

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

WRIT PETITION NO. 11513 OF 2024

Maharashtra State Road Transport Corporation **...Petitioner**

V/s.

Jitendra B. Zunjarrao **...Respondent**

Mr. Yashdeep Deshmukh with Ms. Vaidehi Pradeep, for the Petitioner.

Mr. Vaibhav Jagdale, for the Respondent.

CORAM: SANDEEP V. MARNE, J.

DATED: 12 June 2026.

ORAL ORDER:

1) Rule. Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final hearing.

2) The Petition challenges the judgment and order dated 15 December 2023 passed by the Member, Industrial Court, Thane allowing Complaint (ULP) No. 84 of 2018 filed by the Respondent directing the

Petitioner to fix salary of the Respondent at Rs.995/- on the date of his appointment i.e. 12 June 1992. The Petitioner is further directed to pay difference of salary to the Complainant.

3) Brief facts of the case are that the Respondent was initially appointed as an Assistant in daily wager group No.1 in Divisional Workshop at Pen in Raigad Division from 12 February 1990. Due to shortage of fuel in Raigad district, the services of the Respondent and other 26 employees were discontinued w.e.f. 31 December 1990. The Respondent was again reappointed as daily rated Assistant w.e.f. 12 June 1992. It appears that during the period when Respondent was out of service, a wage settlement took place. However, on account of his reappointment after the wage settlement, Respondent was not extended the benefit of wage settlement. It appears that similar placed employees were granted the benefit of pay revision but the same was denied to the Respondent. The Respondent continued his service without raising any grievance about his basic pay. In the year 2018, he approached the Industrial Court by filing Complaint (ULP) No. 84 of 2018. The Complaint has been allowed by the Industrial Court by passing following operative directions:

1. Complaint is allowed.
2. It is hereby declared that the respondents no. 1 and 2 are engaged in unfair labour practice under items 5 and 9 of Schedule IV of the MRTU & PULP Act and they shall cease and desist from engaging in unfair labour practice.
3. The respondents are directed to fix the salary of the complainant at Rs.995/- on the day of his reappointment i.e. 12.06.1992 as per the settlement of the year 1992 and by taking this salary as a base, his

subsequent salary is to be fixed and he be paid increment and benefits of subsequent settlement accordingly.

4. The respondents are directed to pay the difference of salary to the complainant within three months from the date of this order and in case the respondents failed to pay the salary within three months from the date of this order, then the complainant will be entitled for interest @ 6% p.a. from the date of filing of complainant i.e. 29.03.2018 till realization of the amount.
5. The complainant is also entitled for getting continuity of service from the date of his initial appointment i.e. 12.02.1990 for calculating the service benefits.

4) Mr. Deshmukh, the learned counsel appearing for the Petitioner-MSRTC submits that the Complaint filed by the Respondent was hopelessly barred by limitation as the same was filed after 26 long years from the date of accrual of cause of action. That therefore the Complaint ought to have been dismissed on the ground of limitation alone. He further submits that since Respondent was not in service on the date of wage revision, there was no question of applying the wage revision to him. Alternatively, Mr. Deshmukh would contend that even if the benefit of wage revision is to be granted to the Respondent from 12 June 1992, he is not entitled to arrears on account of late filing of complaint. That the arrears ought to have been restricted for a period of 90 days before filing of the Complaint. In support, he relies on judgment of this Court in **Jaihind Sahakari Pani Purvatha Mandali Ltd., Shirdhon, Kolhapur vs. Rajendra Bandu Khot & Ors.**¹

5) *Per contra*, Mr. Jagdale, the learned counsel appearing for the Respondent, opposes the Petition submitting that the Industrial

¹ Writ Petition No. 563 of 2017 decided on 20 November 2019

Court has rightly appreciated the grievance of the Respondent. The Respondent was given a break without any fault on his part and was re-employed on 12 June 1992. That the break in service was owing to shortage of fuel, which reason is not attributable to the Respondent. He however submits that the benefit of wage revision in the interregnum could not have been denied to the Respondent. So far as the aspect of limitation is concerned, Mr. Jagdale would submit that the cause of action was continuous in nature, Respondent was paid lesser wages every month. He submits that the arrears need not be restricted to any particular period and that the Respondent is entitled to draw full arrears from 12 June 1992, and in support, he relies upon judgment of the Apex Court in **Sanjay Kumar Upadhyay vs. State of Jharkhand and Ors.**²

6) I have considered the submissions urged on behalf of the rival parties. So far as the merits of the decision of the Industrial Court in granting the benefit of pay revision and directing the Petitioner to fix the salary of the Respondent at Rs.995/- as on 12 June 1992 is concerned, I do not find much defect in the same. The Respondent was given break in service owing to particular condition of shortage of fuel in Raigad Division and was reappointed on 12 June 1992. In that sense, the benefit of pay revision occurring in the interregnum was erroneously denied to him. I therefore do not find any flaw in the view taken by the Industrial Court in extending the benefit of pay revision to the Respondent whose salary was erroneously fixed at a lower rate of Rs.875/- when in fact, he ought to have drawn basic pay of Rs.995/- on 12 June 1992.

² Civil Appeal No. 14046 of 2024 decided on 16 December 2025

7) So far as the aspect of limitation is concerned, the cause of action sought to be espoused by the Respondent was continuous in nature. On account of wrong pay fixation done on 12 June 1992, he received lesser salary every month. In that sense, the Complaint could not have been dismissed only on the ground of limitation. The law in this regard is well settled by judgment of the Apex Court in **M.R. Gupta vs. Union of India and Ors.**³

8) However, though the complaint itself was not barred by limitation, the period of limitation would undoubtedly apply to the relief of arrears. Though the Respondent was entitled to file complaint of unfair labour practice in the year 2018, his prayer for recovery of arrears from 1992 was undoubtedly barred by limitation.

9) A Single Judge of this Court in ***Jaihind Sahakari Pani Purvatha Mandali Ltd. Shirdhon*** (supra), after appreciating the ratio of the judgment in ***M.R. Gupta*** (supra) and **Union of India vs. Tarsem Singh**⁴ has held in paras 8 to 11 and 14 as under:

8. The Supreme Court has explained the difference between a continuous wrong and recurring or successive wrongs in the case of **Union of India vs. Tarsem Singh**. A continuing wrong is a single wrong causing a continuing injury. In case of a continuing wrong, the grievance essentially is about an act which creates a continuous source of injury and renders the doer of that act responsible and liable for continuance of that injury. The injury is not complete when the act is committed; it continues even thereafter; and so long as it does, the cause of action itself continues. A recurring or successive wrong, on the other hand, occurs when successive acts, each giving rise to a distinct and separate cause of action, are committed. Each act, in itself wrongful,

³ (1995) 5 SCC 628

⁴ (2008) 8 SCC 648

constitutes a separate cause of action for sustaining a claim or a complaint. It is important to bear in mind in this context the distinction between an injury caused by a wrongful act and the effect of such injury. What is to be seen is whether the injury itself is complete or is continuous. If the injury is complete, the cause of action accrues and is complete; the clock starts ticking for the purposes of limitation, notwithstanding the fact that the effect of such injury continues even thereafter. For example, let us take the case of an occupant of a house who is driven out of it. The injury is complete with the act of throwing him out, though the effect of that injury, namely, his being unable to use or occupy the house, continues even thereafter. Take, however, the case of a person who is detained in a house and not allowed to roam about. The act of detention is the one which causes an injury. This injury, however, is a continuing injury, since the injury here consists in being unable to move about. This injury continues and since the injury itself continues, the wrong is a continuous wrong and the cause of action, a continuing cause of action. Take, on the other hand, the case of a person who is barred from entering a house he is entitled to enter. When he is barred for the first time, an injury follows, and a cause of action thereby accrues. Each successive day on which he is so barred gives rise to a fresh and distinct cause of action, making it a case of recurring/successive wrongs.

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 India**, 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):

"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 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."

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

“7. To summarise, 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 reopening 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 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 nonpayment 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 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.

14. The Division Bench of our court in **Warden & Co. (India) Ltd. vs. Akhil Maharashtra Kamgar Union** [2001 (3) Bom.C.R. 375] 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 unrecognised 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 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 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 standpoint 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** [2009 (121) FLR 310] , **Maharashtra State Electricity Board vs. Suresh Ramchandra Parchure** [2005 (1) Bom.C.R. 820] and **Cipla Ltd. vs. Anant Ganpat Patil** [2008 (1) Bom.C.R. 78], 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).

10) In **Kumar Dashrath Kamble vs. Bombay Hospital**⁵, this Court had an occasion to deal with similar issue of application of period of limitation to the relief of backwages. This Court held in paras 28 to 33 of the judgment as under:

28. The next issue for consideration is whether the Petitioner would be entitled to arrears arising out of grant of permanency from the year 2006? Here the element of delay would creep in. As observed above, though the Industrial Court has recorded the finding that unfair labour practice continued as on the date of filing of the complaint, that finding is recorded in the context of Petitioner's claim of permanency on completion of 240 days of service. Both the Industrial Court, as well as this Court have examined the real grouse of the Petitioner which is denial of benefit of permanency on account of being detected HIV+ in the year 2006. The period of limitation for filing complaint of unfair labour practice under Section 28 of the MRTU & PULP Act, 1971 is 90 days.

29. It is well-settled principle that the principle of delay and latches applies in relation to arrears even in respect of continuous cause of action. In **M. R. Gupta Vs. Union of India** the Apex Court had held that limitation would apply to relief of recovery of arrears. The principle is reiterated in subsequent judgment in **Union of India & Ors. Vs. Tarsem Singh**, wherein the Apex Court, while recognising an exception to normal rule of limitation in cases involving continuous cause of action, has held that there is an exception to that exception where the arrears even in cases involving continuous injury need to be restricted to a period of three years. In **Shiv Dass v. Union of India** [(2007) 9

⁵ Writ Petition No. 3766 of 2024 decided on 23 December 2025

SCC 274] the Apex Court has held that 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.

30. Learned Single Judge of this Court (S.C. Gupte J.) in *Jaihind Sahakari Pani Purvatha Mandali Ltd. Shirdhon Vs. Rajendra Bandu Khot and Ors* 11 has applied the above principles to complaints of unfair labour practice involving continuous cause of action and had held that the arrears would only be for the period prior to 90 days of filing of the Complaint. After considering the ratio of judgments in *M R Gupta* and *Tarsem Singh*, this Court has held thus:

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31. In *Jaihind Sahakari Pani Purvatha Mandali Ltd. Shirdhon* attention of this Court was invited to various judgments of this Court, which had laid down principles contrary to *M. R. Gupta* and *Tarsem Singh*. This Court held the said judgments to be per incurium. It is held thus:

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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.

32. I respectfully agree with the statement of law expounded by Gupte J. in *Jaihind Sahakari Pani Purvatha Mandali Ltd. Shirdhon*. The Division Bench of this Court in *Maruti R. Wankhede vs. Union of India*⁶, has summarised the principles of limitation in cases involving continuous cause of action, 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

⁶ 2021 SCC OnLine Bom 14203

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 v. Union of India, (2007) 9 SCC 274].

33. In my view therefore, though this Court is inclined to grant the benefit of permanency to the Petitioner from the year 2006, the principle of delay and laches would come into play in respect of arrears arising out of grant of such permanency. Petitioner slept over his rights for over 12 years. No doubt, he was wrongfully denied the benefit of permanency in the year 2006. Therefore, he ought to have raised the said grievance immediately after denial of benefit of permanency. His medical examination in pursuance of Memorandum of Settlement was held on 6 December 2006. He ought to have filed the complaint of unfair labour practice within 90 days of denial of benefit of permanency. In that view of the matter, the Respondent-Hospital cannot be saddled with the financial burden of paying difference in wages for unduly long period of 12 long years. In the facts and circumstances of the case, it would be appropriate to deny the actual benefits arising out of permanency during the period from 2006 till 90 days before the date of filing of the complaint. The principle of restricting the arrears for three years in Tarsem Singh and Shiv Dass is on account of period of limitation for filing of suit of three years. However, in respect of complaints of unfair labour practice under the MRTU & PULP Act, 1971 the prescribed period of limitation is only 90 days. Therefore, Petitioner would be entitled to actual arrears from 90 days prior to filing of his Complaint.

11) Following the ratio of the judgments of this Court in ***Jaihind Sahakari Pani Purvatha Mandali Ltd. Shirdhon and Kumar Dashrath Kamble Versus. Bombay Hospital*** (supra), in my view, Respondent cannot be awarded the arrears of pay from 12 June 1992. The arrears of pay need to be restricted to 90 days prior to the date of filing of Complaint, which is the period of limitation prescribed in Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

12) Reliance by Mr. Jagdale on the judgment of the Apex Court in ***Sanjay Kumar Upadhyay*** (supra) is inapposite. The judgment is rendered in peculiar facts of the case where the Government of Bihar had created a classification in two sets of similarly placed employees. Furthermore, though in the case of ***Narendra Kumar Yadav vs State of Bihar and Ors.***⁷, the High Court of Patna had directed revision of pay scales in case of similarly placed employees, but the State Government had not extended the said benefit to the Appellant before the Apex Court. It is in the light of these peculiar facts of the case that the Apex Court did not apply limitation to the arrears. However, the judgment in ***Sanjay Kumar Upadhyay*** cannot be read in support of an abstract proposition that in every case where there is continuous cause of action, period of limitation would not apply even to arrears/backwages.

13) Accordingly, I proceed to pass the following order:

⁷ 2014 SCC OnLine Pat 8212

- (i) Judgment and Order dated 15 December 2023 passed by the Industrial Court, Thane in Complaint (ULP) No. 84 of 2018 is modified to the limited extent that the Respondent shall be entitled to the difference of salary w.e.f. 1 January 2018 and not from 12 June 1992.
- (ii) The amount of arrears shall be paid to the Respondent within a period of 3 months from today failing which the amount of arrears shall carry interest @ 6% p.a. from the date of expiry of period of 3 months.
- (iii) Though the amount of arrears is restricted from 1 January 2018, Petitioner shall be entitled to notional fixation of pay on the basis of his pay at Rs.995/- from 12 June 1992. Accordingly, the arrears shall be computed by notionally fixing his pay from 12 June 1992.

14) With the above directions, the Writ Petition is allowed. Rule is made partly absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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