
(2007) 12 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No's. 7972 and 7973 of 2006

Murlidhar Wani

APPELLANT

Vs

Dharangaon Nagar Palika

RESPONDENT

Date of Decision : 17-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28, 48, 50

Citation : (2008) 3 BomCR 750 : (2008) 117 FLR 384 : (2008) 2 MhLj 127

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : K.C. Sant, for the Appellant; U.S. Malte, for the Respondent

Final Decision : Allowed

Judgement

R.M. Savant, J.—Rule. Rule with the consent of the parties made returnable forthwith and heard.

2. By these petitions filed under Articles 226 and 227 of the Constitution of India, the petitioner in Writ Petition No. 7972 of 2006 impugns the order dated 31-8-2006 passed by the Industrial Court rejecting the Misc. Application (ULP) No. 3 of 2003 filed by the petitioner for condonation of delay in filing the complaint for seeking pensionary benefits. Insofar as Writ Petition No. 7973 of 2006 is concerned, it impugns an order of the same date rejecting the Application (ULP) No. 6 of 2003 praying for condonation of delay caused in filing Misc. application for recovery of difference of salary in terms of the order passed by the learned Member, Industrial Court, Nasik, in complaint ULP No. 604 of 1989.

3. The petitioner was working with the respondent Municipal Council as a Driver on daily wages. The petitioner had filed complaint ULP No. 604 of 1989 under the provisions of the M.R.T.U. and P.U.L.P. Act, 1971 inter-alia claiming various benefits which also included the benefit of permanency .The said complaint ULP

No. 604 of 1989 came to be allowed by the Industrial Court by impugned judgment and order dated 13-11-1996. The direction in Clause 3 and 4 of the operative part of the said order are relevant for the purposes of the present Petitions and are reproduced hereinbelow:

3. The respondent is also directed to make the complainant permanent w.e.f. 1-1-1990 as a driver and pay him the wages that he is entitled for the said post after adjustment of daily wages already paid to him.

4. The respondent is further directed to pay the complainant his un-paid wages for the month of May, June and July, 1989 at the rate of daily wages, he was being paid at that time.

4. The respondent Municipal Council in spite of the order of the Industrial Court did not comply with the directions as contained in Clause 3 thereof. The petitioner was therefore constrained to file Criminal (ULP) invoking Section 48 of the M.R.T.U. and P.U.L.P. Act. Insofar as the difference in wages on account of the order of the Industrial Court was concerned, it appears that then Chief Officer Shri Kochure had made a statement that the petitioner would be paid the difference, in installment of Rs. 10,000/-. According to the petitioner, the difference payable to him came to Rs. 2,14,348/-. In terms of the said statement, the petitioner was paid an amount of Rs. 1,00,000/- and the last of the installment was paid over to the petitioner on 16-7-2001. On account of the stoppage of payment of the said installment, the petitioner sought to invoke Section 50 of the M.R.T.U. and P.U.L.P. Act for recovery of the amount due to him under the judgment and order of the Industrial Court dated 13-11-1996.

5. Insofar as Writ Petition No. 7972 of 2006 is concerned, the petitioner though directed to be made permanent from 1-1-1990, on his superannuation was not being paid the pensionary benefits and other retirement benefits as a permanent employee. The petitioner therefore, sought to file complaint u/s 28 of the said Act for the said benefits. Insofar as, there was delay in filing the Misc. Application ULP for claiming difference in wages, as also delay in filing complaint ULP for the pensionary benefits the petitioner filed an application, in respect of both, the Complaint (ULP) as well as the Misc. Application. The sum and substance of the petitioner's case in the applications for condonation of delay was that insofar as the pensionary benefits were concerned that it is usual that there is a delay of about 4-5 months in any payment being made to the employees as the said payments are made only after receipt of funds from the State Government. The petitioner also justified the delay on the ground that the petitioner was meeting the officers of the respondent Council from time to time and requesting them to make the payment of pensionary benefits. The petitioner also pointed out that in view of the fact that the Chief Officer of the respondent Council, were intermittently being changed, there were administrative difficulties in getting the said pensionary benefits, the Officers of the Council were also assuring the petitioner in the criminal complaint filed by him that the needful would be done.

6. Insofar as the application for condonation of delay in filing the Misc. Application for recovery of the amount due under the order was concerned, it was the case of the petitioner that the petitioner was assured by the Chief Officer that the petitioner would be paid the amount of difference in wages etc. payable to him in installment of Rs. 10,000/-. The Chief officer had accordingly tendered affidavit exhibit U-15 on 13-8-1999. However, the assurance given in the said affidavit was adhered to by the respondent Council to the extent of paying the petitioner an amount of Rs. 1,00,000/- in installment of Rs. 10,000/-, however, last of the said installment was paid on 17-6-2001 and thereafter the payment had stopped. The petitioner thereafter was hopeful that the payment of installment would re-commence and therefore did not want to precipitate the issue by filing the said Misc. Application. The petitioner filed applications for condonation of delay on 27-1-2003 in respect of both the matters i.e. complaint ULP to be filed u/s 28 and the Misc. Application ULP invoking Section 50 of the M.R.T.U. and P.U.L.P. Act, 1971. The said applications for condonation of delay were opposed by the respondent Council on the ground that the petitioner has come out with a false case that assurance was given to the petitioner, the respondent Council, prayed for dismissal of the said application.

7. I have heard the learned Counsel for the respective parties. It is contended by Shri Sant, the learned Counsel for the petitioner that the petitioner was a class-III employee, who in spite of having succeeded in complaint ULP No. 604 of 1989, has till date not been given the full benefits of the said order. The petitioner therefore had to approach the Officers of the respondent Council from time to time, and relied upon the assurance given to him.

8. Insofar as the difference in wages which are payable to the petitioner is concerned, the learned Counsel Shri Sant submitted that the respondent Council having partly complied with the said order dated 13-11-1996 by making payment to the petitioner in installments, the petitioner did not think it fit to approach the Court u/s 50 of the said Act. The petitioner in fact did not want to precipitate the matter as the petitioner was apprehensive that payment of installments would be stopped. The petitioner was also being assured that the needful would be done. The learned Counsel therefore submitted that applications filed on 27-1-2003 suffers from delay of only about 17-18 months and not 575 days and 1875 days as calculated by the Registry of this Court. The learned Counsel further submitted that insofar as the Writ Petition No. 7273 of 2006 is concerned, which is filed for condonation of delay in filing Misc. Application ULP, for recovering the amount due from the respondent Council, since the last of the installment was paid by the respondent Council on 17-6-2001, it is from the said date that the limitation ought to be counted.

9. On the other hand, it is contended by Shri Make, learned Counsel appearing on behalf of the respondent-Council, that proposed complaint of the petitioner for getting the pensionary benefits is itself mis-conceived as though the Industrial Court by it's judgment and order dated 13-11-1996 had directed the respondent-

Council to make the petitioner permanent, in fact the respondent Council has not issued any order making the petitioner permanent and therefore there is no right which is vested in the petitioner to seek the said relief in the proposed complaint ULP, that the petitioner desires to file. It was next contended by Shri Malte that Section 50 of the said Act was not attracted and that the petitioner had not made out any case for condonation of delay.

10. I have considered the rival submissions of the respective counsel. Here it is significant to note that in spite of there being an order in favour of the petitioner, dated 13-11-1996, passed in the Complaint (ULP) No. 604 of 1989 the petitioner has not been given the benefits of the said order fully. Insofar as the pensionary benefits are concerned, the petitioner has not been given the said benefits at all. The argument of Shri Malte that though the order is in favour of the petitioner, in view of the fact that the Council has not issued any order, there is no right vested in the petitioner, the respondent Council cannot take advantage of it's own wrongs by stating that since an order has not been issued, the petitioner cannot be given the benefits of the judgment and order dated 13-11-1996. Insofar as the condonation of delay in filing the Misc. Application for recovery of the amount is concerned, there is considerable merit in the submission of Shri Sant that the limitation ought to be counted from 16-7-2001. The petitioner belongs to strata of Society, who cannot be expected to challenge the authority of his employer more so when he has been given an assurance. The petitioner having been paid installment till 16-7-2001, can be said to be in sanguine hope that he would be paid the remainder of the amount. There is also merit in the submission of Shri Sant that the petitioner could not have precipitated the matter and only after seeing that the installments are not forthcoming, that the petitioner has taken steps of filing the said Misc. Application for recovery of the said amount.

11. It is well settled that a party does not stand to gain by delay in filing of proceedings. It is also well settled that a litigant should be given an opportunity to prosecute it's remedy on merits as the same advances the substantial cause of justice, rather than being thrown out on technicalities. In the instant case, the grounds on which delay has been caused, could not be said to be on account of the negligence or callousness of the petitioner but have been occasioned in view of the circumstances of the said case. Therefore sufficient cause has been shown by the petitioner for the belated filing of the proceedings.

12. In that view of the matter, the impugned order dated 31-8-2006 passed by the Industrial Court in Misc. Application ULP No. 3 of 2003 would have to be set aside as well as the order dated 31-8-2006 passed in Misc. Application ULP No. 6 of 2003 would also have to be set aside and both the Applications would have to be allowed. Consequently the delay in filing the Misc. Application ULP and Complaint (ULP) is condoned. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs. It is made clear that the complaint ULP as well as the Misc. ULP would be decided on their own merits and

in accordance with law un-influenced by the observations if any made in this order.