

(2010) 03 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 4816 of 2009

Sanjay Shalikram Ingle

APPELLANT

Vs

Lokmat Proprietors, Lokmat Newspapers Private Ltd.

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 46(5), 79
Constitution of India, 1950 — Article 226, 227
Industrial Court Regulations, 1975 — Regulation 101
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 20(1)
Industrial Disputes Act, 1947 — Section 33C, 33C(1), 33C(2), 33C(3)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30, 30(2), 50
Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 11, 17, 4, 5, 8

Citation : (2011) 1 LLJ 442

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : S.D. Thakur, for the Appellant; V.P. Marpakwar, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—Challenge in these Writ Petitions filed under Articles 226 read with 227 of the Constitution of India is to common order dated 21/7/2009 passed below Exh. 2 and 12 by the Industrial Court at Nagpur in ULP Complaints Nos. 209 to 215 of 2009 filed u/s 28 read with Schedule IV items 7 and 9 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter referred to as "the MRTU Act" for short). Industrial Court has held that in previous litigation between parties the entitlement to permanency was already settled and hence, subsequent ULP Complaints which only sought its execution needed to be filed only u/s 50 of MRTU Act. It therefore dismissed ULP Complaints No. 209 to 215 of 2009 as not maintainable and as time-barred. Hence with the consent of parties, Rule is made returnable forthwith and Writ Petitions are heard finally.

2. Undisputed facts in relation to previous litigation between parties reveal that by the common order dated 12.02.2002 the Industrial Court allowed seven earlier ULP complaints filed on 19/10/1996 u/s 28 of MRTU Act against present respondent. Those seven complainants are petitioners in these seven writ petitions before this Court. They had claimed permanency and consequential benefits as per provisions of Model Standing Orders after completion of 240 days contending that by not extending to them the said benefits, the respondent - employer had indulged in unfair labour practice falling under Item 9 of Schedule IV of Act No. I of 1972. Said item makes failure to implement award, settlement, agreement etc., an unfair labour practice. The complainants there had filed applications u/s 30(2) of MRTU Act claiming as interim relief the minimum wages as per provisions of Minimum Wages Act. Those applications were rejected on 29.04.1998. Thereafter, the complainants sought amendment in those ULP Complaints pointing out termination of their services with effect from 01.05.1998. The respondent/employer filed written statement and denied relationship of employer and employee. It was stated that all complainants were employees privately engaged by the officers in the employment of the employer and on some occasions they could have visited the establishment in connection with domestic work of said officer. It was contended that the respondent never recruited any such complainant. It was further stated that for filling in the posts with it, the vacancies are advertised, applications are invited and after interview, the successful candidate is given appointment order in writing. All this procedure was not followed in the case of petitioners and none of them was in fact in employment of present respondent. With this defence, the petitioner filed applications for dismissal of complaint on the ground that as the employer and employee relationship was in dispute, the Industrial Court could not have entertained ULP Complaint at all. That application was rejected and when matter came before this Court, on 27.11.2002 in view of judgments of the Hon''ble Apex Court in the case of Vividh Kamgar Sabha v. Kalyani Steels Ltd. reported at 2001 (1) SCC 381, and as also judgment of Division Bench of this Court in the case of Hindustan Coca Cola Bottling v. Bhartiya Kamgar Sena reported at 2002 I LLJ 380, the learned Single Judge allowed all those petitions. The complainants then filed LPA No. 172 of 2003 to 178 of 2003 and the Division Bench of this Court by judgment dated 13.07.2007 allowed those Letters Patent Appeals and restored the matter back before the Single Judge for scrutiny of remaining controversy. This judgment of Division Bench was challenged before the Hon''ble Apex Court but then the Hon''ble Apex Court did not grant leave. After said rejection by the Hon. Apex Court, a review was filed before the Division Bench of this Court and rejection of that review was also assailed in SLP again, which came to be rejected. In these circumstances, those writ petitions were considered by me in Lokmat Proprietors, Lokmat Newspapers Limited Vs. Prabhakar Rambhauji Choudhari, . I did not find any jurisdictional error or perversity in the findings reached by the Industrial Court and hence that challenge by the employer was dismissed on 10/10/2008. The employer then filed LPA before this Court and then an SLP before the Hon''ble Apex Court. Said SLP is stated to be pending.

3. On 8/6/2009 or thereabout the petitioners filed present ULP Complaints 209 to 215 of 2009 and asked for wages as also other benefits according to the provisions of various awards like Palekar award, Bachawat award and Manisana award applicable to working journalists and claimed that failure to extend the same to them constituted an unfair labour practice. By other prayer, in addition to amount determined as above, they also sought compensation at 33% of that amount or interest thereon at 18% (which ever higher) as they are made victims of an unfair labour practice. In short the grievance after permanency is in respect of benefits and salary/salaries in appropriate pay scale as per their occupation as specified in different awards governing service conditions in news paper industry. Though no particular amount as such is claimed in complainants, vide applications at Exh.2 u/s 30(2) for grant of interim relief, directions to employer to pay 75% of the amount claimed in complaints during its pendency was sought. This application was replied on 10/7/2009 by respondent/employer pointing out that ULP Complaints were for implementation of order of the Industrial Court dated 12/2/2002 which already held complainants entitled to permanency after completion of 240 days of service "with all consequential benefits". Hence item 7 or item 9 were not at all applicable and as benefits needed to be calculated and recovered, recourse to provisions of Section 50 of the MRTU Act was only permitted. They also pointed out that Section 28 could not be read as substitute of Section 50 MRTU Act as both prescribed different periods of limitation. They also pointed out the forum of Labour Court made available for such recoveries by Section 17 of the Working Journalists and Other Newspaper Employees (Conditions of Service & Miscellaneous Provisions) Act, 1955 i.e., "Working Journalists Act" for short. They pointed out that the details of wages worked out by employee were not placed on record and as the claim was for period prior to 1/5/1998, it was barred by limitation. With all most same plea, the employer also filed separate applications below Exh.12 for dismissal of ULP Complaints. On 18/7/2009 petitioners filed their reply to Exh. 12 denying all challenges and contending that unfair labour practice was occurring day to day and their complaints were not time barred. Impugned common order is passed in this background below these Exhs. 2 and 12 by the Industrial Court. It may be stated here that though in Ex. 12 contention that Working Journalists Act is a special Act and hence, MRTU Act or remedy under it stands impliedly repealed has been raised, before this Court no such argument has been advanced.

4. Shri Thakur, learned Counsel has argued that entire approach of the Industrial Court in accepting the objection of employer and holding that ULP Complaints ought to have been filed u/s 50 of MRTU Act is unsustainable on facts as also law. First as per annual turn over of the newspaper, its classification under the relevant award needs to be ascertained and then the corresponding wages or benefits prescribed therefore can be extended to the complainants. Till the categorization or classification is so determined, the entitlement of petitioners can not crystallize and hence, exercise required to be undertaken by the Industrial Court is of adjudication of basic facts from which said entitlement

emerges. After declaration of permanency in earlier round, the petitioners become entitled to benefits of various awards holding the field as per Working Journalists Act and as those awards have not been extended to them, item 9 of Schedule IV of MRTU Act has been rightly invoked. He states that only rough calculations are made by the petitioners because of various disputed questions of facts involved and said calculations are filed as a document which needs to be proved. All these calculations are denied by employer. However, the plea on limitation is not countered by it. As the awards are in force and are not being applied to petitioners, it is case of continuous unfair labour practice. To illustrate the scope of Section 50 of MRTU Act, continuous cause and right approach towards issue of limitation, he relied upon certain judgments and I will refer to them at appropriate juncture.

5. Shri Marpakwar, learned Counsel on the other hand has supported the impugned order by urging that it is not the case of continuous cause but of execution of judgment of Industrial Court dated 12/2/2002 which as yet has not attained finality. He invites attention to ULP Complaints as filed in an effort to demonstrate that only exercise of calculation is envisaged and no dispute about classification or categorization is even alleged therein. Support is taken from the document i.e., charts of calculations filed by the petitioners/complainants to show the amounts due and recoverable. The MRTU Act itself makes a special provision for such calculations and hence, only forum u/s 50 is open therefore. Judgment of the Hon'ble Apex Court in Rajasthan State Road Transport Corporation v. Zakir Hussain reported at 2005 III CLR 524 is pressed into service to urge that said computation can not be done in any other way. As time limit prescribed therefore had already expired, the ULP Complaints as filed have been rightly dismissed by the Industrial Court.

6. Industrial Court has found that entitlement of petitioners to regularization and consequential benefits was already declared by competent court on 12/2/2002 and only exercise of calculations of amounts in pursuance thereof u/s 50 was left. It found that complainants had also placed on record the statement of amounts due to them as a document and it supported contention that only arithmetical exercise was called for. It found that Section 28 MRTU Act prescribed limitation of 90 days and as cause had accrued on 12/2/2002, ULP Complaints filed in 2009 were after considerable delay. It also expressed that though pending litigation may be a good excuse, delay does not get condoned automatically. It held that a special forum u/s 17 of the Working Journalists Act was also available and hence Complaints before it were not maintainable. It concluded that alternate & efficacious remedy u/s 50 of MRTU Act or Section 17 of Working Journalists Act is available to Complainants and hence, ULP Complaints were not tenable.

7. In Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another, relied on by Shri Thakur, learned Counsel while considering the validity and scope of Section 17 of the Working Journalists Act, Hon'ble Apex Court holds that the

employee's claim against his employer which can form the subject matter of an inquiry u/s 17 must relate to compensation awardable u/s 4, gratuity awardable u/s 5 or wages claimable under the decisions of the Wage Board. If the employee wishes to make any other claim against his employer, that would not be covered by Section 17. As the marginal note shows, the section deals with the recovery of money due from an employer. The section provides for a procedure to recover the amount due from an employer, not for the determination of the question as to what amount is due. The condition precedent for the application of Section 17 is stated to be a prior determination by a competent authority or the Court of the amount due to the employee from his employer. Hon'ble Apex Court holds that it is only if and after the amount due to the employee has been duly determined, the stage is reached to recover that amount and it is at this stage that the employee is given the additional advantage provided by Section 17 without prejudice to any other mode of recovery available to him. The observations clearly show the ratio & learned Member of Industrial Court could not have given importance to factual matrix. Law laid down is very clear and the Hon'ble Apex Court observes:

9. In this connection, it would be relevant to remember that Section 11 of the Act expressly confers the material powers on the Wage Board established u/s 8 of the Act. Whatever may be true nature or character of the Wage Board - whether it is a legislative or an administrative body - the legislature has taken the precaution to enact the enabling provisions of Section 11 in the matter of the said material powers. It is well known that, whenever the legislature wants to confer upon any specified authority powers of a civil Court in the matter of holding enquiries, specific provision is made in that behalf. If the legislature had intended that the enquiry authorised u/s 17 should include within its compass the examination of the merits of the employee's claim against his employer and a decision on it, the legislature would undoubtedly have made an appropriate provision conferring on the State Government or the specified authority the relevant powers essential for the purpose of effectively holding such an enquiry. The fact that the legislature has enacted Section 11 in regard to the Wage Board but has not made any corresponding provision specified authority u/s 17 lends strong corroboration to the view that the enquiry contemplated by Section 17 is a summary enquiry of a very limited nature and its scope is confined to the investigation of the narrow point as to what amount is actually due to be paid to the employee under the decree, award, or other valid order obtained by the employee after establishing his claim in that behalf. We are reluctant to accept the view that the legislature intended that the specified authority or the State Government should hold a larger enquiry into the merits of the employee's claim without conferring on the State Government or the specified authority the necessary powers in that behalf. In this connection, it would be relevant to point out that in many cases some complicated questions of fact may arise when working journalists make claims for wages against their employers. It is not unlikely that the status of the working journalist, the nature of the office he holds

and the class to which he belongs may themselves be matters of dispute between the parties and the decision of such disputed questions of fact may need thorough examination and a formal enquiry. If that be so it is not likely that the legislature could have intended that such complicated questions of fact should be dealt with in a summary enquiry indicated by Section 17.

10. Section 17 seems to correspond in substance to the provisions of Section 20, Sub-section (1) of the Industrial Disputes (Appellate Tribunal) Act, 1950, which has now been repealed. Under this section, any money due from an employer under any award or decision of an Industrial Tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision. It is clear that the proceedings u/s 20, Sub-section (1) could commence only if and after the workman had obtained an award or decision in his favour. We are inclined to think that the position u/s 17 is substantially similar.

11. In this connection we may also refer to the provisions of Section 33C of the Industrial Disputes Act (14 of 1947). Sub-section (1) of Section 33C has been added by Act 36 of 1956 and is modelled on the provisions of Section 17 of the present Act. Section 33C, Sub-section (2), however, is more relevant for our purpose. u/s 33C, Sub-section (2), where any workman is entitled to receive from his employer any benefit which is capable of being computed in terms of money, the amount at which such benefit may be computed may, subject to any rules made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined should be recovered as provided for in Sub-section (1). Then follows Sub-section (3) which provides for an enquiry by the Labour Court into the question of computing the money value of the benefit in question. The Labour Court is empowered under this Sub-section to appoint a commissioner who shall, after taking such evidence as may be necessary, the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case. These provisions indicate that, where an employee makes a claim for some money by virtue of the benefit to which he is entitled, an enquiry into the claim is contemplated by the Labour Court, and it is only after the Labour Court has decided the matter that the decision becomes enforceable u/s 33C(1) by a summary procedure.

These observations therefore clearly show that forum u/s 17 of the Working Journalist Act is available only when an ascertained sum is to be recovered and not otherwise. Here, first the classification of respondent newspaper and categorization is essential and then only the wages and other benefits relevant for petitioners can be determined. Petitioners are praying for that determination and also for compensation and interest for subjecting them to unfair labour practice. This compensation can not be awarded to them in proceedings u/s 17. In any case as Section 17 is not equivalent to Section 33C-2 of Industrial Disputes Act, no inquiry into any dispute as to classification or categorization and

annual turn over of the respondent news paper is possible under it. The finding of Industrial Court about availability of remedy u/s 17 to petitioners is unsustainable. It is obvious that theory of an alternate efficacious remedy was/is not relevant at all.

8. The next aspect to be scrutinized is that of limitation and continuous cause of action. Section 28 as also Section 50 of the MRTU Act prescribe different periods of limitation and both also enable the Labour or the Industrial court to condone delay. Paragraph 2 of the ULP Complainants show the contention that respondent newspaper establishment is covered by the provisions of the Factories Act, Industrial Disputes Act, Industrial Employment Standing Orders Act and Model Standing Orders framed thereunder. Paragraph 3 shows claim of entitlement to provisions of the Working Journalist Act and benefits accruing to newspaper employees under various awards like Palekar award, Manisana Award and Bachawat Award etc. Bahawat Award classifies the newspaper establishments in para 11 of Section II of Part I of Chapter IX of the Report on the basis of the gross revenue into 10 classes. Ascertaining whether their advertisement revenue is less or more than 45 per cent, of its gross revenue is also essential for this purpose. In 2009(1) CLR 93 - Mukund Nana Edke v. Dainik Gavkari, learned Single Judge while considering challenge to rejection of petitioner's application u/s 33C(2) claiming monetary benefits in view of the Award passed by Justice Manisana Commission has found that the jurisdiction of labour court u/s 33C(2) is very limited and is in the nature of execution proceeding. Unless a party has a pre-existing or pre-adjudged right the proceedings u/s 33C(2) are not tenable and as claim made by petitioner there was not adjudged by any competent authority, labour court was right in rejecting that application. In 2009(3) Clr 782 - Navbharat Press Employees Union v. State of Maharashtra, Labour Industries and Energy Department and Ors., conciliation officer declined to refer the demand for adjudication holding that the dispute was only in respect of implementation of Manisana Award and it did not fall within the ambit of law and could not be admitted in conciliation. Division Bench of this Court held that the dispute was as regards entitlement of the members of the petitioner union to higher wages on the basis that employer newspaper fell in Class II and not in Class IV of Clause 6 of the Manisana Award and hence basic question which to be decided was about class in which it fell. It would involve a detailed investigation as regards gross revenue and was not a case of mere implementation or execution of the said Manisana Award. Since in fact industrial dispute existed in this case, Division Bench found that the conciliation officer could not have refused to admit it in conciliation. In facts before me entitlement of petitioners to permanency only with consequential benefits has been declared. That may only entitle them to benefits of these awards but then their placement in particular category or class qua the service conditions as working journalists in relation to respondent newspaper needs to be determined. It is not the case where employer has fixed them in particular scale in purported extension of these awards and a wrong implementation is only under attack. The case of petitioners is of total non-

implementation and of continuous nature. Failure to extend the award does constitute an unfair labour practice under item 9 of Schedule IV of MRTU Act.

9. Whether in this situation Section 50 of MRTU Act offers a remedy? In 2004 I CLR 145 - Vaibhav Laxman Suravkar v. Ultra Drytech Engineering Ltd. relied on by the petitioners, the grievance was of non-compliance of the order of Industrial Court directing the respondents to pay the wages to the complainants. He filed application u/s 50 before Industrial Court for issuance of a recovery certificate & employer contended that application u/s 50 was not maintainable as the exact amount be payable is not reflected in the order. Entitlement of the workmen was not in dispute, period and amount of wages was also not in dispute and what remained was a simple arithmetic calculation. Learned Single Judge held that the Industrial Court erred in holding that provisions of Section 50 would not be attracted. A comparison of the Section 33C-2 - and Section 50 undertaken there demonstrated the difference between the two provisions. Section 50 applies where the money is due to the employee from an employer under an order passed by the Court under Chapter VI of the State Act while Section 33C(1) deals with a situation where the money due to an employee is under a settlement, award or under Chapter VA or VB of the Central Act. The industrial court had noted in its order that there was no effective challenge to the statement of computation which had been submitted on behalf of the workmen. The amount was not disputed, nor was the mode of calculation in dispute. The workmen had, not approached the industrial court in proceedings u/s 50 for an adjudication of their entitlement. Their entitlement had already been adjudicated upon in the order of 22nd June, 2001 passed in the complaint of unfair labour practices which was affirmed by this Court. This Court held that all that remained to be done was a simple arithmetic calculation. This court also noted that Section 50 is *pari materia* with Section 33C(1) of the Industrial Disputes Act, 1947, save and except that (i) under the former the amount due is pursuant to an order of the Court under Chap. VI while under the latter it is under a settlement award or under Chapter VA or VB and (ii) under the former the computation is done by the labour court while under the latter by the appropriate government. These two differences are held not to restrict the scope of Section 50 in comparison with Section 33C(1) or indicated that a Labour Court u/s 50 has a lesser power than the appropriate government. An arithmetical exercise is held no more alien to the court u/s 50 than it is to the appropriate government u/s 33C(1). Following observations in para 16 are important here:

16. Now, there can be no dispute about the principle that u/s 50, it would not be open to the Labour Court or the Industrial Court to adjudicate upon an entitlement for the first time and the statement of law in the judgment in Ramanathan's case (*supra*) is correct so far as it reiterates that position. Ramanathan's case does not lay down a wider principle and indeed, it cannot be so construed having regard to the law laid down by the Supreme Court. Section 50 refers to a situation where money is due to an employee from an employer under an order passed by the Court under Chapter VI. If the entitlement of the

employees has already been adjudicated upon and a simple arithmetical calculation is all that is required to be made, the workmen are entitled to move the Industrial Court u/s 50. The workman do not forsake their remedy u/s 50 merely because an arithmetical calculation is still to be made and was not made in the order of which enforcement is sought. To hold that Section 50 would not apply merely because in the original order of the Labour or Industrial Court, a final computation has not been made would be to render the salutary provision of Section 50 nugatory. Such an interpretation cannot be adopted particularly since it is contrary to the plain terms of Section 50 and the interpretation placed on a similar provision by the Supreme Court. To recapitulate, therefore, the provision of Section 50 of the Act can be availed of in a case such as the present where the entitlement of the workmen is not in dispute, where the period for which wages had to be paid was not in dispute, where the amount of wages is not in dispute and the only surviving question in that regard was an arithmetical calculation of the amount due and payable.

10. In judgment in *Ultra Drytech Engineering Ltd. and Another Vs. Vaibhav Laxman Suravkar and Another*, against the above judgment the Division Bench of this Court has maintained this view and I find its following observations important:

The legislative intention disclosed by Sections 33C(1) and 33C(2) is fairly clear. u/s 33C(1) where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the workman himself, or any other person authorised by him in writing in that behalf, may make an application to the appropriate Government to recover the money due to him. Where the workman who is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, applies in that behalf the Labour Court may u/s 33C(2) decide the questions arising as to the amount of money due or as to the amount at which such benefit shall be computed. Section 33C(2) is wider than Section 33C(1). Matters which do not fall within the terms of Section 33C(1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of Section 33C(2). If the liability arises from an award, settlement or under the provisions of Chapter V-A, or by virtue of a statute or a scheme made thereunder, mere denial by the employer may not be sufficient to negative the claim u/s 33C(2) before the Labour Court. Where however the right to retrenchment compensation which is the foundation of the claim is itself a matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon a reference, it would be straining the language of Section 33C(2) to hold that the question whether there has been retrenchment may be decided by the Labour Court.

15. The aforesaid three judgments of the Supreme Court of India though considers the provisions of Section 33C(1) but as we have indicated above, the same are in *pari materia* with Section 50 of the M.R.T.U. and P.U.L.P. Act, 1971 and therefore the law laid down by the Supreme Court in the aforesaid cases will

apply with equal force while construing the provision of Section 50 of the MRTU and PULP Act, 1971. Apart therefrom, the aforesaid judgments, in the case of U.P. Electric Supply Co. Ltd. v. R.K. Shukla and Anr., etc., the Supreme Court itself has compared the provisions of Section 33C(1) and (2) with Section 6H of the U.P. Industrial Disputes Act and has come to the conclusion that u/s 6-H of the U.P. Industrial Disputes Act an amount can be computed and the necessary relief can be granted by the Industrial Court. In our view thus the comparison of Section 50 of the M.R.T.U. and P.U.L.P. Act, 1971 with the provisions of Section 33C(1) leaves no manner of doubt that the jurisdiction of the Industrial Court u/s 50 permits simple arithmetic calculation for the purpose of granting effective relief to the party. Undoubtedly, u/s 50 of the M.R.T.U. and P.U.L.P. Act, 1971 the authorities are not empowered to determine the rights between the parties but once the rights are determined by an adjudication then, it is open to the Industrial Court to grant relief u/s 50 of the M.R.T.U. and P.U.L.P. Act, 1971 even though under the said section it possess only executory jurisdiction. We are also of the view that Section 50 of MRTU and PULP Act, 1971 is provided with a view to enable a party to have recourse to an expeditious remedy. We are therefore of the view that we must prefer an interpretation which advances the object of the Act rather than defeat the same.

11. The remedy u/s 50 of MRTU Act is available only to recover the past dues. Compensation or interest sought by the petitioners as penalty for their victimization can not be allowed thereunder. Moreover the classification of respondent establishment is also not possible under it. The respondent has not expressly accepted the calculations of petitioners and it appeared from arguments that dispute about classification of newspaper is also yet not finally settled. Thus entitlement of petitioners to an ascertained sum is possible only after proper classification and their fixation in relevant wage structure. Thereafter only the question of simple arithmetical exercise will arise and not till then. When jurisdiction u/s 50 of MRTU Act is narrower than one u/s 33C2 of Industrial Disputes Act, it follows that dispute as to entitlement under a particular Award is cognizable only under item 9 of Schedule IV thereof. Partial implementation or the wrong implementation are the facets of same unfair labour practice viz. failure to implement award, settlement or agreement under item 9. The learned member of the Industrial Court is therefore in error in holding that the entitlement of petitioners i.e., Complainants before it was completely adjudicated and only simple calculations were to be performed. It also overlooked the fact that the benefits of award can be declined to even a permanent or regularized workman or there may be complaints of incomplete or wrong implementation and victim has to invoke jurisdiction u/s 28 r/w item 9 of Schedule IV of MRTU Act. He can not seek declaration & direction u/s 50 in that respect. Observations of the Hon'ble Apex Court in Rajasthan State Road Transport Corporation v. Zakir Hussain (supra) to buttress the contention that when Act creates an obligation and enforces the performance in a specified manner, said performance can not be enforced in any other manner is therefore

is not relevant here. Hon"ble Apex Court has made those observations while holding that a civil suit challenging termination by a daily wage conductor was not tenable because of Industrial Disputes Act.

12. Section 50 of MRTU ACT enables recovery of money due from employer but that application is required to be moved within one year from the date on which it became due. If the Court finds that application could not be moved within one year for sufficient cause, it can entertain it even after said one year. Section 28 thereof enables the victim of unfair labour practice to move Labour or Industrial Court within 90 days of the occurrence of such unfair labour practice. If good and sufficient reasons are shown, the Court can entertain a complaint filed after said period of 90 days also. Here it is already found that recourse to Section 50 of MRTU Act is not possible. In *Shankar Mahadeo Charpe v. S.S.H. Quazi* 1984 Lab.I.C. 948, relied upon by the petitioners the learned Single Judge of this Court has held that the filing of application for condonation of delay along with belated ULP Complaint as per Regulation 101 of the Industrial Court Regulations, 1975 framed under MRTU Act is not mandatory. In 1984 L.I.C. 1721 - *Regional Manager, MSRTC, Nagpur v. Regional Secretary, MSRT Kamgar Saghatana*, relied upon by petitioners, the Division Bench of this Court held that failure to implement a settlement includes even a partial failure to implement a particular term of the settlement. The settlement gave assurance of absorption to employees and Division Bench has observed that the employees had no other remedy but to invoke item 9 of Schedule IV to enforce that right. The right is held to be enforceable so long as the settlement remains in force and binding on parties. Language of Section 30 of MRTU Act is looked into in paragraph 9 to note that it contemplated two types of occurrences of unfair labour practice. The word "has engaged in" is found to contemplate occurrence of unfair labour practice once for all and only the effect continues to flow therefrom. The other phrase "is engaging in" is held to denote occurrence of unfair labour practice which is of continuing or recurring nature. The relief claimed by complainants there was found to be in relation to unfair labour practice of recurring nature and that unfair labour practice was found to recur so long as the relevant term of the settlement remained un-implemented. It relies upon the Full Bench judgment of Hon"ble Gujrat High Court in *The Textile Labour Association, Ahmedabad Vs. Ashok Mills Ltd.*, on Bombay Industrial Relations Act (11 of 1947), Section 79 (as amended in 1966) and Section 46(5). Hon"ble Gujrat High Court holds that limitation bars only a remedy but does not extinguish the right. In any industrial context so long as an illegal change was continued and recurring month to month, the Legislature could never have intended to deny the peaceful remedy in civil jurisdiction to the affected employee so that the illegal change can be obliterated and original industrial conditions in important matters in Schedule II would be restored by the Labour Court. Said High Court held that in the cases of wage award or payments of the amenities month to month, the question of making an illegal change would arise every month, when the wages in the sense of basic wages or value of amenities would be refused by the employer. The

employer can choose to withdraw that illegal change even voluntarily at any time and then there would be no grievance. It is only when the employer would persist in his illegal change that the employees would have to resort to the Labour Court for getting a decision about the illegal change and an order of its withdrawal. Therefore, in the context of such recurring obligations, the term making of an illegal change could never have same meaning of change made once for all so that what continues is only its effect in the context of such recurring obligations to pay month to month the wages or value of such amenities. The illegal change would be made afresh every month when the employer refuses to carry out that continuous obligation. In *MSRTC v. Premal Gajbhiye* 2003 (4) Mh.L.J. 1025, Full Bench of this High Court relied upon this Division Bench and also Full Bench of Gujrat and concluded that "27. In the case in hand as already observed above, the unfair labour practice by the appellants in continuing the denial of the benefits under Clause 49 of 1956 settlement to the respondents is of recurring nature and till and until such benefits are given, it will continue to recur and, therefore, there is no substance in the contention of the appellants that the complaints were barred by Law of Limitation."

13. Perusal of ULP Complainants as filed here shows that in paragraph 19 it is pleaded that after High Court judgment dated 10/10/2008 it was necessary to wait to find out whether it is further challenged and there is prayer to condone the delay, if any. Without prejudice, it is also pointed out that non payment of wages as per the applicable Awards is a continuing wrong and hence no limitation applied. It is apparent that looking to the nature of grievance made, the cause is continuing one and hence, bar of limitation was/is not attracted at all. Even assuming that the complaints were barred by limitation, as held by the Industrial Court, it ought to have given an opportunity to them for explaining the delay. Admittedly no such opportunity is given to the present petitioners. The complaints as filed are not barred by limitation at all. The finding of Industrial Court in that respect is therefore not sustainable and deserves to be quashed & set aside.

14. The Complainants are complaining of failure on part of employer respondent to extend to them the service conditions as per award and that grievance is squarely covered only under item 9 of Schedule IV of the MRTU Act. Necessary declaration of indulgence in unfair labour practice, direction to withdraw it with appropriate positive direction are all possible only in ULP Complaint u/s 28 r/w Section 30 thereof. Prayers made and relief sought by present petitioners is not envisaged u/s 50. In any case, in present set of facts particularly when recourse was to welfare provisions and non-receipt of wages or benefits as per Awards in force was not in dispute (as defence of the employer was only of arithmetical calculations), the Industrial Court could not have refused to exercise narrower jurisdiction u/s 50 of the MRTU Act found available by it as its larger jurisdiction u/s 28 r/w Section 30 was already invoked. Dismissal of the ULP Complainants themselves in such situation on such technical ground was not at all warranted.

Even if its view on the controversy is presumed to be correct, still it should have seen that it was open to it to grant relief under appropriate jurisdiction and it was duty bound to exercise that jurisdiction in the interest of weaker section of the society.

15. Thus the common orders dated 21/7/2009 passed below Exh. 2 and 12 by the Industrial Court at Nagpur in ULP Complaints 209 to 215 of 2009 are quashed and set aside. Application at Exh. 12 filed by the respondent employer in all matters for their dismissal are rejected. Said ULP Complainants are restored back to file for further consideration as per law. Writ petitions are accordingly allowed. But in the circumstances of the case, there shall be no order as to costs.