
(2010) 04 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 674 of 2010

Municipal Corporation

APPELLANT

Vs

Dinanath Ganesh Shende

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42(4)
Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2011) 128 FLR 1073

Hon'ble Judges : S.J. Kathawalla, J

Bench : Single Bench

Advocate : S.K. Talsania and Kavita Anchan, instructed by M.V. Kini and Co, for the Appellant;

Final Decision : Dismissed

Judgement

S.J. Kathawalla, J.—Despite notice to the Respondent that this Court may hear the above writ petition finally at the admission stage, the Respondent is absent.

Rule. The above writ petition is forthwith taken up for final hearing.

2. By this writ petition, the Petitioner has impugned the order dated 6th July, 2009 passed by the Industrial Court, Mumbai in Revision Application (ULP) No. 95 of 2008 setting aside the order passed by the Ninth Labour Court, Mumbai, dated 25th June, 2008 and allowing the Application of the Respondent seeking condonation of delay caused in filing his complaint before the Labour Court.

3. The petition has been filed by the Municipal Corporation of Greater Mumbai through the General Manager of Brihan Mumbai Electricity Supply and Transport Undertaking. The Respondent was working as a "Cleaner" in the Maland depot of the Petitioner Undertaking from 20th February, 1990. The Respondent was charge-sheeted under the Standing Order 20(f) for his absenteeism during the

period from November, 2000 to October, 2001. He was dismissed from the services with effect from 13th February, 2002. In the inquiry, the Respondent was found guilty of the charges levelled against him and the order dismissing the Respondent from services with effect from 13th February, 2002 was passed. Thereafter, as provided under the Standing Orders, the Respondent filed two departmental appeals, which were rejected on 26th April, 2002 and 27th May, 2002. The Respondent filed a complaint of unfair labour practice under Item 1 of Schedule (IV) of the MRTU & PULP Act against the Petitioner challenging his dismissal from the services. Along-with the complaint, the Respondent also filed an application for condonation of delay as the limitation under the MRTU & PULP Act to file a complaint, is 90 days. The Petitioner opposed the application seeking condonation of delay on the ground that there is no sufficient cause shown by the Respondent for approaching the Labour Court after a period of 5 years and 2 months. The Respondent filed his affidavit of evidence and he was cross-examined by the Petitioner. The Labour Court by its order dated 25th June, 2008 rejected the application for condonation of delay filed by the Respondent.

4. The Respondent thereafter filed a revision application before the Industrial Court, Mumbai. The Industrial Court after hearing the arguments of the parties, by its order dated 6th July, 2009 allowed the revision application filed by the Respondent and condoned the delay caused in filing the complaint before the Labour Court and the matter was directed to be remanded back to the Labour Court. Aggrieved by the order of the Industrial Court, Mumbai, the Petitioner has filed the present writ petition, impugning the said order dated 6th July, 2009.

5. The Respondent has in his affidavit of evidence filed before the Labour Court deposed that after his dismissal, he being a member of the BEST Workers Union had filed the departmental appeals through the Union. He was informed by the Union that immediately on receipt of the copy of the second departmental appeal, the Union will file the case, if necessary. After being assured by the Union, he was busy treating his wife who was suffering from severe mental trauma of loosing their child. After waiting for about 6 months, he approached the Union. On his visit to the Union Office, he came to know that his appeals were rejected by the Petitioner and no further action on his behalf has been initiated by the Union. He thereafter, again and again approached the Union for filing a case. However, the Union did not help him as there was split into two groups of the said Union and the matter was pending in the Industrial Court. Thereafter, elections were declared and all concerned were busy in the election process and therefore, no one from the Union helped him in filing the case nor did they return back his papers which were required for filing the case. On account of loss of job, family tension and attitude of the Union towards his matter, he was depressed. The financial crisis due to loss of job increased the gravity of his helplessness. He thereafter, went and approached Mr. Bagalkar, BEST Committee Chairman, who helped him in filing the complaint and accordingly, he filed the complaint before the Labour Court. He has also stated that the delay in filing the complaint was neither deliberate nor intentional but

was on account of reasons beyond his control. He has a good case on merits and he is serious about pursuing his case. He has submitted that if the delay is not condoned, irreparable loss, damage and injury shall be caused to him whereas no loss, damage or injury shall be caused to the Petitioner if the delay is condoned. In his cross-examination, the Respondent was only asked if he has produced any medical certificate to show the mental sickness of his wife to which he has answered in the negative and has denied that the reason given by him, is false.

6. The application for condonation of delay filed by the Respondent was rejected by the Labour Court, on the ground that the Respondent was aware after a period of 6 months that his departmental appeals were dismissed. It is not his case that he was approaching the Union for the entire period of 5 years and that he was not informed about rejection of his appeals. He was well aware about the rejection of the said appeals and therefore, he ought to have filed the application seeking condonation of delay immediately after 6 months. However, to cover up the inaction, the Respondent further contended that the Union did not help him as there was split of Union and due to election of Union, he was not returned his case papers. According to the Labour Court, these grounds are not convincing.

7. The Industrial Court in revision has held that the reasons stated by the Applicant cannot be said to be false and improper. The Applicant should not be made to suffer for inaction or omission on the part of the Union. On the basis of the assurance given by the Union that immediately on receipt of the copy of the second departmental appeal, the Union will file the case if necessary, he waited and could not file a case in time. Moreover after dismissal, he was unemployed and due to lack of funds, he could not file a case within time. An opportunity is required to be given to the Respondent to prosecute the matter on merits. The Labour Court has not taken into consideration the bonafide grounds and reasons while rejecting the application of the Respondent. The Respondent has sufficient and bonafide reasons to condone, the delay. The findings of the Labour Court that the Applicant has not given sufficient and bonafide reasons, is therefore perverse, erroneous and therefore, needs to be set aside.

8. Mr. Talsania, the learned Senior Advocate appearing for the Petitioner has submitted that the Respondent has not shown any good or sufficient reason to condone the delay. The Industrial Court failed to appreciate the fact that as the Petitioner is governed under the Bombay Industrial Relations Act, 1946, the employee loses his right to challenge the legality and propriety of the order passed under the Standing Orders, if he does not give any letter of approach within a period of 3 months u/s 42(4) of the Bombay Industrial Relations Act. It is submitted that the provisions of Section 28 of MRTU & PULP Act gives the power to the Court to condone the delay if good and sufficient reasons are shown. However, the said provisions of condoning the delay cannot be stretched so far as to cover a delay of 5 years. It is submitted that the reasons given by the Labour Court while rejecting the application seeking condonation are just and

proper and the Industrial Court erred in interfering with the findings of the Labour Court. It is submitted that if the delay of over 5 years is condoned on such causal grounds, it would render the law of limitation redundant and superfluous and thus, ought not to be encouraged. In support of his submissions, Mr. Talsania has relied on the decisions of this Court in *Pune District Central Cooperative Bank Limited v. Hira Lal Ramchandra Gaikwad* 1999 (81) FLR 611 and *Association of Engineering Workers v. Oriental Rubber Industries and Ors.* 1994 (1) CLR 319 : 1994 (1) LLN 542 (Bom.)

9. I have gone through the evidence of the Respondent annexed to the petition and the orders passed by the Labour Court as well as the Industrial Court. I have also considered the submissions advanced by Mr. Talsania, the learned Senior Advocate appearing for the Petitioner. From the evidence of the Respondent, it is clear that the Respondent had lost his child and his wife was suffering from severe mental trauma on account of the loss of the child. Though within a period of 6 months, the Respondent was aware of his departmental appeals being dismissed, he approached the Union repeatedly to take further action, since the Union had earlier assured him that immediately upon receipt of the copy of the second departmental appeal, the Union will file the case if necessary. He did not receive any assistance from the Union as there was split in the Union and the matters were pending in the Industrial Court. The elections of the Union were declared and the persons concerned were busy in election process. Even his papers were not returned by the said Union. Apart from this, on account of loss of job and family tension, he was depressed. The financial crisis increased his helplessness and it is only with the help of Mr. Bagalkar, BEST Committee Chairman, he could file a complaint in the year 2009. There is no specific cross-examination of the Respondent on the issue that he again and again approached the Union for filing his complaint and that the Union did not help him and that there was a split in two groups of the Union and the matter was pending in the Industrial Court and thereafter, the elections were declared and all were busy in the election process and the Union also failed to return his papers. There is also no cross-examination qua the deposition of the Respondent that on account of loss of job, family tension and attitude of the Union, he was depressed. He was facing financial crisis due to loss of job and found himself in a helpless state. The Respondent was also not cross-examined qua his case that he approached Mr. Bagalkar, BEST Committee Chairman who helped him in filing the complaint. The Petitioner has in his cross-examination only put to the Respondent that the reasons given by him are false and that he has filed a false application which he has denied. He has admitted that he has not produced any medical certificate to show the mental sickness of his wife. Though he has stated that he was treating his wife, it cannot be presumed that such treatment was through qualified medical professionals. Under the circumstances, it is clearly established that though the Respondent has again and again approached the Union for help, he has not received help from the Union as there was split in the two groups of the said Union and thereafter, elections were declared and the persons concerned

were busy in election process. Thus, not only did the Union fail to assist him but also did not return his papers. Again, it is further established that the Respondent was helpless and depressed due to loss of job, family tension, due to loss of child and the severe mental trauma suffered by his wife in view of losing the child. The financial crisis added to the helpless state of the Respondent.

The Petitioner may have termed these problems as "casual" or casual grounds" but the same are very serious and critical for the Respondent who has lost his job, who has lost his child, whose wife is a victim of severe mental trauma for the loss of child and is mentally and physically drained out. It is the wearer who knows where the shoe pinches.

10. In my view, sufficient cause/reasons have been set out by the Respondent for delay in filing the complaint. The Labour Court has erred in reaching the finding that the grounds made out by the Respondent seeking condonation of delay in filing the complaint, are not convincing. The Industrial Court has correctly set aside the order passed by the Labour Court and is justified in condoning the delay in filing the complaint. The decision of this Court in Pune District Central Co-op. Bank Ltd. (supra) rejecting the application for condonation of delay will be of no assistance to the Petitioner because in that case, the Respondent had produced the medical certificate of Dr. S.V. Taware, M.B.B.S. Baramati, who certified that the Petitioner was under his treatment from 15th June 1986 to 7th January, 1991 and he was having "Pulcocks" (Sic) and that during the above period, he was advised to take rest and treatment. The Respondent was suffering from tuber-cular infection of the lungs.

The doctor who treated the patient for almost 5 years admitted that he did not get any pathological examination done. There was also no mention of any X-rays of the chest being taken. No case papers were produced. The said doctor was therefore, disbelieved.

11. The decision of this Court in Association of Engineering Workers (supra) will also not render any assistance to the Petitioner in the present writ petition because in that case, the condonation of delay was sought only on the ground that the closure of an establishment gives rise to a continuous cause of action and as such, no period of limitation applies. It was therefore, held by this Court that the contention was not tenable in law. In fact, in the said case, the Court has held that condonation of delay will depend on facts and circumstances of each case.

12. Under the circumstances, no case is made out by the Petitioner for this Court to interfere with the order passed by the Industrial Court, Mumbai, under Article 226 of the Constitution of India. Rule is therefore, discharged and the writ petition is dismissed.