noticed that the

respondents before the Apex Court are such employees who were silent spectators, when the earlier group of cases were tried and when the matter travelled to the Supreme Court they joined the fray and even it was noticed that certain complaints were filed at a later stage and therefore the Apex Court modified the decision in the case of Rajendra Kumar Jagannath Kathar (supra) and substituted the direction issued by it earlier with the following directions :

- "21. In the case at hand, as is noticeable from the judgment of the Industrial Court, the complainants were silent spectators when the earlier group of cases was tried and the matter travelled to this Court. It is also observed that there were certain cases which were filed at a later stage. The Division Bench also considered that the filing of the complaints range from 1997-2003. Regard being had to the totality of circumstances, we are inclined to modify the amount of reasonable compensation which has been granted by the Industrial Court. The modified order would read as under : -

The appellant is directed to pay lump sum amount calculated at 65 days' salary, inclusive of all allowances for the number of year each complainant has actually worked irrespective of the days a complainant may have put in in a year. The calculation would be made on the basis of work during a calendar year and that the calendar year in which a complainant may not have worked at all would be kept out of consideration while calculating the amount. In calculating the salary that would be taken into account would be Rs. 8,000/- p.m. subject to condition that if on the date of termination, the salary of any particular complainant was more, than the calculation would be made on the actual last drawn salary. The calculation in the above manner would be made for the period up to the date of terminations in 1997. For the period after termination till date of this judgment, the basis of calculation would be lump sum two years of service on the basis aforesaid, viz. 65 days for each yer i.e. 130 days.

Although we have modified the order, yet keeping in view the fact that the respondent-workmen had already withdrawn the amount in pursuance of the order dated 06-02-2012 when leave was granted, no steps shall be taken by the appellant-company to recover the differential sum from the respondents."

7. The learned Counsel Shri. Marlapalle would submit that the petitioners who were not diligent in approaching the High Court at a earlier round, do not deserve the benefit extended in the case of Bhojane Gopinath (supra) and since they were silent spectators when the benefit was earlier granted to the earlier group of litigants, they slowly woke up from the slumber and being sure of the benefit being granted in their favour approached the Court and, therefore, they would be governed by the second decision delivered on 04.04.2013.

8. On perusal of the sequence of events, it is very apparent that the Apex Court permitted the compromise to be effected by the management with 1006 employees in the first round and for the remaining employees who had approached the Industrial Court and posed a challenge to the unfair labour practice, they were conferred with the benefit in terms of the paragraph no. 17 of the judgment in the case of Bhojane Gopinath (supra), whereas those who approached at the later point of time were conferred with the

modified benefit, when the Civil Appeals filed by the Company came to be decided on 04.04.2013 and instead of the lump sum amount to be calculated at 85 days' salary, the same was slashed to 65 days' salary and the benefit granted in the case of Rajendra Kumar Jagannath Kathar (supra) was extended to this set of employees with modification as above. As far as the present petitioners are concerned, they had approached the Industrial Court along with the first group of employees being 1197 in number but inadvertently when a decision was given in their favour partly, they approached the High Court with some delay. However, it has to be noticed that they knocked the doors of the High Court before the date on which the Apex Court delivered its verdict in the case of Bhojane Gopinath (supra) and, therefore, it cannot be said that they were watchful of the proceedings and the petitioners in paragraph 9 of the petition have also offered an explanation to the effect that they were under *bona fide* impression that their names are also included in the five writ petitions which were instituted on behalf of the employees but on noticing that their names are not included in the writ petitions, they filed the writ petition separately. The explanation is offered much prior to the decision being delivered by the Apex Court in the case of Bhojane Gopinath (supra) and, therefore, it cannot be said to be an afterthought.

. In any case, Their Lordships of the Apex Court were gracious enough to extend the benefit which it had conferred on the 1197 employees, including 1006 who had compromised, and the benefit with certain modifications was conferred on the employees who approached the Industrial Court, High Court subsequently and were respondents in the Special Leave Petition filed by the Company, the amount being slashed to 65 days in a month.

. In the backdrop of the aforesaid facts and circumstances, the petitioners who were diligent and who had approached the Industrial Court along with 1197 employees in the first round of litigation which gave rise to two set of petitions being instituted in the High court, one at the instance of the employees and another at the instance of the employer/management, the petitioners missed the bus as they were not included as petitioners in the petition filed before High Court and they were not even impleaded as respondents in the petition filed by the management, who challenged the benefit granted to them by the Industrial Court and as such the petitioners, in my considered opinion, are governed by the verdict in the first round of litigation i.e. in the case of Bhojane Gopinath (supra).

9. In the wake of the aforesaid, since the petitioners are governed by the decision of the paragraph no. 17 of the Apex Court

in the case of Bhojane Gopinath (supra) and since the petitioners were parties to the common judgment delivered by the Industrial Court which had been impugned before the High Court and thereafter before the Supreme Court, the petitioners deserve a similar relief as granted in favour of 1197 employees, who were conferred the benefit in terms of paragraph no. 17.

. The writ petition therefore deserves to be allowed, however, the petitioners may not be held entitled for the prayers as have been sought by them in paragraph nos. (c) to (ff) but instead they shall be entitled to the benefits accrued to them flowing from paragraph no. 17 of the decision of the Apex Court in the case of Bajaj Auto Limited versus Bhojane Gopinath D. and others (2004) 9 SCC 488.

. Needless to state that this benefit is applicable to the petitioners because of their peculiar situation, since they had joined the employees who at an earlier point of time had challenged the action of the alleged termination and the unfair labour practice along with 1197 employees and a common judgment delivered by the Industrial Court on 09.11.2000 covered the complaints filed by the present petitioners.

. On the aforesaid writ petition being allowed, the petitioners shall approach the management with all the necessary

documents necessary for implementation of the order, within a period of two weeks from today. On the papers being laid before the management by the petitioners, the management shall disburse the amount within period of eight weeks thereafter.

10. Rule is made absolute in the aforesaid terms.

11. In view of disposal of writ petition, the civil application no. 13476 of 2021 stands disposed off.

[BHARATI H. DANGRE]
JUDGE