

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

WRIT PETITION (WP) NO.7884 OF 2018

- 1) Bhagwant s/o Pandhari Bhande,
Aged about 52 years, Occ. Service, R/o
At Post Mahtodi, Tq. & Dist. Akola.

.... Petitioner(s)

// VERSUS //

- 1) Divisional Controller, M.S.R.T.C.,
Akola Division, Akola.
- 2) Industrial Court, Maharashtra (Akola
Bench), Akola.

... Respondent(s)

Shri R.B. Khan, Adv. h/f Shri B.M. Khan, Advocate for the
Petitioner/s

Shri A.D. Sonak, Advocate for the respondent No.1

**CORAM : ANIL S. KILOR, J.
DATED : 05.07.2023**

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the parties.

3. In the present matter, the judgment and order dated 27.02.2008 passed by the Industrial Court, Akola, rejecting the application for condonation of delay in filing the complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short “the Act of 1971”), is under challenge.

4. The ground on which the application was rejected is that, sufficient explanation has not been offered by the petitioner to explain the delay of nine years in filing the complaint. However, considering the factual matrix, I am of the opinion that the said findings of the learned Industrial Court are erroneous, for following reasons.

5. The respondent/Divisional Controller, M.S.R.T.C., Akola after holding an inquiry against the petitioner, passed an order, withholding three increments vide order dated 13.10.2003 and on the same day, by separate order dated 13.10.2003, the Divisional Controller, Akola terminated the services of the petitioner.

6. As far as the termination of the petitioner is concerned, the petitioner approached to the Labour Court, Akola, challenging his termination. Whereas, withholding of three increments is concerned, the petitioner filed a Departmental Appeal with the Divisional Controller, Akola on 20.10.2003 i.e. within seven days from the impugned order.

7. The learned counsel for the petitioner has produced a true copy of the appeal memo of Departmental Appeal, which bears stamp of the respondent as acknowledgement of receipt of appeal.

8. The learned Labour Court, Akola set aside the order of termination dated 13.10.2003 and accordingly, in 2009 the petitioner was reinstated in service.

9. However, the appeal pending before the Divisional Controller was not decided and no communication was made with the petitioner in that regard and therefore, on finding that the petitioner was not getting full salary because the respondent was making deduction in compliance with the order dated 13.10.2003, the petitioner approached to the Industrial Court by filing the

compliant, however, as an abundant caution, though the cause of action was recurring one, the application for condonation of delay was filed.

10. Thus, the petitioner was reinstated in the year 2009 and till then, there was no occasion for the petitioner to pursue or raise any grievance about the order of withholding of the increments. Further, after 2009, he waited for decision on the departmental appeal and when he noticed that the Divisional Controller is not deciding the appeal and deducting amount from his salary in compliance with the order dated 13.10.2003, he preferred the compliant. As such, I have no hesitation to hold that the petitioner has satisfactory explained the delay in approaching the Industrial Court. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The judgment and order dated 27.02.2018 passed by Member Industrial Court, Akola in Mics. ULP (CD) No.11 of 2012, is hereby quashed and set aside.

(iii) The application, filed by the petitioner for condonation of delay in filing the complaint against the order dated 13.10.2012, is hereby allowed.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]