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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.231 OF 2004

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Pratap Satappa Kamat

... Petitioner

V/s.

The Superintending Agriculture Officer,
Kolhapur Division & Ors.

... Respondents

Ms. Pavitra Manesh i/by Mr. M. S. Topkar for the
Petitioner.

Mr. Y. D. Patil, AGP for the State/Respondent Nos.1 and
2.

CORAM : AMIT BORKAR, J.

DATED : MAY 10, 2024

P.C.:

1. By this writ petition under Articles 226 and 227 of the Constitution of India, the Petitioner is challenging the judgment and the order passed by the Industrial Court, Kolhapur, in Complaint (ULP) No.327 of 1994 dismissing the Petitioner's complaint.

2. On 30 August 1972, Petitioner was appointed to the vacant and substantive post of Soil Surveyor in the Rural Engineering Survey Division, effective from 10 July 1972. Under his appointment, he worked at Satara till 31 August 1974, and after that, the Petitioner was transferred to an equivalent post on the

same pay scale as an Agricultural Supervisor. The Petitioner worked on the said post from 1 September 1974 to 8 November 1979. According to the Petitioner, his service was satisfactory, and no adverse remarks were communicated to him. According to him, he became deemed permanent in view of the Government Resolution dated 19 September 1975.

3. The Petitioner was, after that, selected and appointed by Maharashtra Agricultural Services as Sub-Divisional Soil Conservative Officer (Class-II). The Petitioner was relieved from his earlier post of Agricultural Supervisor to join a newly selected post on 8 November 1979. According to the Petitioner, he did not resign from his original post, nor were his services terminated. According to the Petitioner, he was appointed on probation in a Class-II post for two years. However, before his confirmation, he was removed from the post effective 6 October 1983.

4. On 14 October 1985, the Petitioner made a representation to the State Government, which ended the Petitioner's termination. However, the stay was discontinued later.

5. The Petitioner, after that, filed Writ Petition No.295 of 1986. However, the writ petition was transferred to the Maharashtra Administrative Tribunal as O.A. No.1709 of 1991. On 6 July 1992, the Maharashtra Administrative Tribunal dismissed the Petitioner's O.A. No.1709 of 1991. The Supreme Court confirmed the said order.

6. On 11 August 1992, the Petitioner requested the respondents

to allow him to resume his Class-III post as Agricultural Supervisor. However, by reply dated 17 January 1993, the respondents refused the Petitioner's request to allow him to join the original post because his services were terminated from the Class-II post. According to the Petitioner, he issued notice on 4 January 1994 and opted for voluntary retirement from his original post. According to the Petitioner, merely by accepting the Class-II post, he did not lose his lien over the Class-III post and, therefore, he filed a complaint under section 28 read with Item Nos.5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereafter, ("M.R.T.U. and P.U.L.P. Act", for short) before the Industrial Court, Kolhapur bearing Complaint (ULP) No.327 of 1994.

7. The respondents appeared in the said complaint and contested it by denying the Petitioner's claim of lien over the Class-III post after having been joined on the Class-II post.

8. The Industrial Court, by the impugned judgment dated 15 January 2003, dismissed the Petitioner's complaint, holding that there was no material on record to show that the complainant was informed about his lien while relieving from Class-III post. It was also held that the complainant was subsequently appointed on a permanent post without material to show that the Petitioner reserved his lien. Without an explanation for the delay in approaching the Court, the Industrial Court dismissed the complaint.

9. Learned Advocate for the Petitioner relying on the judgment

of the Division Bench of this Court in **Shirish Suresh Thatte vs. The State of Maharashtra & Ors.** reported in 2015 (1) ABR 420 submitted that the Petitioner's appointment on Class-II post was on probation. In the absence of his appointment to a permanent post, he was entitled to continue on his earlier Class-III post. Relying on Rules 20 and 25 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, it is submitted that the Petitioner's lien is automatically reserved, and it is only in case of suspension or termination of the lien the respondent was required to issue notice to the employee. He, therefore, submitted that the Industrial Court could not have dismissed the Petitioner's complaint. He submitted that the delay in approaching the Industrial Court was due to proceedings initiated by the Petitioner after his termination from the Class-II post.

10. Per contra, the learned AGP for the State submitted that the Industrial Court assigned detailed reasons for dismissing the complaint, and in the absence of an application for condonation of delay, the complaint was not maintainable.

11. Rival contentions fall for consideration. Based on the facts stated above, Petitioner filed a complaint under section 28 of the M.R.T.U. and P.U.L.P. Act without application for condonation of delay. Under section 28 of the M.R.T.U. and P.U.L.P. Act, an employee can file a complaint within 90 days of the occurrence of unfair trade practice before the Court is competent to deal with a complaint either under section 5 or 7 of the Act. Sub-section (1) of section 28 of the M.R.T.U. and P.U.L.P. Act provides that the Court

may entertain a complaint after 90 days from the date of the alleged occurrence of unfair trade practice if the complainant shows good and sufficient reasons. In the present case, the entire cause of action based on undisputed fact appears to have accrued at least on 17 January 1993 when the respondents refused to concede the Petitioner's request to allow him to resume upon the Class-II post. This fact is admitted even in paragraph No.9 of the writ petition. The complaint was filed on 25 August 1994. The Petitioner failed to file application for condonation of delay. Therefore, based on the undisputed fact of refusal on 17 January 1993, there appears to be a delay of 1 year and seven months in filing the complaint. Such delay has not been explained in the complaint nor by filing an application for condonation of delay. In the absence of such explanation in the complaint and the absence of filing of application of condonation of delay, the Petitioner's complaint under section 28 of the M.R.T.U. and P.U.L.P. Act was barred by limitation.

12. Moreover, it appears that the Petitioner was terminated from his Class-II post on 6 October 1983. He represented to the State Government for grant of stay, however, the Petitioner has failed to explain the delay even in filing representation to the State Government in 1985.

13. Since I am satisfied that the complaint was filed beyond the period of limitation, the Industrial Court has rightly refused to grant a declaration of commission of unfair labour practice by the respondents. For aforesaid reason, there is no merit in the writ

petition.

14. The writ petition is, therefore, dismissed. No costs.

15. In view of disposal of the writ petition, all pending interlocutory application(s) stands disposed of as infructuous.

(AMIT BORKAR, J.)