IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9922 OF 2024

Hindustan Coca Beverages Private Limited … Petitioner
V/s.
Hitesh Prabhakar Sawant and anr. ... Respondents

WITH
WRIT PETITION NO.9918 OF 2024
WITH
WRIT PETITION NO.9913 OF 2024
WITH
WRIT PETITION NO.9915 OF 2024
WITH
WRIT PETITION NO.10044 OF 2024
WITH
WRIT PETITION NO.9916 OF 2024
WITH
WRIT PETITION NO.9917 OF 2024
WITH
WRIT PETITION NO.9923 OF 2024
WITH
WRIT PETITION NO.9924 OF 2024
AND
WRIT PETITION NO.10045 OF 2024

Mr. J.P. Cama, Senior Advocate with Mr. Sidharth Shrivastava, Ms. Yasmeen Mohd. Sabir i/by M/s Link Legal*, Advocates for the Petitioner.*

Mr. Mayuresh Nagle, *Advocate for the Respondent No.1.*

Ms. Priyanka Nadkarni, AGP *for the State in WPs No. 9917 of 2024, 9918 of 2024, 9923 of 2024, 9924 of 2024 and 10045 of 2024.*

CORAM : SANDEEP V. MARNE, J.

Dated : 31 January, 2025.

P.C. :

1. These Petitions challenge the judgments and orders dated 10th May, 2024 passed by Learned Judge, Industrial Court, Thane, directing that the Respondents-workmen are entitled to get permanency from the dates of their initial appointments in the year 2013 with a further direction to the Petitioner to pay the difference of salary and other benefits of the permanent post as per settlement dated 21st March, 2013 and 9th February, 2017, difference between the salary and other benefits of the permanent post and the wages received by the workmen alongwith interest at the rate of 6% from the date of filing of the complaint till realization of the amount.

2. I have heard Mr. Cama, learned senior counsel appearing for the Petitioner-employer and Mr. Nagle, learned counsel appearing for the Respondent No.1. I have also gone through the findings recorded by the Industrial Court while allowing the complaints as well as various documents placed on record alongwith the petitions.

3. After having considered the submissions of the learned counsel appearing for the rival parties, it appears that there is a finding of fact recorded by the Industrial Court in each of the complaint that each of the workman has completed 240 days of service in a calendar year. Mr. Cama has strongly objected to recording of that finding by contending that the Respondents-workmen failed to produce any documentary evidence of having completed 240 days of service in any calendar year.

4. It appears that the Industrial Court has held that out of the ten complainants before it, the appointment orders were produced by the Petitioner-employer only in complaint ULP No.55 of 2019 Hitesh Prabhakar Sawant.

5. To test the submissions of Mr. Cama that based on various appointment orders issued to Mr. Hitesh Prabhakar Sawant, finding of fact could not have been recorded that he has completed to minimum 240 days of service in any calendar year, I have gone through those appointment orders and other documents produced on record.

6. Perusal of the evidence produced by the Petitioner-employer of Mr. Himanshu Hemant Acharya would show that he made following statements in his affidavit of evidence:-

> "11. I say that Complainant was appointed initially by the management on fixed term basis vide appointment letter dated 7.10.2013 for the period from 7.10.2013 to 6.4.2014.
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> 12. I say that thereafter the Complainant was re-appointed vide fixed term appointment letter dated 5.6.2014 for the period 5.6.2014 to 1.12.2014.
>
> 13. I say that thereafter the Complainant was again re-appointed vide fixed term appointment letter dated 2.12.2014 for the period 2.12.2014 to 30.5.2015.
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> 14. I say that thereafter the Complainant was again re-appointed vide fixed term appointment letter dated 31.5.2015 for the period 31.5.2015 to 26.11.2015.

> 15. I say that thereafter the Complainant was re-appointed vide fixed term appointment letter dated 1.1.2018 for the period 1.1.2018 to 30.6.2018. I say that I have filed the above fixed term appointment letters at Exhibit C-10(Colly.) on 12.7.2023."

7. Going strictly by the evidence of the Petitioner's witness, one could have concluded that there are breaks in services of the workman Mr. Hitesh Prabhakar Sawant during 7th April, 2014 to 4th June, 2014 and particularly, between 27th November, 2015 to 31st December, 2017. However, if various pay-slips issued to the said workman Mr. Hitesh Prabhakar Sawant are perused, it appears that he was paid salary during the period when no appointment order were issued to him to illustrate his first appointment order was from 7th October, 2013 to 6th April, 2014 and the second appointment order was from 5th June, 2014 to 1st December, 2014. This means that he has not worked from 7th April, 2014 to 4th June, 2014. However at page 89 of Writ Petition No. 9922 of 2024, pay slip of Mr. Hitesh Prabhakar Sawant in respect of month of May, 2014 is placed on record. This would mean that in absence of any appointment order issued in respect of May, 2014, he has worked and drawn salary from the Petitioner.

8. Similar is the case in respect of long gap sought to be demonstrated by relying upon appointment orders dated 31st May, 2015 (31st May, 2015 to 26th November, 2015) and 1st January, 2018 (1st January, 2018 to 30th June, 2018. It is sought to be suggested that the said workman Mr. Hitesh P. Sawant did not work during 27th November, 2015 to 31st December, 2018. However, his salary slips during the said gap period pertaining to the

years 2016 and 2017 are placed on record. It is therefore becomes difficult to believe that the said workman did not work during the period when there was no appointment order issued to him. I therefore do not find any perversity in the findings recorded by the Industrial Court after appreciating the evidence on record that the said workman had worked continuously from the date of his initial appointment and has completed 240 days of service. I am therefore not inclined to interfere in the findings of fact recorded by the Industrial Court after appreciating the evidence on record. Therefore, no serious flaw can be found in the directions issued by the Industrial Court for grant of the benefit of permanency to the workmen vide the impugned order.

9. There is only one area where some interference by this Court would be necessary. The Industrial Court has directed grant of permanency and payment of difference of wages from the dates of initial engagements. The workers were engaged in the year 2013 and filed complaints of unfair labour practise on 28th February, 2019. Mr. Cama has contended that the period of limitation for filing complaints of unfair labour practises is 90 days and that therefore, the complaints ought to have been dismissed on the ground of delay. I am unable to agree. The cause of action in respect of claiming the benefits of permanency would be continuous once it is demonstrated that the concerned workman was in service as on the date of filing of the complaint. At the same time, though the cause of action would be continuous, the same would not mean that the workman can approach the Industrial Court at any point of time and claim the monetary benefits in respect of the past period. Though the complaint cannot be dismissed on the ground of limitation, at the same time the Industrial Court could not

have granted monetary benefits beyond period of 90 days prior to the date of the filing of the complaint. I am fortified in my view by the judgment of this Court in ***Jaihind Sahakari Pani Purvatha Mandali Limited, Shirdhon, Kolhapur Vs.Rajendra Bandu Khot and ors.***[1] in which a Single Judge of this Court (Coram : S. C. Gupte, J.) has held in paragraphs No.9 to 16 as under :-

> "9. In service jurisprudence, this distinction (i.e. the distinction between a continuing wrong and a recurring one) becomes important particularly from the point of view of relief. In M.R. Gupta Vs. Union of Inida reported in 1996 1 CLR 9 (S.C.), the Supreme Court has explained it succinctly. The appellant before the court in that case was a workman, whose grievance was that his wage fixation was not in accordance with the applicable rules. He asserted that the wrong was a continuous one. The court held that his cause of action was a recurring cause of action rather than a continuous one. Each time he was paid a salary which was not computed in accordance with the rules, a cause of action accrued unto him. The Court held as follows (SCC pp.629-30):
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> "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 2 (1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186 sat wp 563-2017.doc 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."

1 2020 (1) CLR 556

10. This law has been reiterated and summarized by the Supreme Court in Tarsem Singh’s case in the following words (Para 7 @ P.651 of SCC) :

"7. To summarize, 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. Insofar as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a sat wp 563-2017.doc 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."

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 sat wp 563-2017.doc 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.

12. Ms. Singh, learned Counsel for the Respondents, refers to the case of Life Insurance Corporation of India Vs. D. J. Bahadur reported in (1981) 1 SCC 135. What this case lays down is that a settlement made between an establishment and its workmen subsists till a new award or settlement takes its place. This proposition does not, in any way, advance the Respondent's case in the present case. It is not that in our case the award is not binding or that it does not continue to be in force, but that each individual act of refusal to implement the award gives rise to a fresh cause of action. The cause of action of non-implementation of the settlement is not a continuous cause of action, but a recurring cause of action, each individual act of non-implementation giving rise to a distinct and separate cause of action. The case of Jagatjit Industries Limited Vs. Labour Officer reported in 2012(132) FLR 124 referred by Ms.Singh does not state the law of continuing cause of action any differently. The case of Mahindra & Mahindra Limited Vs. Sharad Laxman Dalvi2005 1 CLR 584(Bom.) decided by our Court was about an unfair labour practice of not recognizing a claim of permanency. What was submitted to the court was that the claim of permanency related to the year 1990 and no complaint in that behalf could have been entertained in the year 1998. The court did not countenance this argument for the reason that the claim being about permanency, its denial gave rise to a cause of action for complaining about adoption of unfair 3 (1981) 1 SCC 315 4 2012 (132) FLR 124 5 2005 (2) Bom.C.R. 302 sat wp 563-2017.doc labour practice by the employer and this was a continuing cause of action. Non-recognition of permanency is indeed a

continuing cause of action; the injury caused by such non-recognition cannot be said to be complete when permanency, though due, was not recognized or given effect to for the first time by the employer; the injury continues on each succeeding day when permanency benefits are denied to the employee. None of these judgments, thus, supports the case of the Respondent-employees.

13. Ms. Singh, however, relies on four other cases decided by our Court, where our Court appears to have taken a different view. These cases did involve claims of non-payment of salaries and other monetary dues as a cause of action and our Court does appear to have proceeded on the basis that the claims were within time, though filed beyond the ordinary rule of limitation, without taking into account any distinction between a continuing cause of action and a recurring cause of action.

14. The Division Bench of our court in Waden & Co. (India) Limted Vs. Akhil Maharashtra Kamgar Union 2001 II CLR 359 (Bom.) was concerned with a workmen's complaint of unfair labour practice of non-payment of wages from February 1992, and bonus, leave travel allowance, encashment of privilege and causal leave for the years 1990-91 and 1991-92. The complaint was filed on 29-3-1993 under MRTU & PULP Act. Though the main controversy before the court was whether an unrecognized union was entitled to appear and act on behalf of workmen of an industry governed by the Industrial Disputes Act in a complaint relating to unfair labour practice other than those specified by Items 2 and 6 of Schedule IV of the MRTU & PULP Act, the Division Bench did consider the other issue involved in the matter, namely, whether the complaint was barred by limitation. From the 6 2001 (3) Bom.C.R. 375 sat wp 563-2017.doc employer's side, the same provision of limitation was pressed into service, namely, Section 28 of the Act, providing for three months' period. The Division Bench observed that the complaint was of an unfair labour practice under Item 9 of Schedule IV of the Act, namely, "failure to implement award, settlement or agreement"; Section 28 enabled a complainant to file a complaint where "any person has engaged in or is engaging in any unfair labour practice" and every time wages were not paid when due, it could be averred that the employer was engaging in an unfair labour practice under Item No.9 of Schedule IV. That was the basis on which the Division Bench did not find merit in the submission of the employer based on limitation of three months. The Division Bench, with respect, correctly held the complaint as not barred under Section 28, but that was on the basis of a recurring cause of action - every time wages were not paid, the employer could certainly be said to

have engaged in an unfair labour practice. The Division Bench, however, does not appear to have considered the further question, namely, what should be the period for which arrears of wages should be ordered or in other words, which arrears, calculated on the basis of difference in pay, were recoverable as within time and which were time-barred. The decision of the Supreme Court in M.R. Gupta's case (supra) was not brought to the notice of the Division Bench. The Supreme Court in M.R. Gupta, as we have noted above, made it clear that so long as an employee was in service, a fresh cause of action arose every month when he was paid his monthly salary on the basis of a wrong computation; if the employee's claim of computation was found to be 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 sat wp 563-2017.doc on the basis of difference in the pay which has become time barred would not be recoverable". This has now been fully explained and reiterated by the Supreme Court, by making out a clear distinction between a continuing cause of action and recurring causes of action particularly from the stand-point of service jurisprudence in Tarsem Singh's case (supra). After this latter decision, it is impermissible to argue that since each time wages are not paid when due there is a resultant unfair labour practice, arrears could be ordered to be paid for any length of time, that is to say, without reference to any time-bar. The judgments of two learned Single Judges of our court in Indian Smelting & Refining Co. Ltd. vs. Sarva Shramik Sangh reported in 2009 1 CLR 590(Bom), Maharashtra State Electricity Board Vs. Suresh Ramchandra Parchure reported in 2005(1) Bom C.R. 820 and Cipla Limited Vs. Anant Ganapat Patil2008 1 CLR 102(Bom), also, with utmost respect, do not state the law correctly to the extent they allow the claims of arrears of wages without reference to the bar of limitation for claiming past dues. The decisions could be said to be per incuriam for not considering the law laid down in M.R. Gupta's case (supra) and, in any event, now impliedly overruled by the Supreme Court decision in Tarsem Singh's case (supra).

15. Ms.Singh also relies on a Full Bench decision of our court in Maharashtra State Road Transport Corporation vs. Premlal Khatri Gajbhiye10 in support of her submission on limitation. The Full Bench in that case was considering whether a particular clause in an earlier settlement was replaced by another clause of a subsequent settlement,

and particularly, whether the two concerned clauses operated in different fields or the same field. The clauses related to time scale of pay. The case of the complainants was that the original clause of the earlier settlement operated 7 2009 (121) FLR 310 8 2005 (1) Bom.C.R. 820 9 2008 (1) Bom.C.R. 78 10 2004(2) Bom.C.R. 338 sat wp 563-2017.doc in a different field and was not replaced by the new settlement. They claimed that the employer should continue to enforce it. One of the objections of the employer (respondent to the complaint) was based on the bar of limitation. It was submitted that admittedly ephemeral time scale was granted to the complainants, but that was prior to three years preceding filing of the complaints. The complainants' answer was based on Section 23 of the Limitation Act providing for a continuous cause of action. The Full Bench held that the obligation of the employer to honour the time scale was a recurring obligation. It held that in the context of such recurring obligation, the term 'making of an illegal change' could never have the same meaning as change made once for all so that what continued was only its effect in the context of recurring obligation to pay month to month the wages or value of such amenities. It held that an illegal change would be made afresh every month when the employer would refuse to carry out that continuous obligation. The Full Bench, accordingly, recognized the principle of recurring causes of action. It held that non- compliance of terms of settlement concerning service conditions of employees amounted to a recurring cause of action, rather than a continuous cause of action. The Full Bench merely decided the point in principle, holding a complaint for enforcement of a settlement as not barred. The question of actual relief, which would include actual grant of benefits under the settlement, was left to the Division Bench to decide. That question was not part of the reference. One does not know how this question was actually decided by the concerned Division Bench. As noted in Tarsem Singh’s case (supra), it is whilst considering actual relief of past arrears that the question of application of the principle of recurring cause of action would assume importance. The Full Bench decision, accordingly, does not support Ms. Singh's case; it recognizes the principle of recurring sat wp 563-2017.doc cause of action without considering its actual application. So far as actual application is concerned, it does not state the law otherwise that what we have discussed above.

16. Accordingly, for the reasons stated above, the impugned order of the Industrial Court cannot be sustained to the extent of past arrears beyond three months prior to the date of the complaint and will have to be set aside to that extent and the matter remanded to the Industrial Court for considering the claim of past arrears in the

light of its discretion to order recovery beyond three months prior to the complaint for good and sufficient reasons."

10. Similarly, Division Bench of this Court in ***Maruti Wankhede Vs. Union of India and anr., Writ Petition No.8470 of 2019 decided on 8th September, 2021*** has summarized the entire law on subject relating to continuous cause of action in the context of provisions of section 22 of the Limitation Act, 1963 and has summarized the conclusions in paragraph No.12 as under :

> "12. It would be proper for us, at this stage, to summarize the propositions of law deducible from the authorities cited at the bar and those considered therein for the purpose of consideration of its application to the present case. They are:
>
> (i) When an order is passed by a Court/Tribunal to consider or deal with a representation of an individual raising a stale or a dead claim and such claim is rejected even on merits on an impression that failure to do so may amount to disobedience of the order of the Court/Tribunal, such an order does not revive the stale or dead claim, nor amount to some kind of "acknowledgment of a jural relationship" to give rise to a fresh cause of action. [C. Jacob (supra)];
>
> (ii) Disposal of proceedings by seemingly innocuous orders directing consideration of representation though result in quick or easy disposal of cases in overburdened adjudicatory institutions but such orders do more disservice than service to the cause of justice. [P. Venkatesh (supra)];
>
> (iii) Denial of pay fixation of an employee, while he is in

> service, not in accordance with the rules resulting in payment of a quantum of salary not computed in accordance with the rules can give rise to assertion of a continuing wrong against such act giving rise to the cause of action each time he is paid less than his entitlement and so long as such employee is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of such wrong computation. [M.R. Gupta (supra)];
>
> (iv) Even if a delayed claim relating to disability pension is found to be of substance on merits and succeeds, the arrears should be restricted to three years prior to filing of the writ petition. [Tarsem Singh (supra)];
>
> (v) When the issue relates to fixation of salary or payment of any allowances, the challenge is not barred by limitation or doctrine of laches, as the denial of benefit occurs every month when the salary/allowances are paid thereby giving rise to a fresh cause of action based on continuing wrong. [Yogendra Shrivastava (supra)]; and
>
> (vi) If a petition is filed beyond a reasonable period, say three years, normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. [Shiv Dass Vs. Union of India, reported in (2007) 9 SCC 274]."

11. In my view, therefore, the Industrial Court could not have awarded monetary benefits to the Respondent-workman in respect of period prior to 90 days of filing of the complaints.

12. The Industrial Court has also erred in granting the benefits of permanency from the dates of initial appointment of the Respondent-workman. The benefits of permanency cannot be from the date of initial appointment but from the date of completion of 240 days of service as per

clause 4(c) of the Model Standing Orders. To this extent, interference in the impugned orders passed by the Industrial Court is warranted.

13. The Petitions accordingly succeed partly and I proceed to pass the following order :

i. The findings recorded by the Industrial Court that the Respondents are entitled to get the benefit of permanency is not disturbed.

ii. However, the Respondent-workman shall be entitled to the difference in the salary of a permanent employee and the salary actually drawn by them from 1st December, 2018 and not from the date of the initial appointments.

iii. The Petitioner shall pay to the Respondent-workman the difference of salary from December, 2018 onwards within a period of six weeks form today.

iv. All the Respondent-workmen shall produce proof before the Petitioner about completion of 240 days of service and accordingly, they shall be deemed to be permanent employees of Petitioner from such dates of completion of 240 days.

v. If amount of difference of salary is paid by the Petitioner to the Respondent-workmen within the stipulated period of six weeks, the Petitioner-employer shall not be liable to pay any interest on the amount of difference of salary. However, beyond the period of six weeks, the Petitioner shall be liable to pay interest at the rate of 8% on the arrears of salary.

vi. To this extent, the judgment and order dated 10th May, 2024 passed by the Industrial Court shall stand modified.

14. With the above directions, the Petitions are partly allowed and disposed of.

(SANDEEP V. MARNE, J.)