



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2310 OF 2024

Vijay Dattaram Zore and Ors.

...Petitioners

V/s.

Hindustan Hosiery Mills and Ors.

...Respondents

WITH
WRIT PETITION NO.5284 OF 2024

Ashish Arunkumar Kejriwal and Ors.

...Petitioners

V/s.

Mill Mazdoor Sabha, Bombay and Ors.

...Respondents

Ms. Rita K. Joshi (*through VC*) for the Petitioners in WP/2310/2024
and for the Respondents in WP/5284 of 2024.

Mr. K.S. Bapat, Senior Advocate with Mr. Jayesh Desai i/b. M/s.
Desai and Desai Associates for Petitioner in WP/5284/2024 and for
Respondent Nos.3,5 and 6 in WP/2310/2024.

CORAM: SANDEEP V. MARNE, J.

DATED: 1 DECEMBER 2025.

Judgment:

1) These are cross Petitions filed by the workmen and the employer challenging the judgment and order dated 28 February 2022 passed by the learned President, Industrial Court, Mumbai in Complaint (ULP) No.164 of 1996. The Industrial Court has partly allowed the Complaint directing the employer to pay wages of three

months from October to December-1995 to the workmen alongwith interest @6% per annum from 7 January 1996 to 15 March 2006. The employer is aggrieved by the impugned Judgment and Order of the Industrial Court and has filed Writ Petition No.5284 of 2024. The workmen on the other hand are aggrieved by the impugned Judgment and Order of the Industrial Court to the extent of non grant of closure compensation and have accordingly filed Writ Petition No.2310 of 2024.

2) M/s. Hindustan Hosiery Mills (**the Mill**) was an industrial undertaking wherein the concerned members of the union were employed. The workmen were earlier the members of union- Mill Mazdoor Sabha. The union filed Complaint (ULP) No.164 of 1996 in Industrial Court at Mumbai under apprehension that services of its members were likely to be discontinued. The union complained about non-payment of wages during October 1995 to December 1995 and sought restraint order against the employer from terminating the services and from removing, shifting and selling the plant and machinery. The union impleaded the establishment of the Mill and its proprietor- Arunkumar Kejriwal as party Respondents to the Complaint. The Complaint was resisted by Respondent No.2 - proprietor by filing written statement contending that the establishment had ceased to function on and from 23 September 1995 due to illegal strike and other coercive activities of the workers. During pendency of the Complaint, the proprietor passed away on 15 March 2006 and his legal heirs were brought on record. On account of non-appearance on the part of the legal representatives, the Complaint was directed to proceed ex-parte. The Complaint was allowed ex-parte. One of the

legal representatives -Mr. Ashish A. Kejriwal filed Writ Petition No.3447 of 2010 in this Court challenging the ex-parte Judgment and Order dated 21 November 2008. The ex-parte order was set aside and the Complaint was remanded for decision on merits. The legal representatives denied any obligation to make any payment to the workers. It appears that the individual workers were also impleaded to the Complaint. The Industrial Court passed Judgment and Order dated 3 January 2013 dismissing the Complaint holding that the workers could not prove that they actually worked in the Mill from October - 1995. The Industrial Court also held that the legal representatives of the proprietor were not liable to pay anything to the workers as the Mill was permanently closed and rented property was surrendered to the landlord.

3) The union filed Writ Petition No.1475 of 2013 challenging the Judgment and Order dated 3 January 2013. The said Writ Petition was withdrawn with liberty to file the same through proper parties. Accordingly Writ Petition No.858 of 2015 was filed by one Vijay Zore on behalf of Akhil Bhartiya Kamgar Sanghatana challenging the Judgment and Order dated 3 January 2013. Writ Petition was disposed by this Court by order dated 6 October 2015 holding that the Industrial Court did not satisfactorily decide the issues raised before it. This Court therefore remanded the Complaint for reconsideration before the Industrial Court granting liberty to the parties to lead additional evidence. The legal heirs of proprietor of the Mill filed Special Leave to Appeal (C) No.3765 of 2016 challenging the order passed by this Court on 6 October 2015, which was disposed of by granting liberty to the employer to seek review of order dated 6

October 2015. Accordingly, the employer filed Review Petition (Lodging) No. 24 of 2016. However, this Court dismissed the Review Petition for default by order dated 26 July 2019.

4) In the meantime, the remanded Complaint was heard afresh by the Industrial Court and by impugned Judgment and Order dated 28 February 2022, the Industrial Court has partly allowed the Complaint directing the legal heirs of the deceased proprietor of the Mill to pay wages of three months from October to December 1995 to the workmen alongwith simple interest @ 6% p.a. from 7 January 1996 to 15 March 2006. Industrial Court has directed deposit of the awarded sum within three months.

5) It appears that the legal heirs of proprietor of the Mill deposited amount of Rs.7,41,324/- in the Industrial Court towards the amounts awarded in favour of the workmen. The said deposited amount is apparently withdrawn by the concerned workmen.

6) Both the employer as well as workmen are aggrieved by the judgment and order dated 28 February 2022 passed by the Industrial Court. The employer is aggrieved by direction for payment of three months wages with interest whereas the workmen is aggrieved by non grant of closure compensation. Accordingly, the present cross Petitions are filed.

7) I have heard Mr. Bapat, the learned Senior Advocate appearing for the employer in support of Writ Petition No.5284 of 2024 and for opposing Writ Petition No.2310 of 2024. I have also

heard Ms Joshi, the learned counsel appearing for workmen in support of Writ Petition No.2310 of 2024 and for opposing Writ Petition No.5284 of 2024. I have gone through the findings recorded by the Industrial Court in the impugned Judgment and Order. I have also perused records of the case filed alongwith pleadings as well as compilation of documents.

8) So far as Writ Petition No.5284 of 2024 is concerned, the same is filed by the employer challenging award of three months wages with interest. The order is sought to be challenged on the ground that the complaint filed by the union could not have been continued by individual workman. It is further contended that the legal representatives of the deceased proprietor of the Mill are not liable to pay any amount to the workmen when no activity of the Mill has been carried out during their lifetime. It is contended that the Mill was shut in the year 1995 itself when Petitioner No.2 was housewife and Petitioner Nos.1 and 3 were college going students.

9) Before appreciating the above submission raised on behalf of the legal representatives of proprietor of the Mill, it must be appreciated that the financial impact of the impugned Judgment and Order for the said legal representatives of the proprietor is only Rs.7,41,321/-. The said amount has been deposited in the Industrial Court by cheque dated 18 April 2022 and the deposited amount has been withdrawn by the concerned workmen from time to time. Writ Petition No.5284 of 2024 is filed after delay of two long years after the directions in the order are complied with. Thus, Writ Petition No.5284

of 2024 appears to have been filed by way of an afterthought and on this ground alone the said Petition deserves to be dismissed.

10) Thus, on triple grounds of inordinate delay in filing the Petition, filing of the Petition after implementation of the order and minuscule financial impact for the employer, I am not inclined to entertain Writ Petition No.5284 of 2024. Even on merits, the Industrial Court has recorded findings of fact about entitlement of workers to draw wages in respect of three months, no element of perversity is pointed out in the said findings. Therefore there is no warrant for interference in the impugned order in Writ Petition preferred by the employer.

11) So far as Writ Petition No.2310 of 2024 is filed by the workmen is concerned, their complaint is about non-award of closure compensation. It must be observed at the outset that even Writ Petition No.2310 of 2024 is filed by the workmen with some delay. The impugned Judgment and Order dated 28 February 2022 is sought to be challenged by filing the Petition in December 2023. However, considering the fact that the Petition is filed by individual workers, I am not inclined to dismiss it on the ground of delay and laches.

12) The Industrial Court has refused to grant the demand for closure compensation on the ground that the said prayer did not form part of complaint of unfair labour practice. The Industrial Court has held that prayer for compensation could not be raised only through evidence.

13) Ms. Joshi has raised strenuous objections to the course of action adopted by the Industrial Court in refusing to entertain demand for closure compensation on account of absence of prayer. She would submit that Judgment and Order dated 3 January 2013 passed in the previous round of litigation was fought before this Court (Writ Petition No.858 of 2015) was set aside by this Court by order dated 6 October 2015 as the Industrial Court had adopted hyper-technical approach in not deciding the demand for closure compensation on account of absence of specific prayer in the Complaint. She would submit that the Industrial Court cannot commit the same folly after spending another 7 years of litigation and after leading evidence in pursuance of liberty granted in paragraph 9 of order dated 6 October 2015, which reads thus:-

9. It will be open to the Industrial Court if it deems necessary to permit the parties to file additional documents and evidence. It is clarified that the observations made above are in respect of need to remand the matter to the Industrial Court and not on the merits of the dispute. Considering the fact that the Complaint is pending since the year 1996 the Industrial Court will make an endeavour to dispose of the Complaint within period of one year from today.

(Emphasis added)

14) Prayers in Complaint (ULP) No.164 of 96 are reproduced below:-

- a) Hold and declare that the Respondent/Respondents have engaged in unfair labour practices under items 9 & 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971.
- b) Direct the Respondents to cease and desist from engaging in Unfair Labour Practices complained of hereinabove.
- c) Direct the Respondents to pay wages for the month of October, 1995 to December, 1995 with immediate effect @12% simple interest thereon.
- d) Direct the Respondents not to terminate the services of the employees as without following due process of Law.

- e) This Hon'ble Court may be pleased to restrain the Respondents, their agents, servants and hirelings from removing, shifting or selling the machinery, premises, semi finished goods, godown, shop, raw materials etc. till the legal dues are paid to the employees.
- f) Direct the Respondents to pay regularly henceforth as per the Law the monthly wages to the employees on or before 7th day of every month.
- g) Ad-interim/Interim reliefs in terms of prayers 9(c), (d) and (e) as above.
- h) Any other and further reliefs as the nature and/or circumstances of this case may required and/or this Honourable Court deems fit and proper.
- i) Cost and compensation.

Thus, Complaint (ULP) No.164 of 1996 did not contain any prayer for grant of closure compensation. The Complaint in fact, did not refer to any closure compensation possibly because the defence of closure compensation was taken in the written statement. Be that as it may. I now proceed to examine whether this Court directed Industrial Court to decide claim for closure compensation in absence of specific prayer.

15) No doubt, the Advocate, who appeared for workmen in Writ Petition No.858 of 2015 raised the issue of non-decision of closure compensation, which is clear from following observations in the order dated 6 October 2015:-

2. The grievance made by Ms Joshi learned counsel for the Petitioners is only as regards grant of non-payment of closure compensation. ...

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4. Ms Joshi made a grievance that the fact that the closure compensation is not paid is an admitted position. She submitted that this fact is even admitted by Respondent No.5 in his cross-examination. She submitted that the Industrial Court has taken a hyper technical approach and has dismissed the Complaint without **considering whether the relief could be moulded by grant of closure compensation which the workmen were legally entitled.** She submitted that the ground given by the Industrial Court for dismissing the Complaint for not considering closure compensation are not legal and non germane. ...

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5. ...**Ms. Joshi is right that the Industrial Court has taken a hyper technical approach that the 44 workmen have not been paid any thing, inspite working for years, is an admitted position.** ...

(Emphasis added)

16) It appears that one of the reasons why Complaint (ULP) No.164 of 1996 was dismissed in previous round on 3 January 2013 was death of the proprietor of the Mill. This Court has held that mere death of the proprietor would not absolve the legal representatives of the proprietor from satisfying the workers' dues. Therefore, this Court remanded the Complaint for fresh decision by holding as under:-

6. Ms.Joshi has relied upon Section 29(c) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 which reads as under:-

'29(c)in the case of an employer who is a party to the complaint before such Court in respect of the undertaking to which the complaint relates, his heirs, successors or assigns in respect of the undertaking to which the complaint relates ; and '

This section makes the order passed in the Complaint binding on the heirs or successors. In the case of Rasulbhai (supra) the Division bench of Gujarat High Court held that the Complaint does not come to an end on the death of the employer and the rights of the workmen will continue even against the heirs. The Industrial Court has proceeded as if after the death of the employer the Complaint cannot be proceeded against the heirs. If the heir takes a stand that he is not liable to pay any amount for any particular reason, then it is his defence. The workmen are entitled to proceed on the basis of the

Complaint they have filed seeking relief against the original employer, which relief can be resisted by the heirs on the grounds available to them. In the circumstances the Industrial Court was not justified in not considering the payment of closure compensation because it was not so specifically prayed for in the prayer clause or there was no pleading to show that the heir was responsible to pay the amount. In the affidavit of evidence, the workmen had made this assertion.

7. Even the defence of the Respondent Nos.3 to 6 that they are not liable to pay, has not been satisfactorily discussed by the Industrial Court. It is the stand of the heirs that they have not received any benefit nor they have inherited the Mill. Ms.Joshi contended that the mill was on a landed property and it had plant and machinery which is no longer in existence. What has happened to this plant and machinery and where the money from the plant and machinery has gone, has not been disclosed by the Respondent Nos.3 to 6. The stand that the landed property is rented is also an oral submission. This is not to say at this stage, that the stand of Respondent Nos.3 to 6 is incorrect, but the Industrial Court should have held in an depth inquiry into the stand taken by Respondent Nos.3 to 6. Instead, by the impugned order, in one line, Industrial Court concluded that the Respondent Nos.3 to 6 are not liable to pay anything since they have not inherited any benefits of the property. The inquiry carried out by the Industrial Court is not satisfactory at all.

8. Mr.Bapat submitted that the Complaint by the individual workmen is not maintainable since it was initially filed by the representative Union. He also submitted that Respondent Nos.15, 9, 18, 26 were not parties in the Complaint and have been joined in this present petition. **Since I am inclined to remand the proceeding to the Industrial Court for reconsideration, the issues raised by Mr.Bapat can be kept open to be considered by the Industrial Court and are kept open.** Accordingly, the Writ petition is disposed of by quashing and setting aside the order dated 3 January 2013 in Complaint (ULP) No.164 of 1996.

9. **It will be open to the Industrial Court if it deems necessary to permit the parties to file additional documents and evidence. It is clarified that the observations made above are in respect of need to remand the matter to the Industrial Court and not on the merits of the dispute.** Considering the fact that the Complaint is pending since the year 1996 the Industrial Court will make an endeavour to dispose of the Complaint within period of one year from today.

(Emphasis added)

17) No doubt, this Court noted submission on behalf of the workmen about the Industrial Court not moulding the relief by granting the closure compensation. This court also found some merit in submission of their counsel that the Industrial Court has taken a hyper-technical approach. This Court also noted that 44 workmen were not paid anything despite working for years. This Court also granted liberty to the parties to file additional documents and evidence. However, this Court clarified that the observations made in the order were made only for remanding the matter to the Industrial Court and that the same did not touch merits of the dispute. It therefore cannot be contended that this Court had directed or even expected the Industrial Court to adjudicate the claim for closure compensation in absence of a prayer in the Complaint.

18) It appears that despite remand of proceedings, the workmen did not grow wiser and failed to amend the prayers in the Complaint and took a calculated risk of prosecuting the Complaint, which did not contain any prayer for closure compensation. Thus, throughout pendency of the Complaint for over 26 long years and despite three rounds of litigation, earlier the union and later the workmen did not think it appropriate to raise a claim for closure compensation. In the light of the above position, the Industrial Court was faced with a situation where there was no prayer for closure compensation. Accordingly in paragraph 35 of the impugned Judgment and Order has observed as under:-

35. As closure proceedings is altogether different than the scope of the present complaint. The prayer of closure compensation raised

subsequently by the co-complainants in their evidence cannot be considered.

19) Considering the peculiar facts and circumstances of the present case, where parties are litigating against each other for the last 29 long years, where the Mill was closed and proprietor has expired long back, coupled with the fact that main prayer for wages of three months is already granted, in my view a time has come to put a full stop to the litigation. There is no point in now remanding the Complaint for raising a fresh prayer for closure compensation. The Complaint did not contain the prayer for closure compensation and therefore the claim for closure compensation has rightly been not granted in absence of a specific prayer. The workmen have succeeded in their Complaint as their only subsisting demand for payment of three months wages is already granted by the Industrial Court. I therefore do not find any reason to interfere in the impugned Judgment and Order of the Industrial Court challenged in the Writ Petition filed at the instance of the workmen.

20) At this stage, Ms. Joshi would pray for liberty for the workmen to file appropriate proceedings for claiming closure compensation. Since earlier Complaint did not contain a prayer for closure compensation, it would be open for the workmen to adopt appropriate proceedings in that regard.

21) Accordingly both the Writ Petitions are **dismissed**. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]