

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7814 OF 2022**

Sunil Gulab Salunkhe ... Petitioner
versus
The Regional Provident Fund Commissioner ... Respondent

Mr. Ravindra S. Pachundkar-Patil for Petitioner.
None for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 21 APRIL 2023

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an Award dated 29 April 2009 passed by the learned Presiding Officer, Labour Court at Pune, in Reference IDA No.496 of 2000, whereby the Reference at the instance of the Petitioner to adjudicate as to whether the Petitioner was entitled to be reinstated with full back wages and continuity of service came to be rejected.
3. The Petitioner was appointed as a Sweeper (Safaiwala) in the office of the Regional Provident Fund Commissioner vide a Letter of appointment dated 29 September 1993. The appointment was temporary and provisional, subject to the verification of the antecedents of the Petitioner. In the attestation form submitted by the Petitioner, it was specifically provided that if false information was furnished or contrary factual information comes to the notice of the Department, the services of

the candidate were liable to be terminated. In respect of the entries in Column No.12(1) in the attestation form, the Petitioner claimed that he had never been arrested, prosecuted and detained or bound down by any Court. After the Petitioner came to be appointed, the Respondent was apprised by the police that a crime was registered against the Petitioner vide FIR No.79 of 1991 for the offences punishable under Sections 337, 504, 506(2) of the Indian Penal Code, 1860 at Wanawadi Police Station and the Petitioner was being prosecuted for the same in Case No.138 of 1991.

4. A report dated 10 April 1996 was submitted to the Respondent apprising about the said verification report from the Police and also the absentism of the Petitioner. It was, inter alia, reported that during the period 11 October 1993 to 10 April 1996, the Petitioner had availed leave without pay for 34 days, in addition to 49 days earned leave and 15 days commuted leave. Thereupon, by a notice dated 24 October 1996 in exercise of the power under sub-Rule (3) of Rule 8 of Employees' Provident Fund (Staff & Conditions of Service) Regulation 1962 read with sub-Rule (1) of Rule (5) of the Central Civil Services (Temporary Service) Rules, 1965, the services of the Petitioner came to be terminated with effect from the date of expiry of a period of one month from the said notice.

5. Eventually, a Reference came to be made by the Government of India under Sections 10(1)(d) and 2-A of the Industrial Disputes Act, 1947 (the Act of 1947) for adjudication of the industrial dispute which arose between the Petitioner and the

Respondent. An Award came to be passed on 10 February 2003 granting reinstatement with full back wages and consequential benefits. The said Award was challenged in Writ Petition No.2599 of 2008. By an order dated 6 October 2008, this Court quashed and set aside the said Award and restored Reference IDA No.496 of 2000 to the file of the Labour Court, Pune for afresh determination after providing an opportunity to the Respondent to file Written statement.

6. The learned Presiding Officer, Labour Court, after appraisal of the evidence on record, was persuaded to reject the Reference holding, inter alia, that there was a deliberate suppression of the prosecution then being faced by the Petitioner while submitting the attestation form. It was further held that the appointment of the Petitioner was temporary and he had no right to hold the post.

7. Being aggrieved, the Petitioner has invoked the writ jurisdiction of this Court.

8. At the outset, it is necessary to note that the Petitioner has to surpass the impediment of delay and laches. The impugned Award was passed on 29 April 2009. The Petition came to be instituted in the month of January 2022. There is an inordinate delay.

9. The learned Counsel for the Petitioner attempted to salvage the position by asserting that on account of the illiteracy and adverse circumstances, the Petitioner could not assail the impugned Award at an earlier point of time. I find it difficult to

accede to this submission.

10. In paragraph 21 of the Petition, the reasons sought to be ascribed for the delay were that due to lack of legal knowledge, medical condition of the Petitioner's wife and weak financial condition, the Petitioner could not approach the Court earlier. Interestingly, the Petitioner endeavoured to take advantage of the situation which arose on account of Covid-19 Pandemic. The impugned Award, as indicated above, was passed on 29 April 2009. Ex-facie, none of the aforesaid reasons, either individually or collectively, can satisfactorily account for the huge delay of almost 13 years. It would be naive to believe that the Petitioner who could raise an industrial dispute, did not comprehend the consequences of impugned Award, whereby the Reference was answered against the Petitioner. Thus, the Petition suffers from the vice of clear laches. In the circumstances, at this stage, there does not seem to be any justifiable reason to entertain the Petition in exercise of extra-ordinary writ jurisdiction.

11. Even otherwise, the learned Presiding Officer, Labour Court, does not seem to have committed any error in answering the Reference against the Petitioner. Indubitably, the Petitioner faced the prosecution when he had applied for the post of Sweeper and yet the said fact was not disclosed in the attestation form, despite a categorical warning that any false information would entail consequence of termination of service.

12. An endeavour was made to demonstrate that the said information was furnished by the cousin of the Petitioner as the Petitioner was an illiterate person. The learned Presiding Officer, Labour Court, however, found that the said stand was not taken by the Petitioner in the correspondence which ensued post termination of the services of the Petitioner. The aforesaid consideration by the Labour Court cannot be said to be perverse to warrant interference in exercise of the writ jurisdiction.

13. In any event, the Petitioner came to be terminated while he was holding a temporary post. At this length of time, the challenge to the impugned Award which, in effect, upholds the termination of the Petitioner by Notice dated 24 October 1996 with effect from 24 November 1996, does not deserve to be entertained.

13. Hence, the Petition stands rejected.

(N.J.JAMADAR, J.)