
(2011) 08 BOM CK 0199
In the Bombay High Court
Case No : Writ Petition No. 114 of 2011

Pune Mahanagar Parivahan Mahamandal Limited	APPELLANT
Vs	
Sharad B. Bhade and another	RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 5

Citation : (2011) 131 FLR 523

Hon'ble Judges : K.K. Taxed, J

Bench : Single Bench

Advocate : Sameer M. Paranjape, for the Appellant; Saurabh Kulkarni, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Tated, J.—Heard the learned Counsel for the parties.

By this petition under Articles 226 & 227 of the Constitution of India, the petitioner- Original Opponent challenges the judgment dated 23rd February, 2010 passed by the learned Member, Industrial Court, Pune in Misc. (ULP) No. 94 of 2007, allowing respondent No. 1- Original Applicant's application for condonation of delay in filing complaint under MRTU & PULP Act, 1971. The respondent-Original Applicant is a permanent employee of the petitioner. He was served with the charge-sheet for misconduct on 17th October, 1983, suspended pending enquiry and after regular departmental enquiry, he was not held guilty for the charges and, therefore, taken back on duty since 14th March, 1985. During 22nd June, 1983 to 14th March, 1985, he was suspended pending enquiry and paid subsistence allowance. Thereafter, the petitioner by their letter dated 14th March, 1985 awarded punishment to the respondent No. 1 and thereby the period of suspension pending enquiry was treated as suspension period and thereby deprived benefits of increment and promotion to the respondent No. 1. In the meanwhile, criminal case was pending against the

respondent. Thereafter, respondent wrote several letters to the petitioner for his benefit for the period from 22nd June, 1983 to 14th March, 1985. For that, he wrote several letters dated 16th February, 1995, 9th September, 1997, 15th November, 1997, 5th December, 1997, 5th January, 1997, 20th February, 1996, 19th August, 1998, 14th September, 1998, 13th March, 2002, 24th December, 2001 and 22nd October, 2006. There was no reply from the petitioner. Lastly, the petitioner replied the respondent's letter dated 26th October, 2006 and informed the respondent that in view of the resolution No. 159 dated 19th February, 1985, he is not entitled to the benefit for the period during the suspension. Therefore, the respondent-Original Complainant filed complaint before the Industrial Court. As there was delay in preferring complaint, Respondent preferred application for condonation of delay being Misc. Application No. 94 of 2007. The said application was vehemently opposed by the petitioner by filing their reply. Considering the submission made by both the parties, the learned Member, Industrial Court, Pune vide its order dated 23rd February, 2010, condoning the delay in filing complaint. Hence, the present petition.

2. The learned Counsel appearing for the petitioner submits that the learned Member, Industrial Court, Pune, erred in coming to the conclusion that the respondent No. 1 shown sufficient cause for condoning the delay. He further submits that there was delay of more than 22 years in filing complaint. He further submits that respondent No. 1 though intimated earlier that the petitioner has taken decision to withdraw all his benefits during the period of suspension as per resolution No. 159 dated 19th February, 1985, the respondent No. 1 failed and neglected to take immediate steps to challenge the said decision. Therefore, the impugned order passed by the learned Member, Industrial Court, Pune dated 23rd February, 2010 is liable to be set aside.

3. On the other hand, the learned Counsel appearing for the respondent No. 1 - Original Applicant vehemently opposed the present petition. He submits that there is no substance in the present petition, as order passed by Court below is in discretionary power and same is passed after considering the oral as well as documentary evidence on record.

4. I have gone through the impugned order dated 23rd February, 2010, the application filed by respondent No. 1 for condonation of delay and oral evidence. It is admitted fact that the petitioner by their Resolution No. 159 dated 19th February, 1985 decided to take action against respondent No. 1's benefit during suspension period. The said Resolution and/or the abstract of the said Resolution was communicated to the respondent No. 1 first time in the year 2006. Therefore, the learned Member, Industrial Court, Pune rightly held that the cause of action arose first time in the year 2006. The lower Court rightly held that respondent No. 1 pointed out sufficient cause for condonation of delay.

5. After going through the application for condonation of delay and the impugned judgment, I am satisfied that the respondent- Original Applicant have made out sufficient cause for condonation of delay. Even the Apex Court in the matter of N.

Balakrishnan Vs. M. Krishnamurthy, held that rule of limitation are not meant to destroy the rights of parties. Paragraph 11 of that judgment reads thus :

Paragraph 11:--Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal inquiry. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

6. Our High Court in the matter of Baburao Deorao Wankhede v. Sewa Sahakari Sanstha and another, 1989 Mah. L.J. 1144 condone the delay of 10 years on the ground that the impugned order causing grave injustice to the applicant. Head note reads thus:

Limitation Act 1963--Section 5--Condonation of delay in filing appeal -application for- impugned order causing grave injustice of the delay was of about 10 years - in view of interest of justice - delay requires to be condoned.

7. It is to be noted that the learned Member of Industrial Court, Pune recorded in paragraph 5 of the impugned judgment that the petitioner has not adduced any oral evidence on their behalf and filed no evidence prusis at Exhibit C-8. Even in their reply to the application for condonation of delay, nowhere they stated when they communicated their decision as per Resolution No. 159 dated 19th February, 1985 to the respondent- Original Applicant. This shows that first time in the year 2006, the petitioner communicated to the respondent their decision and reasons for withdrawing all the benefits during the period of suspension.

8. In the above mentioned facts and circumstances, I do not find any substance in the present petition.

Writ petition is rejected.