

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

WRIT PETITION NO. 644 OF 2015

Bhaskar Shankarrao Gaikwad,
aged about 56 years,
R/o Plot No. 57, Sai Nagar,
Dighori, Umred Road, Nagpur.

PETITIONER

.....VERSUS.....

1. Maharashtra State Electricity Distribution Company Limited,
through its Executive Director,
“Prakashgarh” 4th Floor,
Plot No. G-9, Station Road,
Bandra (East), Mumbai – 400051.
2. Executive Engineer,
Maharashtra State Electricity Distribution Company Limited,
O & M Division, Wardha.

RESPONDENTS

Shri Sachin Khandekar, Advocate for the petitioner.
Shri S.V. Purohit, Advocate for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : 3/10/2022

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

The challenge raised in this Writ Petition is to the order of termination dated 18/11/2008 passed by respondent No.1 thereby terminating the petitioner's services on the post of Lower Division Clerk. It is prayed that after setting aside the order of termination, the petitioner be notionally reinstated and granted arrears of salary till 28/2/2016 which is the date of his superannuation from service.

2. The brief facts relevant for considering the aforesaid prayers are that the petitioner was appointed on the post of Lower Division Clerk on 22/4/1994. During the course of service, he was placed under suspension on 14/12/2007 on account of commission of alleged misconduct. In the order of suspension, it was stated that the petitioner would be paid the subsistence allowance in terms of Regulation 88(c)(3) of the Maharashtra State Electricity Distribution Company Employees Regulations, 2005. However, shortly thereafter, on 29/1/2008, the petitioner was issued a communication in which it was stated that the respondents intended to proceed against the petitioner under Regulation 90(c) and (d) thereof. Being aggrieved by the said communication, the petitioner filed a complaint before the Labour Court, Wardha challenging the same. In those proceedings, he filed an application below Exhibit 2 seeking grant of an interim relief. The Labour Court on 17/11/2008 refused to grant any interim relief. Shortly thereafter, on 18/11/2008, the services of the petitioner came to be dismissed. In the meanwhile, the Industrial Court disposed of the Revision Application preferred by the petitioner challenging the order dated 17/11/2008 passed by the Labour Court on 20/7/2012, by observing that the services of the petitioner had been terminated. According to the petitioner, on account of financial reasons, he did not take any further steps in the matter nor did he keep track of the complaint filed before the Labour Court. The validity of

Regulation 90 was the subject matter of challenge in *Praveen s/o Prabhakar Rao Jawale Vs. Maharashtra State Electricity Distribution Company Ltd. and another* [Writ Petition No. 3126/2011 decided on 22/8/2013] reported as 2014(1) Mh.L.J. 313 before the Aurangabad Bench of this Court. The Division Bench on 22/8/2013 held that the language in which Regulation 90 was drafted clearly indicated arbitrariness and hence proceeded to strike down Regulation 90. Based on this adjudication, the petitioner on 21/4/2014 and 1/11/2014 made representations to the respondents praying that he may be reinstated in service since the action taken against him was under Regulation 90 and it had been struck down. There being no response to the said representations, the petitioner filed the present Writ Petition on 19/1/2015.

3. The learned Counsel for the petitioner submitted that the petitioner's services were terminated on 18/11/2008 based on Regulation 90. Since the said Regulation had been struck down, the petitioner ought to have been granted consequential relief of reinstatement along with backwages. The action held against the petitioner was thus without any legal basis and there was no justification on the part of the respondents in not reinstating the petitioner. It was further submitted that during the pendency of the present proceedings, the petitioner came to be acquitted

in criminal proceedings being Spl. (ACB) Case No. 7/2009 decided on 28/6/2016. Since the petitioner was acquitted, there was no reason whatsoever to deny him the relief as prayed for. Since the petitioner had attained the age of superannuation on 28/2/2016, he ought to be notionally reinstated and be granted all consequential benefits.

4. The learned Counsel for the respondents opposed the aforesaid submissions. According to him, the petitioner was not entitled for any relief whatsoever since he had accepted the order of termination dated 18/11/2008. The petitioner did not challenge the order of termination and only after the judgment of this Court in *Praveen Prabhakar Rao Jawale (supra)* the petitioner took steps to seek reinstatement. The conduct of the petitioner dis-entitled him to any relief whatsoever since the order of termination was never challenged by the petitioner. It was submitted that it was open for the petitioner to have amended the complaint that he had filed before the Labour Court but the petitioner did not choose to do so. Placing reliance on the decisions in i) *B.L. Sreedhar And Others Vs. K.M. Munireddy (Dead) And Others [(2003) 2 SCC 355]*; ii) *K. Ethirajan (Dead) By LRs Vs. Lakshmi And Others [(2003) 10 SCC 578]*; and iii) *National Insurance Co. Ltd. Vs. Mastan & Anr. [AIR 2006 SC 577]* it was submitted that the petitioner was not entitled to any relief whatsoever. It was urged that on the

principle of estoppel and by applying the doctrine of election, no relief was liable to be granted to the petitioner. It was thus submitted that the Writ Petition was liable to be dismissed.

5. Having heard the learned Counsel for the parties at length and having perused the documents placed on record, we find that the petitioner's conduct of not challenging the order of termination dated 18/11/2008 for a period of almost seven years dis-entitles him to grant of any relief whatsoever. It is seen from the record that though the petitioner had initially sought to challenge initiation of summary proceedings by filing Complaint (ULP) No. 20/2008, he had not specifically challenged the order of termination dated 18/11/2008. The petitioner could have either amended the pending complaint or could have filed fresh proceedings for challenging the same. The Revision Application preferred by the petitioner challenging refusal of interim relief by the Labour Court came to be disposed of on 20/7/2012 since the services of the petitioner were already terminated. The petitioner thereafter did not take any steps whatsoever for all this period. It is only after the judgment of this Court in *Praveen Prabhakar Rao Jawale (supra)* that he sought to make representations on 21/4/2014 and 1/11/2014. The averments in paragraph 14 of the Writ Petition that were relied upon by the learned Counsel for the petitioner to indicate the reasons for the petitioner's

inaction also do not support the petitioner's case in explaining his inaction for a period of almost seven years. From the petitioner's conduct of remaining silent after issuance of the order of termination dated 18/11/2008 dis-entitles him to any relief whatsoever in these facts.

6. Though it was urged by the learned Counsel for the petitioner that the respondents had taken remedial steps in respect of some employees after the judgment of this Court in *Praveen Prabhakar Rao Jawale (supra)*, it is seen that such remedial steps have been taken only in those proceedings that were pending when Regulation 90 was struck down. In the present case, when the services of the petitioner were terminated on 18/11/2008, no action under Regulation 90 against the petitioner was pending. Hence that aspect also does not come to the aid of the petitioner.

The subsequent acquittal of the petitioner in the criminal proceedings also cannot give a fresh cause of action to the petitioner to seek reinstatement. It would have been a different matter had he challenged the order of termination dated 18/11/2008 shortly thereafter. In those circumstances, the petitioner could have relied upon the additional factor of his acquittal in the criminal proceedings.

7. We thus find from the record that the conduct of the petitioner has dis-entitled him to any relief whatsoever notwithstanding the fact that Regulation 90 has been struck down as being arbitrary. The inaction of the petitioner from 18/11/2008 when the petitioner's services were terminated till 19/1/2015 when the present Writ Petition was filed has not been satisfactorily explained.

8. Thus on account of inordinate delay and laches on part of the petitioner, we do not find him entitled to any relief whatsoever. The Writ Petition stands dismissed. Rule is discharged with no order as to costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

SUMIT