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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11000 OF 2018

Shri Bhagwan Tanaji Sawant ..Petitioner
VS.
The Executive Engineer,
Irrigation Project, Ratnagiri ..Respondent

**WITH
WRIT PETITION NO. 10967 OF 2018**

Shri Samadhan Sakharam Phatak ..Petitioner
VS.
The Executive Engineer,
Irrigation Project, Ratnagiri ..Respondent

**WITH
WRIT PETITION NO. 11005 OF 2018**

Shri Shahaji Shripati Yadav ..Petitioner
VS.
The Executive Engineer,
Irrigation Project, Ratnagiri ..Respondent

**WITH
WRIT PETITION NO. 5438 OF 2019**

Shri Dinesh Balkrishna More ..Petitioner
VS.
The Executive Engineer,
Irrigation Project, Ratnagiri ..Respondent

Mr. Sandeep S. Koregave, for petitioners.
Ms. V. S. Nimbalkar, AGP for Respondent – State.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 23, 2022

ORAL JUDGMENT :

1. The issues involved in all these petitions are common and hence, the same are being disposed of by a common judgment.

2. The challenge in these petitions is to an order dated 08/09/2017 passed by the learned Member, Industrial Court No. 1, Kolhapur dismissing the revision applications filed by the petitioners (original complainants) under section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1947 (hereinafter referred to as "the said Act", for short). The revision applications are dismissed on the ground that the same are filed belatedly and in any case, after the period exceeding three years, which according to the Industrial Court is the normal period of limitation under the residuary article 113 of the Limitation Act. The facts of the case in brief are as under:

3. The petitioners-employees were appointed as River Gauge Readers and Rain Gauge Readers with the

respondent, Executive Engineer, Irrigation Project, Ratnagiri. It is contended by them that they worked from 1979 to 1991. Some time in the year 1995, their services came to be terminated. Various complaints of unfair labour practice were filed by the employees before the Labour Court, Ratnagiri between the year 1995-96. The Labour Court by order dated 19/12/2005 allowed the complaints and declared that the employer has engaged in unfair labour practice. The employer thereupon filed revisions under section 44 of the said Act. By an order dated 03/01/2007, the revision applications came to be allowed and the matters were remitted to the Labour Court for a fresh decision. Thereafter by an order dated 09/09/2011, upon remit, not finding favour with the case made out by the petitioners in the complaints, the Labour Court dismissed the complaints.

4. The employees filed revisions before the Industrial Court under section 44 on 21/06/2016 after delay of almost 5 years. The employer raised an objection that the revisions are filed without making appropriate applications

for condonation of delay. It was further submitted that without condoning the delay, the revisions could not be heard and decided on merits.

5. By the impugned order, the revisions are dismissed on the ground of delay. Learned Industrial Court in paragraphs 9, 10 and 11 while dismissing the revision applications on the ground of delay has observed thus :

“9. On perusal of the Revision Petition admittedly the Petitioner has mentioned the ground, mainly of financial difficulties in not approaching this Court by filing the Petition after passing of the impugned order along with other similar situated employees. The Petitioner in the said grounds for condonation of delay shows his awareness above filing of Revision Petition by other similar situated employees in this Court and its decision and also that the Respondents had approached the Hon’ble High Court in Writ Petition and order of the Industrial Court was maintained in the Writ Petition and the said employees were allowed to joined duties.

10. According to me admittedly there is no any specific provision of limitation for filing a Revision Petition under section 44 of the MRTU & PULP Act, 1971. However our High Court while dealing with one of the case has dealt with similar situation where the Revision Petition were filed belatedly. In the case law cited on behalf of the Respondent on this issue as mentioned above the Hon’ble High Court has laid down a ratio that “its settled Principle of Law that when no period of limitation is prescribed the Revision application must be filed within a reasonable time. In my view the reasonable period of time cannot anything event cannot be, anything event, exceeding 3 years, which is the normal period of limitation under the residuary article No. 113 of the limitation Act.” According to me the ratio laid down in this case is perfectly

applicable to the present Petition. The present Petitions are filed after a period of more than 5 years of passing the impugned order. No doubt the delay is explained. However, it seems that since the other similar Complainants were allowed on duty as per the order of this Court in Revision Petitions as confirmed in the Writ Petitions, the Petitioners approached this Court by filing the present Petition, so as to make itself available with the same reliefs as given to the other similar situated employees.

11. The Petitioner has tried to make out grounds of financial difficulties in filing the present Revision Petitions. However the said grounds are not supported with any documents on record. According to me if the Petitioners would have approached the Industrial Court by filing Revision Petition along with the other similar Complainants, they would have been granted the same relief as the other Complainants. Only after the other Complainants succeeded in Writ Petitions before the Hon'ble High Court and the Respondent allowed them to join on duty, the Petitioners made efforts to file the present Petition. Therefore according to me the Petitioners were not diligent in exercising their legal right to challenge the impugned order in reasonable time. Finality of litigation in respect of other similar situated employees, cannot given cause to file Revision Petition belatedly. After a long gap, the situation and circumstances change in respect of both parties, therefore the Petitioner who is not delight in addressing his legal right cannot be entertained. Hence, according to me the Revision Petition is not maintainable on the ground of delay. Therefore, I pass the following order. "

6. Learned counsel for the employees submitted that the Industrial Court having held that the delay is explained, was not then justified in rejecting the applications for the reasons stated in the judgment. It was further contended that the employees were litigating since 1995-96 and there

have been various rounds which resulted in tremendous stress on the financial resources.

7. Learned counsel for the employees relied upon the decisions of the Hon'ble Supreme Court in the case of **Nityananda M. Joshi and ors. Vs. Life Insurance Corporation of India and ors.**¹ and in the case of **Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and anr.**² in support of his submission that in labour matters, the delay has to be viewed liberally and in a manner which advances the objects of the Act. Learned counsel submitted that the revisional Court could have heard the revisions on merits and moulded the reliefs suitably, in case it found the revisions to be belated. He further submitted on instructions that the petitioners are willing to give up their claim for backwages and will not claim any backwages for the period of this delay and even if they are to succeed, they will claim backwages from the date of the revision application filed by them before the Industrial Court and subject to appropriate

1 (1969) 2 Supreme Court Cases 199

2 (1999) 6 Supreme Court Cases 82

orders that may be passed by the Industrial Court on merits.

8. On the other hand, learned AGP for the respondent invited my attention to the findings of the revisional Court. It is her submission that post 2011, after the complaints were dismissed, there is hardly any explanation for the delay caused. It is only after some of the employees succeeded in the revision applications filed before the Industrial Court, that the petitioners preferred to file the revisions. In such circumstances, according to her, petitioners are not entitled to any benefit of condonation of delay, having regard to their lethargic conduct. She submits that they are to be regarded as fence sitters. Learned AGP further submitted that the view taken by the Industrial Court finds support from the decision of the learned Single Judge of this Court in the case of **Nandkumar Kashinath Deorukhkar and ors. Vs. Standard Mill Company Ltd. and anr.**³ She submits that the reasonable period of time as held by this Court, cannot exceed three years which is the normal period of limitation

³ (2006) 5 Mah LJ 668

under residuary article 113 of the Limitation Act. For all these reasons, it is submitted that no interference is warranted in the order passed by the Industrial Court.

9. Heard learned counsel for the parties. The Industrial Court while dismissing the revisions on the ground of delay, found favour with the proposition that the revision application must be filed within a reasonable time and that the reasonable period of time cannot, in any event, exceed three years which is the normal period of limitation under the residuary article 113 of the Limitation Act. It is pertinent to note that the Industrial Court observed that "no doubt the delay is explained, however, it seems that since the other similar complainants were allowed on duty as per the order of this Court in Revision Petitions as confirmed in the writ petitions, the petitioners approached this Court by filing the present petition, so as to make itself available with the same reliefs as given to the other similar situated employees."

10. No doubt, this Court in **Nandkumar Kashinath Deorukhkar and ors.**(supra) has observed that when no

period of limitation is prescribed, the revision application must be filed within a reasonable time. It is held that the reasonable period of time cannot, in any event, exceed three years, which is the normal period of limitation under the residuary article 113 of the Limitation Act. In my opinion, the decision of this Court in **Nandkumar Kashinath Deorukhkar and ors.**(supra) is distinguishable and turned on the facts of that case. This Court was considering the fact situation where the Industrial Court while exercising revisional jurisdiction, had dismissed the revision on two counts; firstly, on merits and secondly, delay in filing the revision. The Industrial Court had observed that the delay in filing the application was not explained and hence, in the facts and circumstances in **Nandkumar's** case, this Court held that there is no reason to take a different view from the one taken by the revisional Court.

11. In the present case, as observed earlier, the Industrial Court held that the delay is explained. Further, there was no adjudication by the Industrial Court on merits and the

revision is dismissed only on the ground of delay.

12. The termination of the services of the employees was way back in 1995. The employees are litigating from 1995. They earlier succeeded before the Labour Court. In the revisions filed by the employer, the matters were remitted to the Labour Court by the Industrial Court. Thereafter the complaints were dismissed by the Labour Court in the year 2011. Similar situated employees, like the petitioners, approached the Industrial Court in revision and after they succeeded before this Court as well, the petitioners preferred the revision. Having litigated from 1995 onwards, it would be harsh to brand these employees as fence sitters and deprive them of a hearing on merits before the Industrial Court only because these employees chose to approach the Industrial Court after their counterparts succeeded. The time spent in litigation from 1995 to 2011 is enough to drain out these employees physically, mentally and financially especially when they are pitted against such a powerful employer-‘The State’. Having lost all hopes in 2011 after they failed in the revisions, it is no surprise that

they gave up. It is only after their counterparts succeeded, that they approached the Industrial Court with a renewed hope. In my humble view, this is not a case where these employees should be looked at as fence sitters for depriving them of even a hearing on merits before the Industrial Court, especially when the Industrial Court has observed that the delay has been properly explained.

13. The Hon'ble Supreme Court in the case of **Nityananda M. Joshi and ors.** (supra) has observed in paragraph 3 thus :

"In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed". Again under Section 5, it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

(emphasis supplied)

14. Again, in the case of **Ajaib Singh** (supra), the Hon'ble

Supreme Court has observed in paragraphs 5, 7, 10 as under:

"5. Before appreciating the rival contentions urged on behalf of the parties, it has to be noticed as to under what circumstances the Act was enacted and what were the objectives sought to be achieved by its legislation. It cannot be disputed that the Act was brought on the statute-book with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties. It is a piece of legislation providing and regulating the service conditions of the workers. The object of the Act is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and by the process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country in its turn, helps to improve the conditions of labour (Hindustan Antibiotics Ltd v. The Workman, AIR 1967 SC 948. The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. In the present socio-political economic system, it is intended to achieve co-operation between the capital and labour which has been deemed to be essential for maintenance of increased production and industrial peace. The Act provides to ensure fair terms to workman and to prevent disputes between the employer and the employees so that the large interests of the public may not suffer. The provisions of the Act have to be interpreted in a manner which advances the object of the Legislature contemplated in the statement of Objects and Reasons. While interpreting different provisions of the Act, attempt should be made to avoid industrial unrest, secure industrial peace and to provide machinery to secure the end. Conciliation is most important and desirable way to secure that end. In dealing with industrial disputes, the courts have always, emphasized doctrine of social justice, which is founded on basic ideal of socio-economic equality

as enshrined in the Preamble of our Constitution. While construing the provisions of the Act, the Courts have to give them a construction which should help in achieving the object of the Act.

7. This Court in Bombay Gas Co. Ltd. v. Gopal Bhiva and Ors., [1964] 3 SCR 709 held that the provisions of Article 181 (now Article 137) of the Limitation Act apply only to applications which were made under the Code of Civil Procedure and its extension to applications under Section 33-C(2) of the Act was not justified. This position was further reiterated and explained by this Court in Town Municipal Council, Athani v. Presiding Officer, Labour Court, [1970] 1 SCR 51, para 11-12 :-

"11. It appears to us that the view expressed by this Court in those cases must be held to be applicable even when considering the scope and applicability of Article 137 in the new Limitation Act of 1963. The language of Article 137 is only slightly different from that of the earlier Article 181 inasmuch as, when prescribing the three years' period of limitation, the first column giving the description of the application reads as "any other application for which no period of limitation is provided elsewhere in this division". In fact, the addition of the word "other" between the words "any" and "application" would indicate that the legislature wanted to make it clear that the principle of interpretation of Article 181 on the basis of ejusdem generis should be applied when interpreting the new Article 137. This word "other" implies a reference to earlier articles, and, consequently, in interpreting this article, regard must be had to the provisions contained in all the earlier articles. The other articles in the third division of the Schedule refer to applications under the Code of Civil Procedure, with the exception of applications under the Arbitration Act and also in two cases applications under the Code of Criminal Procedure. The effect of introduction in the third division of the Schedule of reference to applications under the Arbitration Act in the old Limitation Act has already been considered by this Court in the case of Sha Mulchand & Co. Ltd., AIR (1953) SC 98. We think that, on the same principle it must be held that even the further alteration made in

the articles contained in the third division of the Schedule to the new Limitation Act containing references to applications under the Code of Criminal Procedure cannot be held to have materially altered the scope of the residuary. Article 137 which deals with other applications. It is not possible to hold that the intention of the legislature was to drastically alter the scope of this article so as to include within it all applications, irrespective of the fact whether they had any reference to the Code of Civil Procedure.

12. This Point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the Schedule, including Article 181 of the Limitation Act of 1908 governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a Court governed by the Code of Civil procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to Courts whose proceedings were governed by the Code of Civil Procedure. At best the further amendment now made enlarges the scope of the third division of the Schedule so as also to include some applications presented to courts governed by the Code of Criminal Procedure. One factor at least remains constant and that is that the applications must be to courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than Courts, such as a quasi-judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts as they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than courts, are how to be governed for

purposes of limitation by Art. 137.

10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent- management on the Full Bench judgment of the Punjab and Haryana High Court in Ram Chander Morya v. State of Haryana, (1999) 1 SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases." However, it went on further to say that

"reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay."

We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 37-C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the Legislature in its wisdom had, thought if fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding the Court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left

over by the Legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the courts/boards and tribunal under the Act.”

(emphasis supplied)

15. Though these decisions of the Supreme Court are referred to in **Nandkumar Kashinath Deorukhkar and ors.**(supra) and this Court after relying on the law laid down by the Supreme Court in **Ajaib Singh** (supra) opined that the normal period of limitation under residuary article 113 of the Limitation Act would apply, however, this Court did not express this to be blanket proposition that in all cases of delay, the residuary article 113 of the Limitation Act will apply. In labour matters, it has to be on case to case basis. The Supreme Court has time and again held that the Courts have power to mould the relief in any manner which will advance the cause of justice even in a case where delay is shown to be existing. In my view, the petitions deserve to succeed. The writ petitions are allowed.

16. The impugned orders passed by the revisional Court are set aside.

17. The revisional Court to hear the revision applications (ULP Nos. 56/2016, 146 to 161/2011, 169 to 174/2011 and 20/2011) on its own merits and in accordance with law.

18. Considering the distance of time from when the petitioners have been litigating, the revisional Court is requested to expeditiously decide the revision applications, preferably, within a period of six months from 04/10/2022.

19. The petitioners to appear before the Industrial Court on 10/10/2022 along with copy of this order.

20. Learned AGP to communicate the order to the concerned respondents.

21. The writ petitions are disposed of. No costs.

(M. S. KARNIK, J.)