

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10428 OF 2022**

Sambhaji Shankar Vanave,
Age: 54 years, Occ.: Nil,
R/o. Vanave Galli, At/Post and
Tal-Malshiras, Dist-Solapur

...Petitioner

Versus

1. Divisional Women And Child Welfare
Division, Pune Social Welfare Division 3,
Church Road, Pune.

...Respondents

2. District Woman & Child Development Near
Dr. Babasaheb Ambedkar Bhavan Saat Rasta,
Solapur.

3. Superintendent, Government Kushtadham,
Tal-Karmala, Dist-Solapur

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Mr. Rajaram V Bansode, for the Petitioner.
Mr. Bapusaheb Dahiphale, A.G.P., for the Respondent-State.

CORAM: RAVINDRA V. GHUGE, J.

DATED: 23rd September 2024

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The issue raised in this Writ Petition is with regard to the restoration of Complaint (ULP) No.23 of 1992, filed by the Petitioner herein (the original Complainant), before the Labour Court at Solapur under Item-1 Schedule-IV of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Petitioner had challenged his dismissal. After 19 years, when the matter was at the stage of recording of the oral evidence, the learned Advocate for the Complainant made a statement that the Complainant is not responding to his messages. The Complainant did not lead evidence. Hence, the Complaint was dismissed in default.

3. The Complainant filed a Restoration Application bearing Misc. (ULP) No.5 of 2011, within 30 days. By the Impugned Order dated 30th April, 2012, the Labour Court concluded that the Complainant was deliberately not attending the

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proceedings only because he had been enjoying the interim protective order of the Labour Court. For this reason, the Restoration Application was also dismissed. The Complainant approached the Industrial Court in Revision (ULP) No.31 of 2012. By the Judgment dated 22nd November, 2013, the Industrial Court dismissed the Revision Petition.

4. The learned A.G.P. representing the Respondents has vehemently opposed this Petition. His contentions can be summarized as under :

- a) Because the Complainant received interim relief from the Labour Court, the matter was unduly prolonged.
- b) After 19 years, the proceedings before the Labour Court were at the stage of recording of evidence and yet, the Complainant continued to remain absent.
- c) Though the Complainant may have filed the Restoration Application within limitation, the Labour Court noticed the delay in the prosecuting the

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Complaint that was filed by the Complainant, and hence, the Restoration Application was rejected.

d) The Industrial Court has not committed any error in rejecting the revision proceedings in the light of the above.

5. I find from the record that, the Petitioner/Complainant alone can be said to be the cause of his miseries. After 19 years of the pendency of the Complaint, it was the Complainant, who should have been diligent and more interested in getting the Complaint decided. Nonetheless, the conduct of the Complainant resulted in the dismissal of the proceedings in default. As a consequence, the challenge to his dismissal, stood extinguished. If the complaint is not restored, the Complainant would never be in a position to challenge his dismissal and test its legality and validity.

6. The learned Advocate for the Petitioner submits on instructions that the Petitioner/Complainant has suffered the consequences of this litigation and the brunt of his complaint getting dismissed in default, which clearly emerges from the record. He has suffered a lot in the last 13 years. He would not seek back-

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wages, for the period from the date of the first 'dismissed in default' Order passed by the Labour Court, until today, if this Court restores the proceedings.

7. He further makes a statement on instructions that a time bound programme may be ordered by this Court and the Petitioner/Complainant will ensure that the proceedings before the Labour Court are completed within the said period. On account of the first 'dismissed in default' order of the Labour Court, the Complainant is out of the employment since the interim relief order stood merged in the order of dismissing the Complaint.

8. Considering the peculiar facts and circumstances as recorded above, in my view, the ends of justice would be met if the matter is restored so as to grant an opportunity to the Petitioner/Complainant to test the legality of the impugned order. Since the Complaint has been dismissed in default, the litigation has actually ended. The equities can be balanced by depriving the Petitioner of the back-wages, from 25th January, 2011 till the passing of this Order. If the ULP Complaint is not restored, the doors of litigation would be permanently closed for the Complainant.

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9. In view of the above, this **Writ Petition is partly allowed**. The Impugned Orders dated 25th January, 2011 and 30th April, 2012 passed by the Labour Court and the Order dated 22nd November, 2013 passed by the Industrial Court, are quashed and set aside. The Revision (ULP) proceedings stand allowed in terms of this Order. Complaint (ULP) No.23 of 1992, shall stand restored to the file of the Labour Court, Solapur.

10. The Petitioner shall remain present before the Labour Court for leading oral evidence, on 21st October, 2024. On the same date, he would tender his examination-in-chief in the form of an Affidavit in lieu of examination-in-chief, if not already filed. He would abide by the dates granted by the Labour Court for his cross-examination and for leading further evidence. The interim relief order granted by the Labour Court would not be restored as it stood vacated in 2011.

11. The Labour Court shall conclude the proceedings with due co-operation of the litigating parties, on or before 28th February, 2025. The hearing in the said case shall be posted at least once a week. The Petitioner/Complainant shall refrain from seeking adjournments on unreasonable or trivial grounds, lest, the

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Labour Court would proceed to pass appropriate Orders on account of the conduct of the Complainant.

12. Needless to state, as noted above, the Petitioner would be deprived of the back-wages for the period stated above.

13. Rule is made partly absolute in above terms.

(RAVINDRA V. GHUGE, J.)