

Mr. A.S.Rao, for Petitioners.
Mr. Nikhil D. Patil, for Respondent.

DATE: 26 JUNE 2023

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.

3. The Respondent came to be appointed as Safai Kamgar with the Petitioner No.1, on 26 June 1997. The Respondent claimed to have rendered

continuous and unblemished services till the year 2002. On 4 May 2002, a chargesheet was served on the Respondent of misconduct on account of alleged absenteeism from 6 December 2001 to 5 April 2002. The Respondent denied the imputation levelled against her. It was the stand of the Respondent that her services were transferred from F to E Ward on 16 December 2000. On 8 January 2001 she had given an application to the employer to permit her to resume her duty, as in the intervening period, she was sick. The Respondent was not allowed to resume her duty on one or the other pretext. Eventually, a chargesheet was served on her alleging misconduct on account of absenteeism. In the resultant disciplinary inquiry, the Respondent was held guilty without providing an effective opportunity of hearing and a grossly disproportionate penalty of dismissal from service was imposed on the Respondent vide an order dated 12 September 2002. The Respondent, thus, filed a Complaint (ULP) No.337 of 2002 alleging unfair labour practices under Items 1(a), (b), (d), (f) and (g) of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the Act of 1971).

4. The Petitioners resisted the Complaint. At the outset, it was contended that the Respondent was a temporary employee and was on daily wages. Since the Respondent remained persistently absent without any intimation and authorization, the Petitioner No.1 was constrained to institute disciplinary proceedings, though the Respondent being a temporary employee, it was not required to hold a formal

departmental inquiry. In the disciplinary proceedings, the misconduct on the part of the Respondent-complainant was duly proved and, therefore, the dismissal order dated 12 September 2002 came to be passed. In substance, according to the Petitioners, they had not indulged in any unfair labour practices.

5. The learned Judge, Labour Court, after appraisal of the evidence and documents tendered for her perusal, was persuaded to return a finding that the Petitioners did commit unfair labour practices under Items 1(a), (b), (d), (f) and (g) of Schedule IV of the Act, 1971 and directed the Petitioners to cease and desist from engaging in such unfair labour practices and also to reinstate the Respondent in service with 40% backwages from the date of dismissal till her reinstatement with continuity of service and other benefits.

6. The learned Judge, Labour Court, found that the inquiry conducted against the Respondent was not fair and proper and the finding perverse. The Petitioners were thus permitted to adduce evidence in proof of charge of misconduct. The learned Judge, Labour Court, found that the Respondent had, in fact, sought permission to resume the duty by filing an application along with fitness certificate and, yet, the Petitioners did not allow the Respondent to resume her duty and initiated disciplinary proceedings against the Respondent and, eventually, imposed a shockingly disproportionate penalty of dismissal from service.

7. Being aggrieved, the Petitioners preferred a Revision Application (ULP) No.25 of 2007 before the Industrial Court at Thane. By the impugned judgment and order dated 18 February 2008, the learned Member, Industrial Court at Thane, found no ground to interfere with the order passed by the Labour Court. It was, inter alia, held that the Petitioners did not satisfactorily prove that the Respondent had committed misconduct. Conversely, a finding was recorded that the Petitioners had subjected the Respondent to victimization.

8. Being further aggrieved, the Petitioners have invoked the writ jurisdiction.

9. I have heard Mr. Rao, learned Counsel for the Petitioners and Mr. Nikhil D. Patil, learned Counsel appointed to espouse the cause of the Respondent-complainant. I have also perused the material on record.

10. Mr. Rao would submit that the learned Member, Industrial Court and the learned Judge, Labour Court were clearly in error in directing the reinstatement of the Respondent in service. It was submitted that since the Respondent was not a permanent employee of the Petitioners and worked on daily wage basis, it was not at all required to institute a disciplinary inquiry against the Respondent. In any event, according to Mr. Rao, there was adequate material to show that the Respondent had remained absent without prior intimation and due authorization. In the face of such evidence, the courts below could not have returned a finding that the termination of

the Respondent vide order dated 12 September 2002 was an unfair labour practice.

11. Mr. Rao would further urge that giving effect to the order passed by the courts below would be in breach of the principle of public employment. Since the Respondent was appointed on a temporary post, the courts could not have directed reinstatement in service with 40% backwages and consequential benefits. That would amount to backdoor entry.

12. In opposition to this, Mr. Patil, learned Counsel for the Respondent stoutly submitted that the instant Writ Petition itself does not deserve to be entertained as the Petition came to be filed after 14 years of the passing of the impugned order by the Industrial Court. On this sole count, the Petition deserves to be dismissed. Even otherwise, according to Mr. Patil, the impugned order does not warrant any interference in exercise of writ jurisdiction.

13. As noted above, the Impugned order was passed on 18 February 2008. The said order was sought to be assailed by presenting the Petition in the year 2022. There is a delay of more than 14 years in assailing the impugned order by way of this Petition. The delay is, by any standard, inordinate. This aspect of delay in invoking the writ jurisdiction cannot be said to be inconsequential or immaterial. Unreasonable delay or negligence in pursuing claim involving an equitable relief brings in the element of 'laches'. Relief under Article 226 and 227 of the Constitution of India is discretionary. One of the legitimate grounds for refusing the relief is inordinate delay

in invoking the writ jurisdiction for which there is no satisfactory explanation. Undoubtedly, no hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who invoked the writ jurisdiction after an inordinate delay. Nonetheless the factum of delay and laches comes into play while exercising the writ jurisdiction.

14. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **City and Industrial Development Corporation V/s. Dosu Aardeshir Bhiwandiwalla and Ors.**¹ wherein the following proposition was enunciated :

“26. It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of a High Court to issue appropriate writs particularly a writ of mandamus is highly discretionary. The relief cannot be claimed as a right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a writ is an adequate ground for refusing a writ. The principle is that the courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum.”

15. In the case at hand, the Petitioners, who have approached the Court after about 14 years of the impugned order, are required to surmount this impediment and satisfy the Court that the exercise of writ jurisdiction would still be justifiable.

¹ (2009) 1 SCC 168

16. Mr. Rao made an earnest endeavour to persuade the Court to entertain the Petition by asserting that in Paragraph 14 of the Petition, the Petitioners have explained the circumstances which precluded the Petitioners from approaching this Court at an earlier point of time.

17. From the perusal of the averments in the said paragraph, it becomes evident that the Petitioners seek to take refuge in the administrative lapses by ascribing reasons that the concerned department had not brought the factum of the order passed by the Industrial Court to the knowledge of the higher officials and the original file was missing and the like. It is true, the government machinery being impersonal, some amount of latitude is required to be given. However, the time lag of 14 years cannot be wished away by simply asserting that on account of lapse on the part of the concerned employees, the writ jurisdiction could not be invoked for almost 14 years. The explanation sought to be offered on behalf of the Petitioners cannot be accepted as a justifiable one.

18. In the peculiar facts of the case, where the Respondent asserts that even after the order passed by the Industrial Court, she was not allowed to resume the duty despite having shown willingness to join, on account of laches itself, the Court would be justified in declining to exercise the writ jurisdiction.

19. Even on merits of the matter, the courts below have recorded a concurrent finding that the Respondent had tendered an application seeking

permission to resume her duty. The Respondent had explained the reasons for her absence from duty. The Petitioners had subjected the Respondent to victimization by not allowing her to resume the duty. I am afraid, these findings of facts can be reevaluated in a writ jurisdiction. There is no perversity in the findings recorded by the courts below. Such findings are not amenable to correction in writ jurisdiction.

20. The thrust of the submission on behalf of the Petitioners that the reinstatement of the Respondent would amount to backdoor entry is, in my view, not well founded. In view of the pronouncement of the Supreme Court in the case of **Maharashtra State Road Transport Corporation and Anr. V/s. Casteribe Rajya Parivahan Karmachari Sanghatana**² the judgment in the case of **Secretary, State of Karnataka and Ors. V/s. Umadevi (3) and Ors.**³ does not impinge upon the power of the Labour and Industrial Courts to order reinstatement in service while exercising jurisdiction under MRTU and PULP Act, 1971. Thus on the legal premise as well, no fault can be found with the impugned order.

21. The only aspect which deserves consideration is the time lag which has elapsed since the date of the termination of the services of the Respondent. The order of reinstatement with 40% backwages for such a long period may put onerous burden on the exchequer of the local authority. In my view, the quantum of backwages deserves to be suitably modified. Hence, the following order :

² (2009) 8 SCC 556

³ (2006) 4 SCC 1

ORDER

(i) The Writ Petition stands disposed by modifying the order passed by the learned Judge, Labour Court with respect to back wages only.

(ii) The Petitioners do pay backwages @ 25% from 12 September 2002 till the date of the Respondent's reinstatement in service with continuity of service and other benefits.

(iii) Rest of the order passed by the Labour Court of Thane in complaint (ULP) No. 337 of 2002, stands affirmed.

iv) In the circumstances of the case, the Petitioners shall pay costs of the Respondent.

(N.J.JAMADAR,J.)