
(1996) 03 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 2276 of 1993

Satyawan Narayan Dewoolkar

APPELLANT

Vs

National Textile Corporation, Bombay and Others

RESPONDENT

Date of Decision : 29-03-1996

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 106, 3, 42, 52, 63

Citation : (1996) 4 BomCR 7 : (1996) 73 FLR 1570 : (1998) 3 LLJ 887 : (1996) 2 MhLj 244

Hon'ble Judges : J.K. Chandrashekhara Das, J;G.R. Majithia, J

Bench : Division Bench

Judgement

ChandraShekhara Das, J.—1. The petitioner was a workman in Mumbai Textile Mill which has been taken over by the National Textile Corporation, the first Respondent. He challenges the order of the Industrial Court at Bombay passed in Appeal (IC) No. 107 of 1989 dated April 15, 1993. Though the Industrial Court has found that he is entitled for the relief of reinstatement and back wages, it refused the relief to the petitioner on the ground that his application filed before the Labour Court at Bombay, being Application (BIR) No. 344 of 1986 was premature. Earlier Labour Court at Bombay had dismissed his application.

2. The short facts relevant for the purpose of this case are thus :-

(a) The petitioner while working as a workman under the Mumbai Textile Mills participated in a general strike of the cotton textile mills which commenced on 18th January, 1982. It was a strike which affected the entire Textile Mills in the region of Bombay. The strike was declared illegal. Eventhough the strike was declared illegal, it is alleged by the petitioner, that he was ready and willing to work as he did not participate in the strike and that he was always attending the gate of the Mill regularly and that he was denied employment. While so, letter dated 29th March, 1986 was issued by the first respondent terminating the services, offering him 13 days wages in lieu of notice. On receipt of this letter he sent a notice (commonly known as approach letter) purportedly u/s 42(2) of the

Bombay Industrial Relations Act, hereinafter referred to as "the Act", to the first respondent on 10th May, 1986 requesting the management that he may be reinstated in service with full back wages with effect from 18th January, 1982. After 10 days of dispatch of the letter, the petitioner filed an application before the Labour Court at Bombay u/s 79 read with Section 42(4) of the Bombay Industrial Relations Act, 1946, with a prayer of reinstatement with full back wages. The said application was resisted by the first respondent before the Labour Court and tried to justify the letter of 29th March, 1986. The main contention raised by the first respondent before the Labour Court was that the application filed by the petitioner was premature as the same has been filed before elapsing the 15 days period from the date on which the approach letter was sent as enjoined by Rule 53(2) of the Bombay Industrial Relations Rules, 1947, hereinafter called "the Rules". The management further contended that the strike was declared to be illegal; that the petitioner refused to attend the work inspite of the several appeals made by the first respondent etc. etc. The Labour Court on appreciation of evidence found on merits that the petitioner is not entitled to any relief. The Labour Court also found that the application of the petitioner was not maintainable on the ground that it is premature as the application has been filed before expiry of 15 days from the date of dispatch of the approach letter.

(b) Aggrieved by the order of the Labour Court, the petitioner filed an appeal before the Industrial Court at Bombay. The Industrial Court, as pointed out earlier, has dismissed his appeal, after holding that he is entitled to reinstatement with full back wages.

3. It is to be noted that the first respondent has not challenged the order of the Industrial Court against the finding on facts that the petitioner is entitled to reinstatement with full back wages. Therefore, the only question that we are called upon to decide in this case is whether the refusal of the relief by the appellate Court to the petitioner on the ground that the application is premature in the light of Rule 53(2) of the Rules is legal and valid.

4. Since an intriguing and at the same an interesting question has been arisen in this case as to the legality of the order passed by the Industrial Court dismissing the application of the petitioner on the ground of premature in the light of Rule 53(2) of the rules, we sought the assistance of a Senior Counsel of this Court Mr. S.J. Deshmukh and he has ably assisted us in deciding this case.

5. Before going into the rival contentions of the parties in this case, it is important to refer the relevant provisions of the Act and the rules. Section 42 of the Act reads thus :

"42. (1) Any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. He shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned for the

local area, the Registrar, the Labour Officer and such other person as may be prescribed. He shall also affix a copy of such notice at a conspicuous place on the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any particular case.

(2) Any employee desiring a change in respect of an industrial matter not specified in Schedule I or III give a notice in the prescribed form to the employer through the representative of employees, who shall forward a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(3) When no settlement is arrived at in any conciliation proceeding in regard to any industrial dispute which has arisen in consequence of a notice relating to any change given under sub-section (1) or sub-section (2), no fresh notice with regard to the same change or a change similar in all material particulars shall be given before the expiry of two months from the date of the completion of the proceeding within the meaning of Section 63. If at any time after the expiry of the said period of two months, any employer or employee again desires the same change or a change similar in all material particulars, he shall give fresh notice in the manner provided in sub-section (1) or (2), as the case may be.

(4) Any employee or a representative union desiring a change in respect of (i) any order passed by the employer under standing orders, or (ii) any industrial matter arising out of the application or interpretation of standing orders, or (iii) an industrial matter specified in Schedule III, except item (5) thereof shall make an application to the Labour Court and as respect change desired in any industrial matter specified in item (5) of Schedule III, to the Industrial Court.

Provided that no such applications shall lie unless the employer or a representative union has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period".

Section 78 and 79 of the Act read thus :-

"78 (1) Labour Court shall have power to -

A. decide -

(a) disputes regarding -

(i) the propriety or legality of an order passed by an employer acting or purporting to act under the standing order;

(ii) the application and interpretation of standing orders;

(iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III except item (5) thereof and matters

arising out of such change;

(b) industrial disputes -

(i) referred to it u/s 71 or 72;

(ii) in respect of which it is appointed as the arbitrator by a submission;

(c) whether a strike, lock-out, closure, stoppage or any change is illegal under this Act;

B. try offences punishable under this Act and where the payment of compensation on conviction for an offence is provided for, determine the compensation and order its payment;

C. require any employer to -

(a) withdraw any change which is held by it to be illegal or withdraw temporarily any change the legality of which is a matter of issue in any proceeding pending final decision, or

(b) carry out any change provided such change is a matter in issue in any proceeding before it under this Act.

D. require an employer, where it finds that the order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee made by the employer :-

(i) was for fault or misconduct committed by the employee which came to the notice of the employer more than six months prior to the date of such order;

(ii) was in contravention of any of the provisions of any law, or of any standing order in force applicable to such employee, or

(iii) was otherwise improper or illegal -

(a) to reinstate the employee forthwith or by a date specified by it in this behalf and pay him wages for the period beginning on the date of such order of dismissal, discharge, removal, retrenchment, termination of service or suspension, as the case may be, and ending on the date on which the Labour Court orders his reinstatement or on the date of his reinstatement, whichever is later, or

(b) to pay to the employee in addition to wages (being wages for the period commencing on the date of his dismissal, discharge, removal, retrenchment or termination of service and ending on the date on which the Labour Court orders such payment, such sum not exceeding four thousand rupees by way of compensation, regard being had to loss of employment and possibility of getting suitable employment thereafter.

(2) Every offence punishable under this Act shall be tried by the Labour Court within the local limits of whose jurisdiction it was committed.

Explanation :- A dispute falling under clause (a) of paragraph A of Sub-section (1) shall be deemed to have arisen if within the period prescribed under the proviso to sub-section (4) of Section 42, no agreement is arrived at in respect of an order, matter or change referred to in the said proviso.

79. (1) Proceedings before a Labour Court in respect of disputes falling under clause (a) of paragraph A of Sub-section (1) of Section 78 shall be commenced on an application made by any of the parties to the dispute, a special application under Sub-section 3 of the Section 52 or an application by the Labour Officer or a representative union and proceedings in respect of a matter falling under clause (c) of the said paragraph A on an application made by any employer or employee directly affected or the Labour Officer or a representative union.

(2) Every application under Sub-section (1) shall be made in the prescribed form and manner.

(3) An application in respect of a dispute falling under Clause (a) of paragraph A of Sub-section (1) of Section 78 shall be made -

(a) if it is a dispute falling under sub-clause (i) or (ii) of the said clause, within three months of the arising of the dispute;

(b) if it is a dispute falling under sub-clause (iii) of the said clause within three months of the employee concerned having last approached the employer under the proviso to sub-section (4) of Section 42 :

Provided that, the labour Court may, for sufficient reasons, admit any application in respect of any dispute made to it under this sub-section after the expiry of the period of three months specified therefore under sub-clause (a) or (b), as the case may be.

(4) An application in respect of a matter falling under clause (a) of paragraph A of sub-section (1) of Section 78 shall be made within three months of the commencement of the strike, lock out, closure or stoppage or of the making of the illegal change, as the case may be :

Provided that the Labour Court may, for sufficient reasons, admit any application for a declaration that a change is illegal under this Act, after the expiry of three months from the date on which such change was made.

Provided further that when an application is admitted after the expiry of three months under the preceding proviso the employer who made the change shall not be liable to the penalty provided u/s 106".

There is no dispute between the parties that a dispute contemplated u/s 78(1) has arisen in this case. Learned Counsel for first respondent Mr. Shekhar Naphade argued that no cause of action has arisen in favour of the petitioner unless and until the 15 days is expired after the approach letter is dispatched. In other words, an application u/s 42(4) of the Act can be filed only after expiration of 15 days. He submits that the application has been filed before elapsing of 15

days from the date on which the approach letter was sent. To appreciate his argument it is necessary to extract Rule 53(1) and (2) of the Rules also.

"53(1) Any employee or a Representative Union desiring a change in respect of (i) any order passed by the employer concerned under Standing Orders or (ii) any industrial matter arising out of the application or interpretation of Standing Orders or (iii) an industrial matter specified in Schedule III shall make an application in writing to the employer. An application for change in respect of an order passed by the employer under Standing Orders shall be made within a period of three months from the date of such order. Where such application is made by an employee it may be made to the employer direct or through the Labour Officer for the local area or the representative of employees concerned. A copy of the application shall be forwarded to the Commissioner of Labour and in cases where such application is not made through the Labour Officer for the local area to that officer.

(2) Where an application has been made by an employee under Sub-rule (1) the employer and the employee may arrive at an agreement within fifteen days of the receipt of the application by the employer or within such further period as may be mutually fixed by the employer and the employee or the Labour Officer for the local area or the representative of employees as the case may be".

Rule 53 in fact provides an opportunity to both the employer and employee to approach the authority in certain contingencies. Rule 53(2) emphasises that before an employee or employer approach the Labour Court for the redressal of grievance first they should try to settle the disputes in between themselves. This rider given in Rule 53(2) is inconsistent with the principle underlined in the Act that every opportunity should be given to the parties to resolve the disputes themselves and that on failure alone the machinery provided under the Act can be resorted to for resolving the dispute. Section 42 of the Act provides for the remedy and Rule 53(2) postulates the manner in which such remedy should be availed of. In this context proviso to Section 42(4) is very relevant. Proviso to Section 42(4) provides that the application before the Labour Court shall lie only if application is sent in prescribed manner and an agreement is not arrived at between the parties within prescribed period. Mr. Deshmukh, learned Counsel contended that in the context of Section 42(4) of the Act and Rule 53(2) that making and the maintainability of the application are entirely different. Section 42(4) speaks about the making of an application by the employee whereas the proviso to Section 42(4) speaks about the lie of the application. According to Mr. Deshmukh, these two separate expressions used under the Section is not without any intention. Filing an application should be done by an applicant and the jurisdiction has to be exercised by a Court or authority under the statute. In other words, according to Mr. Deshmukh, 15 days time has been prescribed by rules made under the aforesaid Act only for the exercise of the power of the Court and not for the applicant to file an application. Dwelling upon this point, he elaborates that the Industrial Disputes Act, no doubt, is a social welfare

legislation. The cardinal principle underlined in the Act is to bring about the harmony and peace in the industrial sector. Every attempt should be made at every stage to negotiate and arrive at a settlement between the parties themselves. Therefore, the emphasis that has been made in the proviso is not for running out the 15 days but for settlement. He contended that this is all the more so as the Act does not provide such a period. The period is provided only in the Rules. In this context he brought to our notice a decision reported in *The K.C.P. Employees' Association, Madras Vs. The Management of K.C.P. Ltd., Madras and Others*, wherein it has been highlighted that the Industrial Law should be always interpreted in favour of the appellant. Paragraph 5 of the judgment reads as follows.

"5. In Industrial law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without over-stepping the proved facts, correct the balance-sheets and profit and loss accounts of the Central Workshop to the extent justified by the Act and the evidence and finish the lis within three months of receipt of this order. The appeals are dismissed. No costs".

Relying upon this decision Mr. Deshmukh argued that if an employee, by mistake, approached the Court before the stipulated time it is in the interest of justice and in furtherance of the avowed principle enunciated by the Supreme Court in the aforesaid decision ethically and legally proper to close the doors of justice for ever though the law always closes the door of a Court to a person who slept over his right. A person slept over the right and a person who approached the Court just before the stipulated time prescribed by the rules cannot be treated alike. He pointed out a decision reported in 1971 3 SCR, *Madhav Rao v. Union of India*, and drew our attention to an illuminating paragraph of the said judgment which reads thus :

"A provision which purports to exclude the jurisdiction of the Courts in certain matters and to deprive the aggrieved party of the normal remedy will be strictly construed, for it is a principle not to be whittled down that an aggrieved party will not, unless the jurisdiction of the Courts is by clear enactment or necessary implication barred, be denied recourse to the Courts for determination of his rights. The Court still interpret a statute as far as possible, agreeably to justice and reason and that in case of two or more interpretations one which is more reasonable and just will be adopted, for there is always a presumption against the law maker intending injustice and unreason. The Court will avoid imputing to the legislature an intention to enact a provision which flouts notions of justice and norms of fairplay, unless a contrary intention is manifest from words plain and unambiguous. A provision in a statute will not be construed to defeat its manifest purpose and general values which animate its structure. In an avowedly democratic polity, statutory provisions ensuring the security of fundamental human rights including the right to property will, unless the contrary mandate be

precise and unqualified, be construed liberally so as to uphold the right. These rules apply to the interpretation of constitutional and statutory provisions alike".

6. He lastly submitted that more or less similar circumstance arose in a case decided by Gujarat High Court wherein the aforesaid Section 42(4) read with Rule 53(2) has come up of consideration. The learned Counsel has taken us to various portions of the judgment in Amarsinh Swaroopsinh & Ors. v. Jagdish Processors, reported in 1993 2 CLR 1016. He contended that more or less similar facts have emerged in this case also. In that case the Gujarat High Court has held that Rule 53(2) of the Bombay Industrial Relations Rules is only directory and merely because an employee came before the Court two days or three days before the completion of 15 days the petition cannot be said to be not maintainable. The learned Division Bench of the Gujarat High Court in this decision observed thus :

"In such an eventuality the employee need not and should not wait for the expiry of the prescribed period of 15 days. Within the prescribed period of 15 days whenever the employer refuses to settle the dispute, from that date onwards the period of limitation of three months should be calculated. The contention of the employer has been negated by the High Court in the case of Amarsinhji Mills (supra). While rejecting the contention, in paras 5 and 6 of the reported decision this High Court has inter alia observed that under proviso to Section 42(4) of the Act two conditions are required to be satisfied before any employee can approach the Court in respect of a dispute arising out of the order passed by the employer against him. The first condition is that the employee or representative union in the prescribed manner should approach the employer with a request for the change. The second condition is that no agreement should have been arrived at in respect of the change within the prescribed period".

The Court further observed in paragraph 16 as under :

"True, before expiry of the prescribed period of 15 days, the Labour Court would not be free to exercise jurisdiction. In case an application is filed within the prescribed period the Labour Court may and should refrain itself from passing any order on the application".

In paragraph 17 it is observed :

"It is not with respect to any substantive right and obligation of the parties. Ordinarily the provision in relation to procedural matters is required to be considered directory unless by necessary implication it can be shown that the intention of the legislature was to make the same mandatory. Mere use of the word "shall" is not conclusive".

7. The Gujarat High Court was very emphatic in saying that the 15 days prescribed under Rule 53(2) is not mandatory and it is not a condition precedent to be fulfilled before an employee approach the Labour Court. In this connection the High Court in paragraph 25 observed thus :

"In this connection what is to be understood as pre-condition is not expiry of the prescribed period after which the application could be filed. What is of essential importance is as to whether settlement has been arrived at between the parties during the prescribed period or not. Pre-condition is absence of settlement between the parties during the prescribed period. As indicated hereinabove, even when application is filed before the expiry of the prescribed period it could be shown by either side that the settlement has been arrived at between the parties and, therefore, the application is not maintainable. Only when it is shown that the settlement has been arrived at between the parties during the prescribed period the Labour Court would be precluded from exercising its jurisdiction."

Mr. Deshmukh, therefore, contended that the principle laid down by the Gujarat High Court in interpreting Section 42(4) with Rule 53(2) of the Rules will be *para materia* applicable to the facts and also the law arising in this case.

8. Now we will consider the argument of the learned Counsel for the first respondent. Mr. Naphade submits, in short, that a cause of action for an employee u/s 42(4) would arise only when the 15 days time is elapsed after giving the approach letter to the employer. He fortifies his argument by relying on the decision of the Supreme Court reported in *Chhotobhai Jethabhai Patel and Co. Vs. The Industrial Court, Maharashtra Nagpur Bench, Nagpur and Others*, This is a case where a dismissed employee without resorting to Section 42(4) viz., without sending an approach letter to the employer directly approached the Labour Court. The Apex Court was examining the scope of jurisdiction of the Labour Court under Sections 72, 78(1)(D) in exercising the power u/s 42(4). The learned Counsel has relied upon the observation of the Supreme Court in that judgment, which reads thus :

"Under S. 79(1) proceedings before a Labour Court in respect of disputes falling under Clause (a) of paragraph A of Sub-section (1) of S. 78 must be commenced on an application made by any of the parties to the dispute, etc., and under Sub-section (2) every application under Sub-section (1) has to be made in the prescribed form and manner. Under S. 84 an appeal lies to the Industrial Court against the decision of a Labour Court in respect of a matter falling under Clause (a) or Clause (c) of paragraph A of Sub-section (1) of Section 78 except in the case of lock-out etc., or a decision of such Court under paragraph C of Sub-section (1) of the said Section.

"16. It must be held that a person who is dismissed would be an employee within the meaning of S. 3(13) of the Act and we can see no valid reason for differentiating the case of a dismissed employee from one who complains of some other change. As the scheme of the Act is that disputes should be settled as far as possible and primarily through conciliation and agreement, it does not stand to reason that an employee should be able to side-step all this by a direct reference to the Labour Court. A Labour Court is a creature of the statute and it can only exercise such jurisdiction as the statute confers on it. If there are certain preconditions to be exercised of its jurisdiction, it must refuse to entertain any

such application unless such pre-conditions are first complied with".

With great respect, we do not find that this decision lends any support to the contention of the Counsel for the first respondent. In fact, in this decision the Supreme Court has noticed that the conditions prescribed under the statute that before approaching the Labour Court the employee should first approach the employer has not been complied with and in that context the Supreme Court said that so long as that pre-condition is not fulfilled the Court will not get jurisdiction. In our case, the objection raised by the Appellate Court is that the petitioner has not approached the Court in the manner prescribed by the Rules. Formation of cause of action means emerging a right to a party to approach the competent Court for relief which is already provided under the enactments of legislature which normally fixes certain conditions to be fulfilled by the party. Once that condition is fulfilled a rule made under the Act cannot take away or demolish the cause of action by prescribing another condition to be fulfilled for the exercise of the jurisdiction of the Court. Non fulfillment of a condition prescribed under rules under such circumstances can only be said to be a defect which could be curable.

9. The learned Counsel for the respondent then relied upon another decision of the Supreme Court reported in *The Raipur Manufacturing Co. Ltd. Vs. Okhabhai Devrajbhai Patni*, In this case Sections 78 and 79 of the Act and Rule 53 has come up for consideration. In fact, the validity of the aforesaid provision has been examined by the Supreme Court in that case. Learned Counsel has relied upon this decision and argued that the Supreme Court has said that the waiting of 15 days as laid down in Rule 52(3) has been held to be mandatory. We fail to see that the Supreme Court has made such finding in this case even though we extensively and very carefully read that decision. What the Supreme Court held in that case is as under.

"The words used by the rule-making authority are "within 15 days of the receipt of the application by the employer or within such further period as may be mutually fixed between the employer and the employee" and these words are sufficiently wide to cover a situation where further period is mutually fixed after the expiration of the initial period of 15 days. There is really no warrant for reading in the words used by the rule making authority and restriction that further period must be mutually fixed before the expiration of the initial period of 15 days. It must be remembered that the object of this provision is that, as far as possible, the employer and the employee should arrive at an agreement in respect of the change desired by the employee and it is only where an agreement is not possible that the employee should be allowed to approach the Labour Court. The provisions of the Act are intended to bring about settlement of disputes between the employer and the employees and so far as the methodology or mechanics of the resolution of such disputes is concerned, the greatest importance is attached by the Legislature to settlement by negotiations. It is only where settlement through negotiations fails that other modes of

resolution of disputes are provided by the Legislature in the different provisions of the Act. It is in the light of this philosophy underlying the provisions of the Act and this policy and principle to promote, as far as possible, settlement by negotiations and avoid adjudication that the words used by the rule making authority in Rule 53(2) must be construed and if that is done, there can be little doubt that further period may be mutually fixed between the employer and the employee even after the initial period of 15 days has expired".

The question posed in that decision is whether the party can agree to a mutually agreed date for settlement even after the expiry of 15 days. With respect to the learned Counsel for the respondent we cannot rely on this decision for the purpose of resolving the dispute in hand. As we pointed out earlier the validity of the provisions of Sections 78 and 79 and Rule 53 was the subject matter of the above decision.

10. The learned Counsel for the first respondent drew our attention to a decision of this Court in *Ratnagiri District Central Co-op. Bank Ltd. v. Dinkar K. Watve & Ors.* 1989 2 CLR 202. The real question emerged in that case was whether the Labour Court is empowered to condone the delay in filing an application u/s 79 of the Bombay Industrial Relations Act. The learned Counsel was relying on paragraph 18 of the judgment which reads as follows :

"The net result is that before an application can be made to the Labour Court challenging an order passed by an employer acting or purporting to act under the Standing Orders, the employee or a representative union has to approach the employer with a request for a change. Such an application under Rule 53(1) in respect of an order passed by the employer under Standing Orders shall be made within a period of 3 months from the date of the order. After the employer is so approached the employer and the employee may arrive at an agreement within 15 days of the receipt of the application or within such further period as may be mutually fixed by the employer and the employee or the Labour Officer. If no agreement is arrived at within 15 days or the mutually extended period, the dispute must be filed before the Labour Court within 3 months thereafter."

As we pointed out earlier, the real question posed in that case was that from which point of time the 3 months period within which the application before the Labour Court to be filed to be reckoned, it is whether from the expiration of 15 days or whether from the extended period of 15 days. This decision, according to us, also however does not support for the contention raised by the Counsel for the first respondent in this case.

11. What emerges from the rival arguments of the parties herein is that a relief cannot be denied to a party, if he is otherwise entitled to, only and solely on the ground that he approached the Court a little earlier than the period prescribed by the rules. The refusal of the Appellate Court to grant the relief sought by the petitioner cannot, therefore, be justified. It is true that general law of limitation bars the remedy. But applying this principle to a case when a party approaching

of a Court a little earlier than the period prescribed by the rules seems to be putting the cart before the horse. Perhaps it may be that the petitioner's application is defective as he has come to the Court before the 15 days period prescribed under the Rules and that defect is, of course, curable after a lapse of 5 days without doing anything by any party. Only thing is that the Court cannot take cognisance of the complaint before the 5 days period is elapsed. We fully agree to the contention of Mr. Deshmukh that 15 days is prescribed only for taking cognisance of the matter by the Court. We do not find any reason to take a different view from what was taken by the Division Bench of the Gujarat High Court in the aforesaid decision. We find, therefore, that the denial of reliefs to the petitioner by the Industrial Court cannot be justified and is, therefore, liable to be set aside.

12. We have stated that the strike was commenced on 18-1-1982. A cut of date has been declared by the first respondent being 31-5-1983 to the employees to join duty. On that date the employer was prepared to entertain all the employees those who are willing to attend the work. Therefore, we feel that the petitioner is entitled for the wages only from the date on which the employer offered the employment i.e., 31-3-1983. The petitioner is, therefore, entitled to reinstatement with full back wages w.e.f. 31-3-1983 instead of 18-1-1982.

13. In the result, the writ petition is allowed. Rule is made absolute on the following terms.

(a) The order of the Industrial Court to the extent it refused the relief of reinstatement and back wages is set aside.

(b) The petitioner is entitled to be reinstated forthwith with full back wages w.e.f. 31-3-1983.

(c) In the circumstances there shall be no order as to costs.

We do express our gratitude for the able assistance rendered to us by Shri Deshmukh, Advocate in this case.

14. After the judgment was pronounced the learned Counsel for the first respondent sought leave to appeal to the Supreme Court. In the circumstances of the case we do not feel that any substantial question of public importance arise in this case. Leave refused.

15. Oral prayer for stay of the order is also declined.