

WRIT PETITION NO. 744 OF 2021

Versus

...Respondents

1/30

CORAM: N. J. JAMADAR, J.

RESERVED ON: 6th MARCH, 2023

PRONOUNCED ON: 5th JUNE, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.

2. The petitioner - undertaking takes exception to a judgment and order dated 17th October, 2019 passed by the President, Industrial Court, Maharashtra, Mubmai, in Complaint (ULP) No.183 of 2014 whereby the complaint preferred by the respondents – complainants under Items 5 and 9 of the Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the Act, 1971”) came to be partly allowed declaring that the petitioner has committed unfair labour practices under Item 9 of Schedule IV of the Act, 1971 and directing the petitioner to pay *inter alia* increments to complainant Nos.2 to 18 from the date of appointment till the date of their permanency and grant privilege leave and sick leave on pro-rata basis as specified in Clause 4(2)(iii) @ (a) and (b) of the Standing Orders, if not already granted.

3. Background facts can be stated in brief as under:

(a) The petitioner is a statutory body established under the provisions of Mumbai Municipal Corporation Act, 1888 (“the MMC Act”). The petitioner supplies electricity to the residents of the Mumbai City and provides transport services to the inhabitants of Mumbai City and sub-urban areas. Respondent No.1 is a Union registered under the Trade Unions Act, 1926. Respondent Nos.2 to 18 are the employees of the petitioner.

(b) To meet the exigencies of the situation the petitioner had created 16 temporary posts of Draughtsmen on the establishment of Planning Department of the Electricity Supply Branch. In the year 1996 the respondents were appointed against those temporary posts; initially for the period of six months. The appointment order made it clear that the respondents were appointed on temporary post. Eventually, during the period 1998 to 2002 respondent Nos.2 to 18 were confirmed as and when the vacancies arose in the permanent cadre. The last of the respondent nos.2 to 18 came to be confirmed on 21st October, 2002.

(c) The respondents filed a complaint with the allegations that respondent Nos.2 to 18 were appointed on temporary post despite the work being of perennial nature and artificial break of one day was given after a lapse of six months

so as to deprive respondent Nos.2 to 18 of the benefit of permanency. The said *modus operandi* was stated to be in violation of the standing orders and, thus, constituted an unfair labour practice. It was further alleged that under the terms of Clause 4(2)(iii) @ (a) of the Standing Orders, employees who had worked for 240 days continuously were entitled to annual increment, leave, leave travel concession and other benefits. In order to unjustifiably deprive respondent Nos.2 to 18 from availing the said benefits, respondent Nos.2 to 18 were given artificial break in service so that they could not render 240 days continuous service. Instead of giving the aforesaid benefits, respondent Nos.2 to 18 were given benefit of one leave for 20 days of work. This again constituted an unfair labour practice, being in infringement of the standing orders, under Item No.9 of Schedule IV of the Act, 1971.

(d) The petitioner resisted the complaint. The allegation of unfair labour practices were categorically denied. It was contended that respondent Nos.2 to 18 were appointed on purely temporary posts. As and when the vacancies arose in the permanent cadre, the services of respondent Nos.2 to 18 were duly regularized. Thus, there was no unfair labour practice attributable to the petitioner.

(e) The complaint was contested on the ground of delay and laches. It was contended that there was a delay of 12 to 14 years in raising the alleged dispute about not granting the permanency and the benefits which were admissible to the temporary employees under the standing orders. Since the complaint of unfair labour practice was required to be made within 90 days of the accrual of cause of action, the complaint was stated to be hopelessly barred by limitation. The petitioner also assailed the locus of respondent No.1 to espouse the cause of respondent Nos.2 to 18 as respondent No.1 was not a recognized Union under Bombay Industrial Relations Act 1946. In addition, it was contended that by their conduct of accepting the permanency without any demur, respondent Nos.2 to 18 had dis-entitled themselves from claiming any relief.

(f) The learned President, Industrial Court, by the impugned judgment and order was persuaded to partly allow the complaint, as indicated above. In the process, the learned President held that the complainants failed to prove that they were denied the benefit of permanency from the date they had completed 240 days of continuous and uninterrupted service. However, it was held that the petitioner indulged in unfair labour practice under Item 9 of Schedule IV of the Act, 1971 by

unjustifiably denying proportionate leave, increment and leave encashment and other benefits, admissible to the temporary employees, under the standing orders to respondent Nos.2 to 18. It was held that the complaint was not barred by delay and laches.

4. Being aggrieved, the petitioner has invoked the writ jurisdiction.

5. I have heard Mr. Naidu, the learned Counsel for the petitioner, and Mr. Bhat, the learned Counsel for the respondents, at length. The learned Counsel took the court through the pleadings, documents on record and the impugned order.

6. Mr. Naidu, the learned Counsel for the petitioner, mounted a three-pronged challenge to the impugned order. Firstly, the learned President, Industrial Court, committed a manifest error in returning a finding that the petitioner indulged in unfair labour practice under Item 9 of Schedule IV of the Act, 1971 despite having answered Issue No.1 in favour of the petitioner, to the effect that there was no unfair labour practice indulged in by the petitioner in not making the respondents permanent upon completion of 240 days of continuous service. Mr. Naidu strenuously submitted that having recorded such a finding, it

was not open to the Industrial Court to hold that the petitioner indulged in unfair labour practices. Since a finding that the person complained against has indulged in unfair labour practice is a jurisdictional condition for passing order under Section 30 of the Act, 1971, according to Mr. Naidu, the learned President, Industrial Court, could not have passed the consequential directions. To buttress this submission, Mr. Naidu placed a strong reliance on a judgment of a learned Single Judge of this Court in the case of *Blue Star Ltd. vs. Blue Star Workers Union, Mumbai-14 and Anr.*¹.

7. Secondly Mr. Naidu would urge that the Industrial Court fell in error in appreciating the aspect of limitation. One, the fact that the respondents had neither filed an application for, nor any averments were made in the complaint seeking, condonation of delay was unjustifiably discarded by the Industrial Court. Having regard to the time-lag of more than 10 years, since the last of the respondent Nos.2 to 18 came to be made permanent, the Industrial Court should have declined to entertain the complaint.

8. Mr. Naidu would further submit, having entertained the complaint, the Industrial Court was duty bound to limit the

1 1997(2) CLR 1018.

period for which the benefits could be availed by respondent Nos.2 to 18. Under no circumstances, respondents could lay claim for monetary benefits beyond the statutory period of limitation. It was urged that the case in point is not one of a continuing wrong. Even if that was the case, the respondents could not recover arrears for the period beyond the period of limitation. The Industrial Court thus must have restricted the consequential relief as to entitlement to increment and leave etc. for the statutory period of limitation. A very strong reliance was placed by Mr. Naidu on a judgment of the Supreme Court in the case of *Union of India and others vs. Tarsem Singh*².

9. Mr. Naidu would further urge that the judgment of a learned Single Judge of this Court in the case of *Jaihind Sahakari Pani Purvatha Mandali Ltd. Vs. Rajendra bandu Knot and Ors.*³ enunciates the legal position that where the Court is dealing with an unfair labour practice of not honouring a settlement between the employer and employee, the period of limitation would be three months in conformity with the period of limitation for lodging the complaint provided in Section 28 of the Act, 1971. On this sole count, according to Mr. Naidu, the impugned order deserves to be quashed and set aside.

2 (2008) 8 Supreme Court Cases 648.

3 2020(2) BOM CR 98.

10. Thirdly, it was submitted that the finding recorded by the learned President, Industrial Court, that the petitioner indulged in unfair labour practices under Item 9 of Schedule IV of the Act, 1971 was wholly erroneous and contrary to the finding on issue No.1. The said finding, according to Mr. Naidu, was not borne out by the material on record.

11. Mr. Bhat, the learned Counsel for the respondents, joined the issue by canvassing a submission that under Section 460 T (2) of the MMC Act, the petitioner had no power to appoint a person on temporary post beyond a period of six months. Yet, respondent Nos.2 to 18 were continued on temporary posts by giving an artificial break of one day only. The unfair labour practice was thus writ large. Mr. Bhat further submitted that the learned Presiding Officer, Industrial Court, has in effect directed the petitioner to extend the benefits which are otherwise admissible to the temporary employees. Thus, the petitioner cannot have any grievance against the impugned order.

12. Meeting the challenge to the impugned order on the count of limitation, Mr. Bhat would urge that as the unfair labour practice in question was in the nature of a continuing wrong, in as much as denial of increment to the employees, though

otherwise lawfully entitled to, constitutes a continuing wrong, the learned President, Industrial Court, committed no error in holding that the complaint was not barred by limitation. To bolster up this submission Mr. Bhat placed a strong reliance on a judgment of the Supreme Court in the case of *M. R. Gupta vs. Union of India & ors.*⁴.

13. Before advertng to consider the aforesaid submissions, it may be apposite to note that the findings recorded by the learned President, Industrial Court, on the maintainability of the complaint, namely, that respondent No.1 Union could file the complaint under all Items other than Item Nos.2 and 6 of Schedule IV of the Act, 1971 and that the complaint was also filed by respondent Nos.2 to 18 the affected employees, under Items 5 and 9 of Schedule IV of the Act, 1971, were not seriously assailed on behalf of the petitioner. At any rate, the finding on the maintainability of the complaint at the instance of respondent Nos.2 to 18 alleging unfair labour practices under Items 5 and 9 of Schedule IV of the Act, 1971 appears impeccable.

14. Few uncontroverted facts deserve to be noted in order to properly appreciate the rival submissions. Respondent Nos.2 to

4 1996 I CLR 9.

18 were appointed to the post of draughtsman on various dates in the year 1996. There is not much controversy over the fact that the respondents were appointed on temporary basis. Under Section 460 T (2) of the MMC Act, the committee is empowered to create temporary posts for the period not more than six months. No such post shall be continued beyond a period of six months without previous sanction of the Corporation. It is incontrovertible that respondent Nos.2 to 18 were given a break of one day after rendering services of six months till they were made permanent. Out of 17 employees, seven were given benefit of permanency in the year 1998, five in the year 2000 and rest five in the year 2002, as and when the vacancies arose in the permanent posts of the draughtsman. Indisputably respondent Nos.2 to 18 – complainants raised the grievance in the year 2012, which was followed by the complaint in the year 2014.

15. In the backdrop of the aforesaid facts, Mr. Naidu would urge that no element of unfair labour practice can be attributed to the petitioner either under Item 5 or Item 9 of Schedule IV of the Act, 1971. In fact, the aforesaid timeline would indicate that the petitioner had acted in a most responsible manner and absorbed respondent Nos.2 to 18 no sooner permanent vacancies arose.

16. To amplify the aforesaid submission, Mr. Naidu laid stress on the finding recorded by the learned President on issue No.1 to the effect that there was no unfair labour practice to the extent of not extending the benefit of permanency to respondent Nos.2 to 18 upon completion of 240 days continuous service. In the face of this categorical finding, the subsequent finding on issue No.4 that the petitioner indulged in unfair labour practice under Item 9 of Schedule IV in not extending the benefits of the temporary employees is clearly unsustainable. It was urged that a clear and categorical finding of unfair labour practice is a *sine qua non* for an order under Section 30 of the Act, 1971.

17. In the case of ***Blue Star Ltd.*** (supra) a learned Single Judge of this Court after adverting to the provisions contained in Section 30 of the Act, 1971 ruled that the finding by the Industrial Court or Labour Court, as the case may be, that such person named in the complaint, has engaged in or is engaging in unfair labour practice is a foundation on which the order of declaration is built or suitable directions are issued. *Sine qua non* for passing the order of declaration and direction as contemplated in Clauses (a), (b) and (c) of sub-section (1) of Section 30 is a finding by the concerned Labour Court or

Industrial Court that such person named in the complaint has indulged in or is engaging in unfair labour practice.

18. There can be no quarrel with the aforesaid proposition. However, the endeavour of Mr. Naidu to draw home the point that once a finding was recorded that there was no unfair labour practice in not extending the benefit of permanency the moment the employees has put in 240 days, there can be no further unfair labour practice qua any other matter does not merit countenance. The learned President, Industrial Court, was cautious to record a finding that the complainants failed to prove that there was unfair labour practice so far as making them permanent upon completion of 240 days continuous service. The said finding cannot insulate the petitioner of the charge of indulging in unfair labour practice with regard to the other terms and conditions of employment.

19. It could not be disputed that under Clause 4(2)(iii) @ (a) of standing orders the temporary employees were entitled to grant of annual increment, privilege leave and sick leave on pro-rata basis at the defined rates. The learned President, Industrial Court, found that the act of giving artificial break of one day after completion of six months of service deprived respondent Nos.2 to 18 of the aforesaid benefits otherwise available to

temporary employees under Clause 4(2)(iii) @ (a) of the standing orders. I do not find any reason to interfere with the finding of fact arrived at by the Industrial Court.

20. The two items of unfair labour practice attributed to the petitioner namely, not extending the benefit of permanency and not extending the benefits available to temporary employees are quite distinct. The finding that respondent Nos.2 to 18 were not entitled to the benefit of permanency, merely upon completion of 240 days, for want of permanent sanctioned post, does not bear upon the finding that the petitioner indulged in unfair labour practice in not giving the benefit available to the temporary employees by depriving them of continuous service of one year to be eligible to get those benefits. I am, therefore, not inclined to accede to the challenge to the impugned order on the ground that there is an irreconcilable inconsistency in the findings on issue Nos.1 and 4 recorded by the Industrial Court.

21. The aforesaid consideration also bears upon the third challenge sought to be mounted by Mr. Naidu that in fact there was no unfair labour practice. On a consideration of a material on record, especially in the absence of significant controversy on facts, particularly on the aspect of break in service of one day post six months service on the temporary post of the

draughtsman, in my view, the learned President, Industrial Court, correctly recorded a finding that such break in service deprived respondent Nos.2 to 18 of the benefits available to the temporary employees.

22. This propels me to the principal challenge to the impugned order on the ground of delay and laches. Inviting the attention of the Court to the averments in the complaint, Mr. Naidu would urge that no endeavour was made on behalf of the complainants to seek condonation of more than 10 years delay in raising the grievance of unfair labour practice.

23. In paragraph 5.1 of the complaint, it is averred that the unfair labour practice being continuous one, the complaint was not time barred. In the event the Court found that there was a delay in filing the complaint, the complainants sought to reserve the liberty to apply for condonation of delay.

24. The ground of delay and laches is required to be appreciated in two parts. One, the nature of the unfair labour practice. Did it constitute a continuing wrong. If it did do, then the aspect of delay may not be decisive. Two, even if it is held that the unfair labour practice was a continuing one, could the final relief be restricted to a particular period or, for that matter,

to the period of limitation prescribed for filing a complaint of unfair labour practice.

25. Mr. Bhat submitted with tenacity that depriving an employee of the legitimate wages by denying benefit of accrued increment constitutes an unfair labour practice which is continuing one. Each month when such an employee is paid wages less than the correct wages, on account of such denial of increments, the legal injury continues. Therefore, the bar of limitation would not apply to such continuing unfair labour practices.

26. In the case of *M. R. Gupta* (supra), the Supreme Court was confronted with a situation where the grievance of the employee was that his pay fixation was not in accordance with the rules and constituted a continuing wrong. In that context, the Supreme Court held that so long as the employee was in service a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to the rules. The observations in paragraphs 5 and 6 are instructive and hence extracted below:

“5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the

appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao v. Mattapalli Raju AIR 1950 FC 1: 1949 FCR 484: 50 Bom LR 181: (1950) 1 MLJ 752*.)"

27. The Supreme Court has enunciated in clear and explicit terms that the claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to

salary computed correctly in accordance with the rules. The said right is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists. It was further explained that an employee would be entitled to be paid in accordance with the properly fixed pay scale in future and the question of limitation would arise for recovery of the arrears of the past period. The employee would not be able to recover the arrears calculated on the basis of the difference in the pay which has become time barred.

28. In law there is a distinction between a continuing wrong and successive wrong. A continuing wrong occurs when a party continuously breaches an obligation imposed by law or agreement. In the case of *Balkrishna Savalram Pujari Waghmare vs Shree Dhyaneshwar Maharaj Sansthan*⁵, the Supreme Court expounded the nature of continuing wrong in the context of a dispute where the appellants were kept out of possession, referring to Section 23 of Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963. The Supreme Court observed as under:

“**31.** Does the conduct of the trustees amount to a continuing wrong under S.23? That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in them as claimed by the appellants ? In dealing with this argument it is necessary to

5 AIR 1959 SC 798.

bear in mind that S.23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the 'doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that S.23 can be invoked."

29. In the case of *Commissioner of Wealth Tax vs. Sursh Seth*⁶ the Supreme Court enunciated that true principle appears to be that where the wrong complained of is the omission to perform a positive duty requiring a person to do a certain act the test to determine whether such a wrong is a continuing one is whether the duty in question is one which requires him to continue to do that act. The Supreme Court went on to give illustrations of continuing wrong. The relevant part of paragraph 17 of the said judgment reads as under:

"17. The true principle appears to be that where the wrong complained of is the omission to perform a positive duty requiring a person to do a certain act the test to determine whether such a wrong is a continuing one is whether the duty in question is one which requires him to continue to do that act. Breach of a covenant to keep the premises in good repair, breach of a continuing guarantee, obstruction to a right of the way, obstruction to the right of a person to the unobstructed flow of water, refusal by a man to maintain his wife and children whom he is bound to maintain under law and the carrying on of mining operations or the running of a factory without complying with the measures intended for

6 (1981) 2 SCC 790.

the safety and well-being of workmen may be illustrations of continuing breaches or wrongs giving rise to civil or criminal liability. as the case may be, de die in diem.”

(emphasis supplied)

30. In the case of *Tarsem Singh* (supra), on which a strong reliance was placed by Mr. Naidu, the facts were that the respondent therein was invalidated out of army service, in medical category, on 13th November, 1983. He had invoked the writ jurisdiction in 1999. The High Court granted him disability pension from the date it fell due till the filing of the writ petition. The question that arose for consideration before the Supreme Court was whether the High Court was justified in directing payment of arrears for the period of 16 years instead of restricting it to three years. While answering the said question, the Supreme Court adverted to the distinction between “continuing wrong” and “recurring/successive wrong”. It was held that a continuing wrong refers to a single wrongful act which causes a continuing injury. “Recurring/successive wrongs” are those which occur periodically, each wrong giving rise to a distinct and separate cause of action.

31. After adverting to the pronouncements of the Supreme Court in the cases of *Balkrishna Savalram* (supra), *M. R. Gupta* (supra) and *Shiv Dass vs. Union of India and others*⁷, wherein

7 (2007) 9 Supreme Court Cases 274.

the principle of delay and laches was explained, the Supreme Court summarized the legal position in paragraph 7 as under:

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

32. The aforesaid pronouncement would indicate that principles of continuing wrong and recurring/successive wrongs operate at different stages of one and the same proceeding. If the Court finds that the service related claim is based on a continuing wrong, delay does not matter and the Court is empowered to remedy the situation as a continuing wrong creates a continuing source of injury. At this stage, the principle of “continuing wrong” giving rise to a fresh period of

limitation at every moment of time during which the said wrong continues comes into play. Secondly, while considering the grant of consequential relief of recovery of arrears, the principle relating to recurring/successive wrongs governs the situation. Ordinarily, the Court would not grant a consequential relief to cover the period of three years prior to the date of the institution of the proceeding. Thus, at the second stage, the bar of limitation in the matter of recovery of arrears comes into play.

33. Mr. Naidu submitted that the judgment in the case of *Tarsem Singh* (supra) was in the context of a writ petition for which there is no stipulated period of limitation. Under Section 28 of the Act, 1971, in contrast, 90 days period of limitation from the date of accrual of cause of action, namely, occurrence of unfair labour practice complained of, has been provided. Therefore, the Court would not be justified in granting arrears beyond a period of 90 days prior to the institution of the complaint even in a case of continuing wrong, urged Mr. Naidu. A party who wishes to seek arrears beyond the period of 90 days must make out a case for condonation of delay as envisaged by the proviso to Section 28(1) of the Act, 1971.

34. To buttress this submission Mr. Naidu banked upon the judgment of this Court in the case of *Jaihind Sahakari* (supra)

wherein a learned Single Judge of this Court after adverting to the judgments in the cases of *Tarsem Singh* (supra) and *M. R. Gupta* (supra) enunciated the law in paragraph 11, which reads as under:

“11. The three years' period considered by the Supreme Court in Tarsem Singh's case was on the basis of a general limitation for recovery of a money claim. What was considered was that since the recovery period being considered by the High Court was in a writ petition, where the case was not covered by any particular article of limitation, the normal rule of limitation for recovery of money dues, i.e. limitation of three years, should apply unless there are extra-ordinary circumstances. Had the case been before an administrative tribunal, it would have been the particular article of limitation which would have applied. In the present case, since we are dealing with an unfair labour practice of not honouring a settlement between the employer establishment and its workmen, the period is of three months. Ordinarily, therefore, salaries and other emoluments payable for three months prior to the complaint can alone be considered for relief as a normal rule. The Industrial Court appears to have disregarded this law. It appears to have proceeded on the footing of a continuous cause of action. It ought to have instead considered each successive act of non- payment as a separate injury and cause of action and proceeded to consider the successive acts as recurring causes of action. Going by that, as per the law stated in Tarsem Singh's case, enforcement of settlement could have always been ordered for future and as for arrears, they could have been ordered only for three months as per the limitation period ordinarily applicable. The court should then have considered whether and to what extent to exercise its discretion to go beyond this ordinarily applicable period, depending on good and sufficient reasons being shown for the delay. This aspect of the matter, however, has not been addressed to at all by the Industrial Court, since it, as we have seen above, wrongly, treated the cause of action as a continuing one and gave relief on that basis. The impugned order of the court, thus, deserves to be quashed and the complaint remitted to the court for consideration of the period of recovery, that is to say, how far to go back for ordering recovery of arrears.”

35. Attention of the learned Single Judge was invited to a Full Bench decision of this Court in the case of *Maharashtra State*

*Road Transport Corporation & Others vs. Premlal Khatri Gajbhiye and others*⁸. The learned Single Judge observed that the Full Bench decision in *Premlal Khatri* (supra) only recognizes the principle of recurring cause of action without considering its actual application. So far as actual application was concerned it did not state the law otherwise than what the learned Single Judge had discussed.

36. In the case of *Premlal Khatri* (supra) the controversy arose on account of the non-implementation of the benefits under Clause 49 of 1956 Settlement, in the said case. The tenability of the complaint was challenged on the ground that it was barred by limitation as it was filed beyond three years of the commencement of denial of benefits to the employees under Clause 49 of 1956 Settlement. The employees contended that it was a case of recurring cause of action. In that context, after adverting to the judgment of the Supreme Court in the case of *Balkrishna Savalram* (supra) and other precedents, the Full Bench held that denial of the benefit under Clause 49 of 1956 Settlement was a continuing wrong.

37. In view of the construction put by the learned Single Judge on the import of the judgment of the Full Bench in the

8 2004(2) Bom. C. R. 338.

case of *Premal Khatri* (supra) it may be expedient to extract the observations of the Full Bench in paragraphs 23 to 27. They read as under:

“23. The Full Bench of the Gujarat High Court in *Ashok Mills’ (1977 LIC 179 : 1978-I-LLJ-235 (Guj-DB))* case rather than lending any assistance to the appellants clearly justifies the order of the Industrial Court as well as the learned single Judge. Thereunder it has been ruled that "so far as the contravention of the terms of an agreement, settlement or award or effective order of the wage board are concerned, there may be continuous obligations from day to day or month to month, which may not be capable of being executed by single compliance once for all. As pointed out by the Full Bench in *Shri Ram Mill's case 1950 ICR 1241 (IC Bom)* in the context of bonus or retrospective difference in the shape of past arrears, the occasion of change would arise once and for all while in the cases of wage awards or payments of such amenities month to month, the question of making an illegal change would arise every month, when these wages in the sense of basic wages or value of amenities would be refused by the employer. The employer can choose to withdraw that illegal change even voluntarily at any time and then there would be no grievance. It is only when the employer would persist in his illegal change that the employees would have to resort to the Labour Court for getting a decision about the illegal change and an order of its withdrawal. Therefore, in the context of such recurring obligations, the term making of an illegal change could never have same meaning of change made once for all so that what continues is only its effect in the context of such recurring obligations to pay month to month the wages or value of such amenities. The illegal change would be made afresh every month when the employer would refuse to carry out that continuous obligation. Apparently it has been held that giving effect to the settlement relating to the payment of wages or final benefits under the settlement, the same are required to be given month to month and question of illegal change once and for all in such cases does not arise and, therefore, it is a recurring cause of action for the employee in case of non-compliance of the terms of the settlement in relation to the grant of monetary facility relating to the service conditions of the employees.

24. The decision of the Division Bench of this Court in *Regional Manager, Maharashtra State Road Transport Corporation, Nagpur and another* is also of no help to the appellants. Therein it was specifically ruled that "the respondent has invoked Item 9 of Schedule IV of the Act No. 1 of 1972, which entry relates to failure of implementing the

settlement which according to both the parties is still in force and binding upon them. Therefore, in our opinion the unfair labour practice will continue to recur so long as the settlement remains unimplemented." As already held above, Clause 49 of 1956 settlement is still in force and, therefore, non-compliance thereof would amount to unfair labour practice by the appellants and it will continue to recur till and until the appellants grant the benefit under said Clause 49 of 1956 settlement to the respondents.

25. Similarly the decision in M.S.R.T.C 's case by the Division Bench of this Court clearly assist the respondents. The Division Bench therein has held thus:

"In order to ascertain whether the limitation has expired, it is necessary to find out whether the activities complained of as unfair labour practices are of the recurring nature, or whether the occurrence of the unfair labour practices were over once it was engaged in and only the effect continues to flow therefrom. Where the occurrence is of recurring nature, the limitation would continue to extend as long as the occurrence continues. In other words, if the acts of partiality and favouritism continue from time to time the occurrence of unfair labour practice would be of a recurring nature, in which case the limitation will not come to an end on expiry of the ninety days from the date when the unfair labour practices were first committed. For this proposition reliance can be placed on the decision of this Court in Regional Manager, M. S. R. T. C. v. Regional Secy., Maharashtra S. T. Kamgar Sanghatana, 1984 LIC 1721."

26. It is well settled that as long as the default in performance of obligation continues, the wrong is deemed to have continued and therefore, it is to be taken as a continuing wrong. If the duty continues from day to day, the non-performance of that duty from day to day is a continuing wrong. (Vide Smt. Maya Rani Punj v. Commissioner of Income Tax, Delhi).

27. In the case in hand as already observed above, the unfair labour practice by the appellants in continuing the denial of the benefits under Clause 49 of 1956 settlement to the respondents is of recurring nature and till and until such benefits are given, it will continue to recur and, therefore, there is no substance in the contention of the appellants that the complaints were barred by Law of Limitation."

(emphasis supplied)

38. The aforesaid observations, in my considered view, lay down that the wrong complained of in the said case was a continuing wrong and the denial of the benefits under Clause 49 of 1956 Settlement amounted to non-performance of the duty from day to day and thus constituted a continuing wrong. Consequentially, the Full Bench held there was no substance in the contention that the complaints were barred by law of limitation. The judgment in the case of *Premal Khatri* (supra), thus, with respect, cannot be restricted to laying down the principle of recurring cause of action alone.

39. The Full Bench decision in the case of *Premal Khatri* (supra) would govern the facts of the case at hand. Under the Standing Order Clause 4(2)(iii) @ (a) and (b) it was the obligation of the petitioner to give the benefits, which were admissible to the temporary employees, to respondent Nos.2 to 18, but for the artificial break of one day. The denial of the increments to which respondent Nos.2 to 18 were otherwise entitled to, while being the temporary employees, resulted in incorrect fixation of their pay. Denial of increments thus constituted a continuing injury month by month. The pronouncement of the Supreme Court in the case of *M. R. Gupta* (supra) makes the position abundantly clear. I am, therefore, persuaded to hold that the

case at hand was an instance of a continuing unfair labour practice. The complaint was thus not barred by law of limitation.

40. On the aspect of grant of arrears, as noted above, the principle of recurring/successive wrong governs the situation. Bar of limitation would operate in the matter of recovery of arrears, which would be admissible upon the release of the increments. The question that wrenches to the fore is the period upto which the entitlement to arrears be restricted. Undoubtedly, under Section 28 of the Act, 1971 a complaint has to be lodged within 90 days of the occurrence of the unfair labour practice. Could that be the only measure of recovery of arrears?

41. I find it difficult to accede to the submission of Mr. Naidu that the recovery of arrears cannot exceed 90 days on the premise that 90 days period is stipulated for filing a complaint. The recourse to the proviso to Section 28(1) to urge that if the arrears are to be recovered beyond the said period, a case be made out before the Industrial Court, in my view, is not well-founded. That would make an invidious distinction between the complainants who approach the Court within the period of limitation and those who come to the Court beyond the

prescribed period of limitation. If taken to its logical conclusion, such construction would imply that a complainant who approaches the Court belatedly stands to gain in the matter of recovery of arrears. In my view, the determination must rest on a surer foundation.

42. Article 7 of the Schedule to the Limitation Act, 1963 provides three years period of limitation for recovery of wages, in case of any person other than a seaman, and the period begins to run when the wages accrue due. This period of limitation accords with the general period of limitation of three years, normally adhered to, when there is no stipulated period in the matter of recovery of past arrears. I am, therefore, persuaded to hold that the consequential relief deserves to be restricted to the period of three years prior to the lodging of the complaint.

43. The petition thus deserves to be partly allowed.

44. Hence, the following order:

: O R D E R :

- (I) The petition stands partly allowed.
- (II) The impugned order stands modified as under:
 - (a) The petitioner Undertaking shall release the annual increments, to which respondent Nos.2 to 18 were entitled to while holding temporary post, in

accordance with Clause 4(2)(iii) @ (d) of the Standing Orders, re-fix the wages and pay the arrears for the period of three years prior to the filing of the complaint.

(b) The petitioner shall grant privilege leave and sick leave on pro-rata basis as specified in Clause 4(2)(iii) @ (a) and (b) of the Standing Orders for the maximum period of three years, if not already granted.

(III) Rest of the order passed by the Industrial Court stands affirmed.

(IV) Rule made absolute to the aforesaid extent.

No order as to costs.

[N. J. JAMADAR, J.]