

HARSHADA SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9348 OF 2023

Dattatray Pandurang Phaltankar

Age : 58 Years, Occ – Retired.

429, Ambika Chowk, Main Road,

Jawhar, Dist- Thane – 401603.

.. Petitioner

Versus

1. **Manager of the Jawhar Urban Co.Op. Bank Ltd.**

2. **The Chairman of the Jawhar Urban Co.Op. Bank Ltd.**

3. **The Jawhar Urban Co.Op. Bank Ltd.**

Having common address as:

The Jawhar Urban Co.Op Bank Ltd.

Central Office, Pandit Jawaharlal,

Chowk Chatrapati Shivaji Maharaj Path,

Main Road, Jawhar, District – Palghar

.. Respondents

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• Ms. Priyanka Patkar i./by Mr. Yogendra Pendse, Advocate for Petitioner.

• Mr. V. A. Gangal a/w. Ms. Shweta Parab, Advocate for Respondents.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 18, 2023

JUDGMENT:

1. Heard Ms. Patkar, learned Advocate for Petitioner and Mr. Gangal, learned Advocate for Respondents.

2. This Writ Petition is filed under Articles 226 and 227 of the Constitution of India taking exception to the order dated 10.02.2023

passed by the Industrial Court, Thane in Revision Application (ULP) No.23 of 2021.

3. Revision Application under Section 44 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices, 1971 (for short '**MRTU and PULP Act**') is filed against the order dated 27.06.2018 passed by the 2nd Labour Court, Thane in an application seeking condonation of delay in filing the complaint to condone delay of 6 years and 4 months.

4. Briefly stated Petitioner was appointed as Clerk in Respondent – Bank on 15.04.1985 and continued to work thereafter. It is the Bank's case that he was subsequently promoted as Branch Manager and his last drawn wages were Rs.29,050/-.

4.1. On 02.03.2012, the Respondent – Bank dismissed Petitioner from service on the ground that he had consumed alcohol while on duty. According to Petitioner, before dismissal no show cause notice, charge-sheet or enquiry was held by Respondent – Bank.

4.2. Being aggrieved Petitioner filed a Civil Suit in the Civil Court at Jawhar on 22.04.2013 to challenge his dismissal. In that Civil Suit, Respondent – Bank filed written statement and raised the issue of jurisdiction of the Civil Suit to try the Civil Suit. By order dated 04.10.2013, the learned Civil Judge, Junior Division, Jawhar answered the preliminary issue of jurisdiction in favour of the Petitioner on the

ground that the Plaintiff was not a workman or employee within the definition of workman employed by the Bank and therefore the Civil Court had jurisdiction to entertain and try the Suit.

4.3. Respondent – Bank being aggrieved challenged the order dated 04.10.2013 by filing Civil Revision Application No.891 of 2013 in this Court. By order dated 06.07.2015, Revision Application was allowed and Petitioner was permitted to withdraw the regular Civil Suit with liberty to institute appropriate proceedings before the appropriate forum. These are the undisputed facts.

4.4. Petitioner thereafter filed Complaint (ULP) No.161 of 2018 under sections 1(a)(b)(d)(f) and 10 of Schedule – IV read with section 28 of MRTU and PULP Act before the Labour Court, Thane. Alongwith that complaint Petitioner filed application for Condonation of Delay (ULP) No.07 of 2017 which was allowed by the 2nd Labour Court by its order dated 27.06.2018. Delay was condoned whereas the issue regarding maintainability of the complaint was directed to be decided alongwith the main complaint. However in Revision Application (ULP) No.23 of 2021, the learned Industrial Court reversed the decision of the Labour Court and held that the application for condonation of delay filed by the Petitioner stood rejected.

5. Ms. Patkar, learned Advocate appearing for the Petitioner / employee would submit that the impugned order passed by the

Industrial Court has not appreciated the delay which had occurred due to the Petitioner approaching the Civil Court under the presumption that the Petitioner being a Branch Manager and in a supervisory position would not be covered under the definition of employee under the MRTU and PULP Act.

6. Next she would submit that it was the Respondent who had challenged the order of the Civil Court in revision proceedings by filing Civil Revision Application and this Court had specifically granted liberty to the Petitioner to approach the appropriate forum. She would therefore submit that in that context under the MRTU and PULP Act, the Petitioner filed complaint in the Labour Court alongwith application for condonation of delay because of the aforesaid reasons which were valid and sufficient to condone the delay. She would submit that the learned Labour Court while passing the order dated 27.06.2018, clearly appreciated the aforesaid sufficient cause and passed a correct order. She would submit that the impugned order of the Industrial Court on the contrary took a rigid stand and reversed the order of the Labour Court and suffers from non-application of mind. She would submit that admittedly dates and events show that Petitioner was not lethargic in causing the delay of 6 years and 4 months and he had prosecuted his case in the Civil Court on the ground that he could not be covered by the definition of employee

under the Labour Laws since he was a Branch Manager at the time of dismissal. She would submit that this was a *bona fide* belief of the Petitioner since admittedly he was holding charge of Branch Manager.

6.1. Next she would submit that by reversing the decision of the Labour Court the only remedy available to the Petitioner is extinguished and the Petitioner is left remediless despite serving the Respondent – Bank since the year 1985. Finally she would submit that Petitioner has pleaded sufficient cause to explain the delay in approaching the Labour Court and therefore the impugned order suffers from injustice and deserves to be quashed and set aside.

7. *PER CONTRA*, Mr. Gangal, learned Advocate for the Respondent – Bank has drawn my attention to the affidavit-in-reply dated 23.09.2023 filed by the Manager in-charge of the Bank and would submit that the Bank has a excellent case on merits against the Petitioner. He has drawn my attention to paragraph Nos.4 and 5 of the affidavit-in-reply and would submit that there were prior complaints against the Petitioner regarding misbehaviour, that he was warned on two earlier occasions and once minor punishment was awarded to him for dereliction in duty.

7.1. Next he would submit that on the date of the incident Petitioner was found lying in his cabin with very high consumption of liquor and the police were summoned and a blood test was carried out

which revealed the presence of alcohol in his blood. He would submit that Petitioner was fully aware about his rights but chose to approach the Civil Court. Thereafter once again mistakenly Petitioner approached the Labour Commissioner, Palghar under the Industrial Disputes Act, 1947 and it is only thereafter that the Labour Commissioner directed him to approach the appropriate forum, he filed the complaint in the Labour Court fully being aware of the fact that the Respondent – Cooperative Bank is covered by the provision of the Maharashtra Industrial Relations Act, 1946. He would therefore urge that the impugned order be upheld as it is a reasoned order.

8. I have heard Ms. Pathak, learned Advocate for Petitioner Mr. Gangal, learned Advocate appearing for Respondents and with their able assistance perused the pleadings and record of the case. Submissions made by the learned Advocates for the parties have received due consideration of the Court.

9. It is seen that admittedly, pursuant to the dismissal of the Petitioner he had approached the Civil Court under the *bona fide* relief that being a Manager he would not be covered under the definition of employee. In that context, the learned Civil Court framed preliminary issues on 01.08.2013 as to whether the Petitioner is a workman or employee and whether the Civil Court has jurisdiction to try the Suit. Next it is seen that in the written statement filed by the Bank it was

stated that due to the basic pay drawn by the Petitioner of Rs.1,510/-, he was covered by the definition of employee under Section 3 (13) of the Maharashtra Industrial Relations Act, 1946. But it was also further stated that in view of Section 60 of the MRTU and PULP Act, the Civil Court would have no jurisdiction to try the Suit. Further it is an admitted position that on 06.07.2015, this Court allowed the Petitioner to withdraw the Civil Suit and granted liberty to Petitioner to institute appropriate proceedings before the appropriate forum. In that view of the matter, it needs to be seen as to whether by virtue of order dated 06.07.2015, the time consumed by the Petitioner can be condoned or otherwise. It is seen that in the application seeking condonation of delay filed by the Petitioner alongwith the complaint, the learned Labour Court framed an issue as to whether Petitioner has shown sufficient cause to condone the delay. While answering that issue the learned Labour Court clearly arrived at the finding that the Petitioner approached the labour Court on 06.04.2017 with his complaint and in view of the intervening dates and events the delay was not deliberate. Another finding was returned to the effect that in the interregnum Petitioner has pursued his case although it maybe in the wrong forum. It was held that in such a case Labour Legislation is required to be liberally construed towards the workman and hence the delay was condoned.

10. However by the impugned order the learned Industrial Court held that the Petitioner had not explained the delay properly and it appeared that the delay was deliberate and inordinate. In that context and with this reason, the learned Industrial Court reversed the order passed by the Labour Court. *Prima facie*, it is clearly seen that not only the delay was explained by the Petitioner but it cannot be construed as deliberate in the facts of the present case. It is also seen that Petitioner has clearly explained the delay by placing adequate material on record to show that he had approached the Civil Court. Thereafter it is seen that it is the Bank i.e. Respondent who had approached this Court by filing a Civil Revision Application. This clearly shows that the delay was adequately explained by the Petitioner. It therefore cannot be called as inordinate or deliberate at all.

11. In view of the above, the impugned order dated 10.02.2023 passed by the Industrial Court deserves to be interfered with as it does not appreciate the delay which was caused and explained to the satisfaction of the Labour Court. Hence, the order dated 10.02.2023 is quashed and set aside and the order dated 27.06.2018 passed by the 2nd Labour Court in Condonation of Delay (ULP) No.07 of 2017 is confirmed and upheld.

12. Delay stands condoned. Adjudication of the original

Complaint (ULP) No.161 of 2018 filed by the Petitioner before the Labour Court is expedited and is directed to be decided preferably within a period of six (6) months from today strictly in accordance with law.

13. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

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by HARSHADA
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SAWANT
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