

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 964 OF 2022

Divisional controller, Maharashtra State Road
Transport Corporation, Chandrapur

-- Petitioner

Vs.

Pandurang Marotrao Tonge

-- Respondent

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.R. Charpe, Advocate for Petitioner

CORAM : MANISH PITALE, J.

DATE : 7th SEPTEMBER, 2022

By this petition, the petitioner Maharashtra State Road Transport Corporation has challenged order dated 20/08/2015, passed by the Labour Court and order dated 31/10/2017, passed by the Industrial Court, Chandrapur. The present writ petition challenging these orders was filed on 16/01/2021. The objections were removed on 22/10/2021 and today i.e. on 07/09/2022, the writ petition is listed for the first time for consideration before this Court.

2. At the outset, this Court put queries to the learned counsel appearing for the petitioner – Corporation as to what was the explanation for approaching this Court after delay of more than three years insofar as order of the Industrial Court was concerned and more than five years insofar as order of the Labour Court was concerned. In fact, if the date of listing i.e. today is taken into consideration, the delay is even more.

3. To this, the learned counsel appearing for the petitioner – Corporation submitted that since the impugned judgments and orders passed by the Courts below were in the teeth of the law laid down by the Hon'ble Supreme Court in the case of **Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and others** reported (1991) 2 SCC 716, this Court may consider the present petition on merits. In order to explain as to what took so long for the petitioner – Corporation to rise from its slumber to challenge the impugned orders passed by the two Courts below, attention of this Court was invited to paragraph Nos. 20, 21 and 22 of the writ petition, which read as follows :

“20. It is submitted that the judgment was by the learned Member Industrial Court, Nagpur on 31/10/2017. The petitioner had applied for grant of certified copy of the judgment on 10/11/2017 and the certified copy was received by the petitioner on 29/11/2017. The petitioner is a public Corporation owned by the state of Maharashtra and it's head office is situated at Mumbai. As per the procedure of the Corporation, the petitioner has to seek an opinion from the head office as to whether the judgment has to be challenged or not and therefore immediately after receipt of the certified copy of judgment the petitioner had sent it to the head office for its opinion.

21. Thereafter, the head office of the petitioner had advised the petitioner to challenge the judgment through panel advocate. On receipt of advice from head office, the petitioner had approached the panel advocate Shri R.S. Charpe and handed over the case papers with request to file petition. On going through the case papers the panel advocate found that most of the documents necessary for drafting the writ petition were

missing had sent a letter dated 16/11/2018 by mail to the petitioner requesting for supply of documents.

22. The concerned clerk who was dealing with the matter was transferred and therefore, the matter was lost sight and the petitioner was under impression that the petition has been filed. Thereafter due to covid-19 there was a lock down since march 2020 and the work of the petitioner corporation was almost stopped. In the month of December, 2020, the petitioner has made an enquiry about the progress of the petition with panel advocate shri Charpe, thereafter the petitioner came to know that the petition could not be filed for want of documents. Thereafter immediately, the petitioner had obtained the necessary documents and handed over the same to panel advocate Shri Charpe in 1st week of January 2021 who has taken some time to study the case papers and drafted the petition and the same is being filed today. Thus some delay has been caused in filing the petition due the reasons beyond the control of the petitioner and there is no deliberate delay on the part of the petitioner.”

4. Insofar as the findings rendered by the two Courts below are concerned, the learned counsel for the petitioner – Corporation could not dispute the fact that after the Labour Court rendered finding and concluded to the effect that the findings of the enquiry Officer were perverse and opportunity was granted to the petitioner – Corporation to prove the alleged misconduct against the respondent before the Labour Court, no steps were taken by the petitioner – Corporation in order to prove the alleged misconduct.

5. A perusal of the above quoted paragraphs Nos.20, 21 and 22 of the writ petition show that there is not even a semblance of reason put-forth for explaining as to what took the petitioner –

Corporation so long to file the present writ petition. It is found that even according to the petitioner – Corporation, the certified copy of the judgment and order of the Industrial Court was received on 29/11/2017 and admittedly, the writ petition was filed on 16/01/2021. The contents of paragraphs Nos.21 and 22, quoted above also do not put-forth any reasonable explanation for the huge delay in approaching this Court under writ jurisdiction.

6. There can be no quarrel with the proposition that specific limitation is not provided for invoking writ jurisdiction of this Court, but, it is settled law that the aggrieved party is expected to knock the doors of the Writ Court within reasonable time. This Court finds that the explanation given in the paragraphs quoted above is wholly untenable and, therefore, it is rejected.

7. Insofar as the findings of the two Courts below are concerned, it is found that after the Labour Court concluded that the findings of the Enquiry Officer were perverse and a specific opportunity was granted in terms of the settled law to the petitioner – Corporation to prove the alleged misconduct of the respondent - workmen before the Labour Court, no steps were taken by the petitioner – Corporation. This is evident from the following observations made by the Industrial Court in the impugned judgment and order.

“In the present case before me also after learned Judge of Labour Court held that finding of enquiry officer are perverse while deciding preliminary issue and thereafter though opportunity was given to the respondent to prove alleged misconduct before Court by producing material on record respondent failed to produce any

material. Therefore, at this stage respondent has no right to raise the said issue. Hence, on the basis of issue no.2 that findings of enquiry officer are perverse learned Judge of Labour court rightly allowed the complaint, therefore, no interference is required in the said judgment and order. As such by answering point no.1 in the affirmative and point no. 2 in negative revision is liable to be dismissed. I pass the following order.”

8. In the light of the aforesaid admitted position, this Court is not impressed with the submissions made on behalf of the petitioner – Corporation by placing reliance on the judgment in the case of **Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi** (supra). It is also relevant that admittedly the respondent – workman has since superannuated on 31/12/2020. The subject matter of challenge in the proceedings is penalty of reducing basic pay by two stages and also a direction to refund the amount to the respondent – workman. In the light of the admitted position that the respondent has now superannuated on 31/12/2020, this Court is not inclined to consider the aforesaid aspect as a factor for condoning the conduct of the petitioner – Corporation, for entertaining the present writ petition.

9. In view of the above, the writ petition is dismissed.

JUDGE