



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6921/2024

M/s Yash Pharma Laboratories Pvt. Ltd.,
Unit No. 1001, 10th Floor, Dosti Pinnacle,
Plot No. E-7, Road No. 22, Wagle
Industrial Estate, Thane (West),
Thane - 400 604, Through its
Director Mr. Atri Yashodhan Shah.

... **PETITIONER**

...VERSUS...

Mr. Ashok Rasiklal Pandya,
Aged about 58 Years, Occ: Not known,
R/o Avadh, Behind Mahendra
Furniture, Tapadia Nagar,
Akola, Maharashtra.

...**RESPONDENT**

Shri A. P. Wachasundar, Advocate for Petitioner.
Shri Sameer V. Sohoni, Advocate for Respondent.

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 03/03/2025

DATE OF PRONOUNCING THE JUDGMENT: 02/04/2025

JUDGMENT

Rule. Rule made returnable forthwith. Heard
finally with the consent of the learned Counsel for both the
parties.

2. Being aggrieved by the order dated 20/07/2024 passed by the learned Member Industrial Court, Akola in Misc. Application No. 14/2024 thereby rejected the application for condonation of delay on the ground of *res-judicata*.

3. Petitioner is a Company Registered under the provision of the Companies Act, 1956 and now governed and regulated in accordance with Companies Act, 2013. Respondent is in the employment of the Petitioner as a Medical Representative since 01/09/1980, at Akola and was drawing salary of Rs. 325/- per month. Transfer Order dated 09/01/2001, issued to the Respondent Employees thereby transferring him from Akola to Jammu. Therefore, ULPA complaint No. 157/2000 was filed by the Respondent/complainant challenging the transfer order dated 07/07/2000 which was dismissed in default. Further, Respondent/complainant filed complaint ULPA No. 71/2001 before the learned Industrial Court, Akola challenging the transfer order dated 09/01/2001. The Complaint case was

decided ex-parte i.e. in absence of any participation by the Petitioner company was passed on 14/08/2008. The Petitioner came to know about the ex-parte order on 06/08/2013 and he applied for certified copy on 04/09/2013. Industrial Court at Akola declared the transfer order as illegal. After 5 years, 6 months and 11 days, Petitioner company filed a Misc. Application (UPLA) No. 02/2014 for setting aside the order of Industrial Court at Akola. The said misc. application was dismissed by the learned Industrial Court on 23/04/2018. In September 2020, after completion of 60 years of age, the Respondent employee stood retired.

4. Petitioner Company filed second Application for setting aside the order dated 14/08/2008 and also filed application for Condonation of delay. This application was filed after four years of retirement of the Respondent employee. The learned Industrial Court at Akola vide its order dated 20/07/2024 rejected the Application for condonation of delay ULP No.14/2024 as not maintainable on the ground of

res-judicata. The aforesaid order is the subject matter of challenge in the present writ petition.

5. Learned Counsel for the Petitioner contended that the learned Member committed error to consider and apply the amended provisions of the Regulation No. 119-A to the facts and circumstances of the case. Regulation No.119 was amended by inserting Regulation No. 119-A in the Industrial Court Regulations 1975, permitting the Learned Member to entertain separate application for condonation of delay, if filed, duly supported by an affidavit, showing sufficient cause for the purposes Section 5 to 12 of the Limitation Act, and that in all such applications made by persons, suffering from ex-parte orders in the proceedings in the complaint, would be entertainable. Thus, the Petitioner had prayed for grant of opportunity to satisfy the Learned Member about existence for sufficient cause for the said period from date of ex-parte order. Hence the impugned order needs interference by this Court and which also needs to be set aside.

6. Learned Counsel for Petitioner relied on following citations:

- i) Maharashtra State Cotton Marketing Employees Co-operative Spinning Mill Limited, Akola Vs. Satish Narayanrao Gawande 2019 (6) Bom.C.R. 15 (Single Bench)*
- ii) Maharashtra State Cotton Marketing Employees Co-operative Spinning Mill Ltd. Akola, Vs. Satish Narayanrao Gawande, 2021 (4) Mh.L.J. 338 (Division Bench)*
- iii) Ram Deo Singh and others Vs. Board of Revenue and others, AIR 1961 Allahabad 278 &*
- iv) Municipal Committee Amritsar and another Vs. The State of Punjab and others, AIR 1969 SCC 1100.*

7. Learned Counsel for the Respondent contended that the Petitioner Company has not challenged the proceedings in Case No. 6/2013 pending before the Labour Court at Akola in this Writ Petition. The proceeding before Labour Court at Akola is regarding the recovery of arrears of salary of Respondent employee. The mischief is, by way of interim relief, the Petitioner Company is requesting for staying the proceeding pending before Labour Court at Akola. In

proceeding before Labour Court at Akola, the Petitioner Company has participated since the year 2013 and when the proceeding before Labour Court at Akola are on the verge of completion, the Petitioner Company is requesting this Hon'ble Court for stay of the proceeding, which are totally different proceedings not connected with the issue involved in this matter. This Court while partly allowing the Writ Petition No. 1568/2019 filed by the Respondent employee against the Petitioner Company, in para 21 and 22 of the Judgment, has observed that the request made by present Petitioner Company to grant liberty to raise the Judgment and Order passed by Industrial Court at Akola cannot be accepted since the matter pertains to proceeding under Section 33(c)(2) of the Industrial Disputes Act and has nothing to do with the Judgment and Order of the Industrial Court at Akola. Hence prayed for the dismissal of the present Petition.

8. I have heard both the parties, considered the documents placed on record and perused the impugned order

and citations relied on by both the parties.

9. The only ground of challenge to the order dated 20.07.2024 passed by the learned Industrial Court, Akola in Misc. Application No.14/2024 in Misc. Application No.2/2014 in Complaint ULPA No.71/2001 is that in view of the amendment in the Industrial Court Regulations No. 116-A and 117-A to 117-C and 119-A, the Applicant can file an application for condonation of delay. The Complaint ULPA No.157/2000 was filed by the Complainant/Respondent challenging the transfer order dated 07.07.2000 which was dismissed in default. However, he was not transferred pursuant to the order dated 07.07.2020 and complainant not proceeded further. On 13.02.2001, the Respondent/Complainant have again filed a Complaint ULPA No.71/2001 before the learned Member, Industrial Court, Akola challenging the transfer order dated 09.01.2001 transferring him from Akola to Jammu. On 16.10.2004, an ex-parte order was passed against the Petitioner Company in complainant

ULPA No. 71/2001. On 22/11/2004, Advocate Rathi appeared as Advocate for the Petitioner Company. On 30/07/2008, Advocate Rathi lastly appeared and not appeared thereafter. The Court passed ex-parte Judgment in Complaint ULPA No.71/2001 on 14.08.2008. The Petitioner company filed a Misc. Application No.2/2014 on 24.01.2014 for restoration of the said Complaint under Section 31(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short the “MRTU & PULP Act”). The learned Industrial Court rejected the application No. 2/2014 for restoration of Complaint ULPA No.71/2001 as the delay was beyond 30 days on 23/04/2018. The said order was not challenged by the Petitioner Company. On 17.10.2019, there was an amendment to the Industrial Court Regulations Nos.116-A, 117-A to 117-C and 119-A, thereby Section 119-A amended as under :

“119-A. On an application filed under Section 31(2) of the MRTU and PULP Act, 1971 seeking to have an ex-parte order or a

dismissed in default order set aside after 30 days from the date of the passing of such ex-parte of Dismissed in Default order the Court may upon issuing notice to the other side in Form No.22, entertain such an application provided a separate application for seeking condonation of delay is filed supported by an affidavit and only if a just and sufficient cause is made out by the applicant Section 5 to 12 of the Limitation Act, 1963 shall apply to such applications”.

10. This provision have been notified on 17.10.2019 after the passing of the said order. The main question is whether order passed on 23.04.2018 which has attained finality, the Petitioner Company is entitled to file another application for condonation of delay in view of the amended provisions dated 17.10.2019 that too on 14.06.2024 praying for condonation of delay between the period from the date of knowledge of the ex-parte order coming to knowledge on 04.09.2014 is maintainable. As the Industrial Court passed the order on merit in Misc. Application No.2/2014 and there was no challenge to the said order, there is no jurisdiction to set

aside its own order specifically when the application for condonation of delay which is already decided on 23.04.2018. Moreover, unless there is specific provision of its application retrospectively the amended provision would be applicable prospectively. The most important is that the challenge was to the transfer order and the complainant stood retired in September 2020, after completion of 60 years of age. On 08.04.2024, the Petitioner Company filed second application for setting aside the order dated 14.08.2008 and also filed an application for condonation of delay. The subject matter of the complaint was illegal transfer. When the order on application for condonation of delay is confirmed and was not challenged, it applies *res judicata* in the subsequent application.

11. Learned Counsel relied on ***Maharashtra State Cotton Marketing Employees Co-operative Spinning Mill Limited, Akola*** (supra), by way of this judgment, the learned Single Judge requested for reference to the Division Bench. After reference, the learned Division Bench answered as

under :-

<i>Sr. No.</i>	<i>Question</i>	<i>Answer</i>
1.	<i>Whether the Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 has the power to set aside an ex parte order made under section 31(1) of the said Act if an application to set aside such order as contemplated by the provisions of section 31(2) of the said Act is made after a period of thirty days from the date of that ex parte order despite such application having been made within a period of thirty days of receiving a copy of that order?</i>	<i>The period of 30 days as mentioned in section 31(2) of the Act of 1971 is to be counted not from the date of the ex parte order passed under section 31(1) but from the date of receipt of the certified copy of the ex parte order, which would be irrespective of the distance or time lag between the date of passing of the ex parte order and receipt of the certified copy thereof and the Court is empowered to entertain the same and set aside the ex parte order, upon receipt of such an application.</i>
2.	<i>Whether an application received after 30 days of the receipt of copy of the order could be dealt with in accordance with the provisions contained in section 29(2) of the Limitation Act, so that in appropriate cases, the delay could be condoned under section 5 of the Limitation Act, 1963?</i>	<i>An application under section 31(2) of the Act of 1971, for setting aside the ex parte order, filed after 30 days of receipt of the copy of the order, can be entertained and dealt with by applying the provisions of Section 5 of the Limitation Act, 1963, in view of the mandate of section 29(2) of the Limitation Act and the delay, if reasons found sufficient, can be condoned in appropriate cases.</i>

12. However, it is pertinent to note that the order dated 14.08.2008 was challenged by the Petitioner Company after five years and six months for setting aside the order of Industrial Court, Akola passed in Misc. Application No.2/2014. Though certified copy collected on 06.08.2013, the application filed on 22.01.2014, which is not within 30 days of obtaining certified copy. Hence the judgment in *Maharashtra State Cotton Marketing Employees Co-operative Spinning Mill Limited, Akola* (supra) is not applicable. The said application came to be dismissed on 23/04/2018. That said order was not challenged by the Petitioner Company and on 08/05/2024, the Petitioner company filed second Application for setting aside the order dated 14/08/2008 along with application for condonation of delay. This application was filed after four years of retirement of the Respondent employee. As the issue in respect of setting aside the order dated 14/08/2008 was concluded vide order dated 23/04/2018. In absence of any challenge to the order, no such

subsequent application can be filed on the same ground.

13. Learned Counsel for the Petitioner also relied on ***Ram Deo Singh*** (supra), however the facts are distinguishable of the said matter, wherein an appeal before the Board of Revenue against the dismissal of a suit for ejectment under Section 180 of the U. P. Tenancy Act the question at the stage of the decision of the preliminary objection and at the stage of the final decision of the appeal was in general terms the same viz. The decision of the Board at the stage of preliminary objection that the Respondent did not acquire Adhivasi rights having been only recorded as occupant in the khatavani did not operate as *res judicata* at the stage of final decision. There is no matter pending to extent the benefit of amendment. In the above facts and circumstances, the judgment relied on by the learned Counsel for the Petitioner in ***Municipal Committee, Amritsar*** (supra) is also not applicable.

14. As such, there is no error or infirmity in the impugned order dated 20.07.2024 passed by the learned Member, Industrial Court, Akola in Misc. Application No.14/2024 in Misc. Application No.2/2014 in Complaint ULPA No.71/2001.

The Writ Petition stands **dismissed**. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak