

(2010) 04 BOM CK 0116
In the Bombay High Court
Case No : Writ Petition No. 2238 of 2001

Chittranjan Wasnik

APPELLANT

Vs

Managing Director, Vasantrao Naik Vimukt Jati and Nomadic
Tribe Development Corpn. (Ltd.) and Another

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

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

Citation : (2011) 1 LLJ 63

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : F.G. Isaac, for the Appellant;

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—This petition by a workman is directed against order of learned Member, Industrial Court dismissing as barred by limitation Petitioner's complaint of unfair labour practice as described in Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short).

2. The facts, which are material for deciding this petition, are as under: The Petitioner claimed to have been appointed in Bhandara and Nagpur offices of Respondent Corporation from July 1, 1986 to September 15, 1987 under different spells of appointment orders. He was discontinued w.e.f. September 15, 1987. He claims to have made several representations, which fell on deaf ears. The Respondent appointed nine persons after termination of the Petitioner; three on January 1, 1989, one each on April 1, 1990, December 6, 1990, April 1, 1991, September 7, 1992 and March 3, 1994. The Petitioner, therefore, filed a complaint on November 24, 1996 complaining of unfair labour practice as defined in Item 9 of Schedule IV of the MRTU & PULP Act and sought a direction to reemploy the

Petitioner in view of the provisions of Section 25H of the Industrial Disputes Act.

3. This complaint was contested by the Respondent Corporation, which stated that the Petitioner was appointed on June 23, 1986 only for the period of 59 days and that thereafter he was not given any appointment. It was stated that the Petitioner has not completed 240 days in any calendar year and also disowned the experience certificate which had been issued to the Petitioner on February 22, 1988. It was stated that since the Petitioner's employment came to an end on the expiry of term of his employment, there was no question of complying with provisions of Section 25F of the Industrial Disputes Act, or there being any breach of provisions of Section 25G of the Act. It was also pointed out that the Petitioner had himself made a representation to the Minister of Social Welfare indicating that he was called as and when work was available and was paid as daily rated worker. It was also stated that there was absolutely no explanation for not approaching the Court for ten years since Petitioner's termination.

4. After considering the evidence tendered, the learned Member, Industrial Court held that the Petitioner had proved that Respondent had indulged in unfair labour practice as contemplated in Item 9 of Schedule IV of the MRTU & PULP Act but he held that the complaint was barred by limitation and therefore, dismissed the same. Aggrieved thereby, the Petitioner is before this Court.

5. I have heard learned Counsel for the Petitioner. In spite of two adjournments none appeared on behalf of the Respondents to address me in support of their contentions.

6. Since there is no challenge to the finding by the learned Member, Industrial Court that the Respondent was guilty of unfair labour practice, the question to be decided in this petition is only as to whether the complaint was barred by limitation. The learned Member, Industrial Court has held that limitation of 90 days has been prescribed for making complaint u/s 28 of the MRTU & PULP Act. The learned Member observed that the complaint does not contain any explanation as to why the complainant could not approach the Court within prescribed period of limitation from the date of termination of the Petitioner, or in any case within 90 days from the date on which the first, or even the last, employee was appointed by the Respondent, even if it was to be presumed that such appointment gave a rise to the cause of action. The learned Member also observed that even in the evidence tendered there was no explanation whatsoever from the Petitioner as to why he could not file the. complaint within a period of 90 days in spite of the fact that a specific objection has been raised by the Respondent in paragraph 11 of the written statement before the Industrial Court.

7. The learned Counsel for the Petitioner submitted that there could be no limitation for a complaint in respect of unfair labour practice as defined in Item 9 of schedule IV of the MRTU & PULP Act and for this purpose relied on a number of judgments. :

(i) In *Regional Manager M.S.R.T. Corporation v. Regnl. Secy., M.S.T.K.S.* (1984) LIC 1721, a Division Bench of this Court was considering the complaint in respect of Item 9 of Schedule IV of the Act. It was the case of Union that the employer had failed to implement term No. 69 of settlement dated April 29, 1956 and thereby had indulged in unfair labour practice. The Industrial Court, Nagpur held that in terms of the settlement, the employer was obliged to absorb bona fide employees of ex-transport operators (before nationalization) and therefore, directed the Corporation to desist from continuing with the unfair labour practice and to absorb all the employees of ex-operators. The Court also awarded compensation. This was questioned before High Court by filing writ petition. The High Court set aside the order only in so far as it related to payment of compensation. Aggrieved thereby the employer had filed Letters Patent Appeal. For the first time the question of bar of limitation u/s 28 had been raised in the appeal. In this context, the Court observed in paragraph 8 that the point of limitation did not survive for the simple reason that the employer had impliedly admitted that the unfair labour practice, complained of, was of continuous nature. The union has specifically pleaded that the unfair labour practice was of continuous nature and the employer had not entered any denial. Therefore, the Court held that it was not open for the Corporation to raise a plea of limitation. Thus, it may be seen that the judgment does not rule that limitation prescribed by Section 28 of the Act does not apply to a complaint in respect of the unfair labour practice defined under Item 9.

(ii) A Full Bench of this Court in *M.S.R. T.C. v. Premal S/o. Khatri Gajbhiye and Ors.* (2003) 2 CLR 387 was again considering the bar of limitation. The question which had been referred to the Full Bench was whether Clause 49 of 1956 settlement was replaced by Clause 19 of 1985 settlement or whether the clauses operated in totally different fields. The Corporation had also raised a ground of limitation. In this context, while dealing with the question of limitation, the Full Bench observed in paragraph 18 of the judgment that it was the contention of the workmen that it was a recurring cause of action, which entitled them to approach the Industrial Court even beyond the period of three years from the date the employer started refusing the benefits under Clause 49 of 1956 settlement, and that the injury continued to be inflicted upon the workman every month by being denied the benefits of better pay packet. After considering several decisions, the Court held that since Clause 49 of 1956 settlement was still in force, noncompliance thereof would amount to unfair labour practice and it will continue to recur till the benefits are granted. It has to be mentioned that even in this judgment there is no blanket observation that there is no bar of limitation for complaint in respect of Item 9. The nature of grievance which had been raised was about continuing wrong, by being denied the benefits of settlement which was in force and therefore, it was held that the bar of limitation did not apply.

(iii) In *Shankar S. Khedikar v. M.S.R.T.C.* 1994 III LLJ (Suppl) 361 (Bom) again a question was of non-implementation of settlement which entitled the workman to

time scale from October 15, 1971, though MRTU & PULP Act itself came into force on September 8, 1975. The Court observed that unfair labour practice continued until the settlement" remained unimplemented.

(iv) The learned Counsel for the Petitioner also relied on a judgment of *Hindusthan Lever Mazdoor Sabha v. Hindustan Lever Ltd.* 1998 III LLJ (Suppl) 641 (SC). In that case again there was a question in respect of settlement. The Supreme Court observed that the High Court had erred while holding that the complaint was barred by limitation, since the High Court failed to appreciate the effect of Supreme Court's judgment delivered in the year 1984, which decision gave a further cause of action to the complainants to agitate the matter, which was unilaterally blocked by the management by its order of June, 1975. thus, it would be seen that the facts are quite peculiar. In the case at hand, there is no judgment of the Supreme Court or the High Court, which could be said to give rise to further cause of action.

(v) The learned Counsel for the Petitioner relied on a Division Bench judgment of Gujarat High Court in *Agriculture Produce Market Committee Vs. Kanubhai Laxmanbhai Patel*, which pertains to breach of Section 25H of the Industrial Disputes Act. In that case the workman had been undisputedly retrenched and at a subsequent point of time a person junior to workman was taken in service. The question in that case was as to what was meant by "retrenched workman" and it was held that the expression "retrenched workman" must be given the wide meaning of "retrenchment" in Section 2(oo) of the Industrial Disputes Act, and was not to be restricted to those retrenched u/s 25F of the Industrial Disputes act. There can be no doubt that this expression would cover the case of the Petitioner but still would leave the question of limitation open.

(vi) In *Mahindra & Mahindra v. Sharad Laxman Dalvi and Ors.* 2005 (1) CLR 584: 2005 IV LJ 885 (Bom), the workman had joined services of the employer in October, 1979. In terms of Model Standing Order 4(c) he was entitled to status and privileges of permanent workman which status had been denied by the employer. The workman complained that the employer was thus, guilty of unfair labour practice under Items 6 and 9 of Schedule TV of the MRTU & PULP Act. It was also alleged by the workman that the company and the union had entered into a settlement contrary to Model Standing Order 4(c). The employer had raised bar of limitation on the ground that the cause of action for raising the grievance about unfair labour practice arose in July, 1980 and the complaint was filed on October 7, 1988. In this context the Court observed in paragraph 7 of the judgment that the claim regarding permanency and denial thereof is continuing cause of action and therefore, merely because the complaint was not filed beyond the period of 90 days it cannot be said to be barred by Law of Limitation. The learned Counsel for the Petitioner submitted that not employing the Petitioner and leaving the Petitioner in lurch also is a continuing cause of action since the Petitioner still continues to be out of job.

(vii) In *Akhil Maharashtra Kamgar Union v. Warden & Co. Ltd. and Ors.* 1998 III

LLJ (Suppl) 578 (Bom) on which the learned Counsel for the Petitioner places reliance, the question was of nonpayment of wages to the workman from February, 1992. The complaint was filed in March, 1993. Interim relief had been granted which was later on vacated when the employer entered into a settlement on March 15, 1993 with another union. The Industrial Court had not dealt with contention as to limitation. In paragraph 5 of the judgment this Court observed that it was not disputed that the right to receive wages is recurring cause of action arising from month to month and therefore, to urge that the complaint was barred, was misconceived.

8. The learned Counsel for the Petitioner submitted that whether the Petitioner was actually retrenched or not by following the provisions of Section 25F would be immaterial. He submitted that obligation u/s 25H of the Industrial Disputes Act to employ a retrenched workman has to be read as if it is a settlement, and therefore, non-implementation of such settlement would amount to unfair labour practice. He submitted that in any case, if the Petitioner was entitled to be employed in terms of Section 25H of the Industrial Disputes Act, denial of such employment would be a continuing wrong and complaint in respect of it could be filed at any point of time.

9. The attempt of the learned Counsel to equate termination of workman and failure to reemploy him to failure to implement a settlement is based on strenuous logic. If the termination or failure to reemploy is allowed to be termed as a continuing wrong, prescription of limitation of 90 days would be rendered meaningless. The learned Counsel for the Petitioner could not lay hands on any judgment where any High Court has held that in a case where a workman was not reemployed, he was allowed to agitate his cause years after such denial. In my view, it would be thoroughly impermissible to equate the obligation to employ a retrenched workman in preference to others, contained in Section 25H of the Industrial Disputes Act, to an unimplemented settlement or nonpayment of revised wages to workmen who are already in the employment. The right of the Petitioner to seek reemployment arose the moment the employer engaged somebody else in his place. There is absolutely no reason given by the Petitioner as to why he could not approach the Court promptly, or even within 90 days of the employment of the last such workman. It seems that the Petitioner had tried to rake up the dispute, after all the years when he might have been engaged elsewhere possibly because he found reclaiming a job with the Respondent more beneficial. Such a course cannot be permitted.

10. In view of this, it cannot be said that the learned Member, Industrial Court erred in dismissing the complaint on the ground of limitation. The petition is, consequently, dismissed.