

**(2014) 10 BOM CK 0114**

**In the Bombay High Court**

**Case No :** Writ Petition Nos. 6380, 6381, 6382, 6383, 6384, 6385, 6388, 6389, 6390, 6391 and 6392 of 2013

Chief Engineer

APPELLANT

Vs

Sadaram Muka Sahare

RESPONDENT

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**Date of Decision :** 31-10-2014

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25F, 25G, 33C(2)  
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

**Citation :** (2015) 3 ABR 143 : (2015) 1 BomCR 164 : (2015) LabIC 2408

**Hon'ble Judges :** A.S. Chandurkar, J

**Bench :** Single Bench

**Advocate :** D.B. Patel and P.V. Bhoyar, Assistant Government Pleaders, Advocate for the Appellant; M.P. Jaiswal and U.K. Bisen, Advocate for the Respondent

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**Judgement**

A.S. Chandurkar, J.—Since common issues arise in all these writ petitions, they are being decided by this common judgment.

2. Rule in each writ petition. Rule made returnable forthwith and heard finally with the consent of the learned Counsel for the parties.

3. In these writ petitions, the order dated 7 -1 -2013 passed by the learned Judge, Labour Court Gondia in proceedings under Section 33C(2) of the Industrial Disputes Act, 1947 (in short "the said Act") allowing aforesaid application in each case and granting relief to the respondent is under challenge. There being similarity of facts in each case resulting in common reasoning in each order, the facts in Writ Petition No.6380/2013 are being referred to.

4. The respondent claimed to have been working on daily wages with the petitioners since the year 1981. He continued to do so till the year 2000. According to the respondent, in terms of the Kalelkar Award, those employees who had been working continuously for a period of five years in the same establishment were entitled to have the post converted into temporary

establishment (CRTE). According to the respondent, initially a complaint was filed before the Industrial Court invoking Items 5,6 and 9 of Schedule -IV r/w Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of the Unfair Labour Practices Act, 1971 (for short "the Act of 1971"). In the said proceedings, the present petitioners took the stand that as the respondent was not in employment when the complaint was filed, said proceedings were not tenable. The respondent, therefore, withdrew aforesaid complaint with liberty to file fresh proceedings. Accordingly, application under Section 33C(2) of the said Act was filed claiming difference of wages from the year 1987 to 2000. The aforesaid benefit was claimed in terms of Clause 28 of Kalelkar Award. The petitioners filed their reply claiming that the proceedings were belated and that the respondent was not having any pre-existing right as his services were never converted into temporary establishment. In said proceedings, the Industrial Court after considering the material on record granted relief to the respondent and directed payment of difference of wages as prayed within a period of two months. Said order is impugned in the present writ petition.

5. S/Shri D. B. Patel P. V. Bhojar, the learned Assistant Government Pleader appearing for the petitioners submitted that the Labour Court erred in granting relief to the respondent. It was submitted that in absence of there being any pre-existing right in favour of the respondent, he was not entitled to any relief under Section 33C(2) of the said Act. He submitted that there being no order of conversion of the respondent's post into temporary establishment, he was not entitled for the difference in wages. It was then submitted that the proceedings as filed were highly belated and a stale claim was sought to be agitated. It was submitted that the claim for difference in wages from 1987 to 2000 was being sought in 2006. It was, therefore, submitted that even if the provisions of the Limitation Act, 1963 were not applicable, there being long unexplained delay in seeking relief, the same could not be granted. In support of aforesaid submissions, the learned Counsel for the petitioners relied upon decision of the Supreme Court in *Municipal Corporation of Delhi Vs. Ganesh Razak and Another*, , judgment of the *Dashrath Rajaram Solanke and Others Vs. Executive Engineer, Chief Gate Erection Unit No. 2 and Another*, , judgment of learned Single Judge in *The Chief Officer, Sangli Municipal Council Vs. Shri Masoom Akbar Patharwal and others*, , *Mr. Sarjerao Janardhan Hande and Others Vs. Maharashtra State Cooperative Marketing Federation Ltd.*, , *S.A. Shaikh Vs. Union of India (UOI) and Others*, . and unreported judgment of learned Single Judge in Writ Petition No.1389 of 2005 - *District Superintending Officer Washim vs. Badruddin Patel* decided on 13 -3 -2009. He, therefore, submitted that the impugned order was not sustainable in law and the same deserves to be set aside.

6. On the other hand, S/Shri M. P. Jaiswal and U. K. Bisen, the learned Counsel appearing for respondent supported the impugned order. It was submitted that the respondent was entitled to the difference in wages in terms of Clause 28 of the Kalelkar Award. It was submitted that having worked continuously for a period of five years, the respondent was entitled to have his post converted in

temporary establishment. There was no need of passing any specific order in that regard and such right accrued after completion of continuous service for a period of five years. By not granting higher wages in terms of the Kalelkar Award, the petitioners had violated the terms of said Award and said violation being of a continuing nature, there was no question of delay in seeking relief on the part of the respondent. It was submitted that initially complaint under Section 28 of the Act of 1971 had been filed by the respondent and on objection being raised by the petitioners, the same was withdrawn with liberty to file proceedings under Section 33C(2) of the said Act. It was urged that the respondent had sought production of records by the petitioners before the Labour Court, but such record was not produced and hence, adverse inference was required to be drawn against the petitioners. In support of aforesaid submissions, the learned Counsel for the respondent relied upon various decisions of the Supreme Court and of this Court as under :

[1] The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., .

[2] Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, .

[3] State Bank of Bikaner and Jaipur Vs. C. S. Varma, 1968(1) LLJ 940.

[4] R.B. Bansilal Abirchand Mills Co. Ltd. Vs. The Labour Court, Nagpur and Others, .

[5] Ajaib Singh Vs. Sirhind Co -operative Marketing -cum - Processing Service Society Ltd. And another 1989 (82) FLR 137.

[6] Judgment of learned Single Judge in Writ Petition No. 3396 of 2002 dated 3 -6 -2003 and of the Division Bench in LPA No.189/2003 dated 24 -7 -2003 arising there from.

[7] State of Maharashtra Vs. M. V. Ghalge and another, .

[8] Chima Shravan Shinde and Others Vs. M.V. Patil and Others .

[9] Judgment in Writ Petition No.4843/2005, The Chief Engineer Irrigation Department vs. Rashtriya Mazdoor Seva and others decided on 27 -10 -2005.

It was thus, urged that there was no ground made out to interfere in writ jurisdiction and hence, dismissal of the writ petition was sought.

7. I have carefully considered aforesaid submissions. I have also gone through the writ petitions and the entire material on record. From the aforesaid, therefore, two issues arise for consideration. Firstly, whether the respondent is entitled to seek relief under provisions of Section 33C(2) of the said Act by relying upon provisions of Clause 28 of the Kalelkar Award and secondly, whether the respondent does not deserve to be granted any relief on account of delay in seeking legal redress.

8. Before considering aforesaid issues, it would be necessary to advert to certain factual aspects of the matter. According to the respondent, he was working with

the petitioners since the year 1972 on daily wages. His services were being utilized for supplying water during the period from January to May and August to October in every year. The Kalelkar Award was made applicable to the Irrigation Department and according to the respondent, he was entitled to benefit there under. In this background, the respondent had filed complaint under Section 28 of the Act of 1971 seeking relief of regularizing his services by invoking Items 5, 6 and 9 of Schedule -IV thereof. Hence, on 19 -10 -2004, the respondent had filed complaint before the Industrial court, Bhandara. The petitioners raised preliminary objection to the maintainability of aforesaid complaint on the ground that the respondent was not working with the department when the complaint was filed. In that background, the respondent sought permission to withdraw aforesaid complaint with liberty to approach the Labour Court for seeking relief under Section 33C(2) of the said Act. The Industrial Court, Bhandara by order dated 31 -3 -2005 permitted the respondent to withdraw the complaint and granted permission to approach the appropriate forum as permissible in law. It is thereafter that the respondent filed present proceedings under provisions of Section 33C(2) of the said Act. In said complaint, relief in terms of monetary benefits as per provisions of the Kalelkar Award was sought. It was stated that the respondent had worked continuously for a period of five years. Aforesaid proceedings were filed on 1-7-2006 and difference in wages was sought for the period from 1987 to 2000. The petitioners contested aforesaid application claiming that there was long delay in approaching the Court. On merits, it was stated that the respondent had not worked continuously for a period of five years to be entitled for benefit of having his post converted into temporary establishment. A stand was taken that there being no order adjudicating the claim of the respondent, no pre-existing right accrued in favour of the respondent to claim relief under provisions of Section 33C(2) of the said Act.

9. The respondent examined himself before the Labour Court. The petitioners examined one witness in support of their reply. During pendency of said proceedings, the respondent had filed an application below Exh.10 seeking production of certain records by the department. The petitioner's witness admitted that said documents had not been filed though order in that regard was passed on the application below Exh.10. Said witness stated that 10% increase in wages was being effected every year. In this background, the Labour Court drew an adverse inference due to non -production of documents. Relying upon decisions of this Court, the Labour Court held that in terms of Clause 28 of the Kalelkar Award, the respondent was entitled for difference in wages. Further holding that the provisions of the Limitation Act, 1963 were not applicable to proceedings under the said Act, the Labour Court proceeded to allow aforesaid application and directed the petitioners to pay difference in wages to the respondent within a period of two months from its order.

10. Proceedings under Section 33C(2) of the said Act though basically are in the nature of execution proceedings, the Labour Court has jurisdiction to determine whether a workman has right to receive a particular benefit and for said purpose,

the Labour Court can interpret the Award or settlement on which the workman's right is based Central Bank of India Ltd. (supra). Similarly, provisions of the Limitation Act, 1963 are not applicable to proceedings under the Act of 1947 and especially to those under provisions of Section 33C(2) of the said Act Bombay Gas Company Limited (supra) and State Bank of Bikaner and Jaipur (supra). Further, the jurisdiction of the Labour Court is not ousted on a mere plea of denial of the workman's claim for computation of benefit in monetary terms. It has to go into the question and determine on facts if it has jurisdiction to make such computation R. B. Bansilal (supra). Keeping aforesaid position of law in mind, the rival contentions of the parties will have to be considered.

11. The question as regards entitlement to relief on the basis of Clause 28 of the Kalelkar Award with regard to workmen in the Irrigation Department has been considered by this Court in various judgments. In State of Maharashtra (supra), a somewhat similar situation was considered by the learned Single Judge (B. N. Srikrishna J as his Lordship then was), the workmen therein after having worked continuously for a period of five years had sought relief under provisions of 33 - C(2) of the said Act. Clause 28 of the Kalelkar Award on the basis of which relief was sought when translated reads thus:

"28.The benefits available to the daily rated employees under the Kalelkar Agreement (regarding availability of definite appointments on definite establishments):-

Such of the workmen on daily wages who have been working continuously for five years on such establishment shall be entitled, upon completion of five years, to have the posts held by them converted into posts on temporary establishment and such daily rated workmen shall be appointed on such converted posts. The post created on the converted establishment shall be personal to the incumbent and if the incumbent, for any reason leaves service, such post shall come to an end. Upon appointment on the converted temporary establishment, the workmen shall be covered by the Bombay Civil Services Rules."

After holding that it was not necessary to render 240 days of actual work in a year, it was held that if the employee had worked on the daily rated establishment for five consecutive years irrespective of days of actual work, he would be entitled to benefit of aforesaid Clause 28. On that basis, relief was granted by the Labour Court to the workmen after holding that they were entitled to have their post converted in the temporary establishment after a period of five years. It is to be further noted that the Division Bench in Executive Engineer (supra), had occasion to consider the correctness of aforesaid view. Said judgment of learned Single Judge was affirmed by the Division Bench holding that Clause 28 had been correctly construed therein. Similar view has again been taken by the same learned judge in Chima Shravan Shinde (supra). It is thus, beyond doubt that the question as regards entitlement of a workman to relief under provisions of Section 33C(2) of the said Act on the basis of Clause 28 of the Kalelkar Award stands answered in favour of the respondents workmen.

The Labour Court, therefore, had jurisdiction to consider Clause 28 of the Kalelkar Award while determining the entitlement of the workman to relief under provisions of Section 33C(2) of the said Act.

12. In *Municipal Corporation of Delhi (supra)*, relied upon by the learned Counsel for the petitioners, the workmen therein were held entitled to same pay as regular employees on the principle of "equal pay for equal work". The workmen's claim of doing similar nature of work and entitlement to the paid wages at the same rate as regular workmen was disputed by the employer. There was no prior adjudication of their dispute resulting in acceptance of their claim to "equal pay for equal work". As there was no prior adjudication, the relief granted by the Labour Court and upheld by the High Court was set aside. The Supreme Court in said case observed that only when the entitlement had been earlier adjudicated or recognized by the employer that the question of its implementation or enforcement would arise. In the case in hand, as observed herein above, the terms of the Kalelkar Award have been made applicable to the Irrigation Department and hence, entitlement to higher pay scale after completion of five years continuous service stands recognized by the petitioners. Hence, ratio of aforesaid judgment cannot be made applicable to the facts of the present case. For very same reason, decision of learned Single Judge in *Chief Officer, Sangli Municipal Council (supra)*, would also not apply. In *Dashrath Rajaram Solanke (supra)*, the dispute between the parties was with regard to violation of provisions of Section 25F, 25G and 25H of the said Act. In that context, it was observed that mere violation of Section 25F of the said Act would not entitle the workman to relief of reinstatement when read along with Clause 28 of the Kalelkar Award. The observations therein cannot be made applicable to the facts of the present case. In *District Superintending Officer, Washim (supra)*, the services of the respondent therein were terminated and proceedings for reinstatement were filed before the Labour Court. Relief under provisions of Section 33C(2) of the said Act was sought in said proceedings. As it was found that there was no earlier adjudication with regard to entitlement to a particular pay scale, relief was not granted in that regard. Considering the facts involved, ratio of aforesaid judgment cannot be made applicable to the case in hand especially when provisions of Kalelkar Award are applicable to the Irrigation Department.

The first issue, therefore, stands answered accordingly.

13. In so far as the second issue in relation to delay in seeking relief under provisions of Section 33C(2) of the said Act is concerned, as observed herein above, the provisions of Article 137 of the Limitation Act, 1963 are not applicable to proceedings under the said Act. In *Ajaib Singh (supra)* while reiterating the aforesaid position, the Supreme Court in para 9 of its judgment held as under:

"9. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of

delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour Court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal....."

In view of aforesaid, actual prejudice caused on account of delay is required to be shown by the party raising a plea of delay and laches.

14. In the present case, initially the respondent had approached the Industrial Court in the year 2004 by filing complaint under Section 28 of the Act of 1971. In view of the preliminary objection as raised, aforesaid complaint was withdrawn and present proceedings under Section 33C(2) of the said Act were filed in the year 2006. The relief claimed is from 1987 to 2000. In the reply filed by the petitioners to the aforesaid application, in so far as the aspect of delay is concerned, it has been stated as under:

"1..... It is submitted that though there is no limitation prescribed by law for filing application u/s 33C(2) of Industrial Disputes Act, however, there are catena of judgments of High Court and Supreme Court that it is true there is no period of limitation under section 33C(2) of the Act, but that does not mean that it is open to a party to file petition under Section 33C(2) of the Act at a time which suits his convenience. If there is long delay, unless delay is properly explained, the Labour Court can reject the claim as stale.....".

In the evidence of the petitioners" witness, no specific stand as regards prejudice being caused on account of the aforesaid delay has been stated. There is no cross examination of the respondent on the aspect of delay and prejudice being caused to the present petitioners on account of the same. It is to be noted that the respondent had sought production of records by the department as per application vide Exh.10. The same was allowed, but the documents as sought were not produced. It is not the case of the petitioners in their evidence that as aforesaid records were not available, the same could not be produced. It was open for the petitioners to have brought on record prejudice, if any, caused to them on account of the delay in filing proceedings under Section 33C(2) of the said Act. However, no such stand has been taken by the petitioners. Except stating that the proceedings were belated, said stand has not been substantiated. Thus, as observed by the Supreme Court in Ajaib Singh (supra), raising of a mere hypothetical defence is not sufficient and real prejudice has to be proved as a matter of fact. The same is, however, absent in the present case.

As regards the decision of learned Single Judge in S. A. Shaikh (supra) relied upon by the learned Counsel for the petitioners, claim for the period from 1957 to 1964 was sought to be agitated after a lapse of 26 years. In the written

statement, the employer raised a specific plea that they had not preserved old records as the same were destroyed according to the relevant rules. In that background and considering the specific plea of the employer regarding destruction of old records, this Court refused to grant relief to the workmen therein on the ground of delay. However, in the present case, it is not the case of the petitioners that on account of destruction of old records, their production was not possible. No such stand has been taken by the petitioners. On the contrary, the respondent sought inspection of the records of the petitioners by moving an application in that regard. During inspection, it was noticed that the records had not been properly maintained due to which records pertaining to the respondents could not be inspected. Hence, the observations made in aforesaid judgment are clearly distinguishable and cannot be made applicable to the facts of the present case.

15. From the above, therefore, it is clear that the relief sought by the respondent cannot be refused only on the ground that the proceedings have been belatedly filed. In absence of any specific stand as regards prejudice being caused on account of delay, the respondent cannot be non-suited on said count. Moreover, in 2004, the respondent had approached the Industrial Court seeking relief under provisions of the Act of 1971. After withdrawing aforesaid proceedings and on the basis of liberty granted, the respondent approached the Labour Court. Perusal of the impugned judgment reveals that the Labour Court has rightly taken into consideration the law laid down by this Court as regards applicability of Clause 28 of the Kalelkar Award. It has further noted that despite being called upon to produce its records as per the order passed below Exhibit -10, the same was not done by the petitioners without any justifiable reason. On that basis, it granted relief to the respondent and also granted two months time to make necessary payments. There does not appear to be any jurisdictional error committed while passing the impugned order. The law as laid down by the Supreme Court and by this Court has been properly applied. Thus, in the facts and circumstances of the present case, no case for interference in writ jurisdiction has been made out. Rule in each writ petition, therefore, stands discharged with no order as to costs. The direction to make payment within a period of two months from the date of the order of the Labour Court stands confirmed. However, the period of two months to make such payment shall commence from the date of this judgment. If said amount is not so paid, the same shall carry interest at the rate of 6% per annum till realization.