

(2018) 01 BOM CK 0096
In the Bombay High Court
Case No : 704 of 2014

Sayaji s/o Mahadu Gavhane & Ors.

APPELLANT

Vs

Bajaj Auto Limited & Ors.

RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Code of Criminal Procedure, 1973, Section 417(3) - Power to appoint place of imprisonment
Limitation Act, 1963, Section 4, Section 24, Section 29(2) - Expiry of prescribed period when court is closed - Computation of time mentioned in Instruments - Savings
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, Section 31, Section 31

Citation : (2018) 01 BOM CK 0096

Hon'ble Judges : M.S.SONAK

Bench : Single Bench

Advocate : Nikhil S. Tekale, Sachin V. Dankh

Judgement

1. Rule in each of the petitions. With consent of and at the request of learned Counsel for the parties, Rule is made returnable forthwith.

2. Learned Counsel for the parties agree that both these petitions can be disposed of by common judgment and order. This is only appropriate, since, both these petitions are directed against the order dated 19.01.2011 (impugned order), made by the Industrial Court, Aurangabad. Petitioners, in Writ Petition No.704/2014, are workmen, whose application for restoration of Complaint (ULP) No.140/1999 was held as maintainable in law, but rejected on merits, by the impugned order. Petitioner, in Writ Petition No.6136/2016, is the employer who is aggrieved by the maintainability finding recorded in the impugned order. Taking into consideration this position, it is only appropriate that both these petitions

are heard together and disposed of by a common judgment and order.

3. Mr.Tekale, learned Counsel for the workmen, submits that the Industrial Court, after holding that the application for restoration made by the workmen on 29.08.2004, was maintainable, completely failed to exercise jurisdiction by holding that no sufficient cause was shown to explain delay of hardly 07 days in applying for restoration. Mr.Tekale submits that in fact the period of limitation is to be construed from the date of knowledge,

and there was no delay whatsoever in applying for restoration. In any case, Mr.Tekale submits that the circumstances that the workmen's advocate came to be appointed as a Judge and the workmen had no means to engage a new advocate were more than sufficient to order restoration.

4. Mr.Tekale pointed out that the petitioners were admittedly residing in rural parts of Maharashtra and were otherwise regular in attending the proceedings. Mr.Tekale pointed out that the case of these 10 petitioners is, in no manner, different from the case of remaining co-complainants numbering over 100, who have been granted relief/compensation by the Industrial Court. Mr.Tekale points out that it was not necessary for each of the complainants to remain present on each of the dates or to lead any oral evidence. Mr.Tekale points out that there is overwhelming evidence on the record which establishes that case of 10 workmen was, in no manner different than the case of their co- complainants. Therefore, there was no justification for the Industrial Court to deny the petitioners the same relief, which came to be granted to their co-complainants. In any case, there was no justification whatsoever to dismiss petitioners' application for restoration on the ground that delay of 07 days was not satisfactorily explained.

5. Mr.Tekale has relied upon several rulings, which will be referred to in the course of this judgment and order. In particular, Mr.Tekale, placed reliance upon the order made by this Court on 29.09.2010 in Writ Petition No.7756/2009, by which, relief, almost identical, to the relief applied for by the petitioners,

came to be granted by this Court. Mr.Tekale points out that the delay involved in W.P.No.7756/2009 was substantially greater than the delay of 7 days in the present case. Mr.Tekale points out that the employer has not even challenged this Court's order dated 29.09.2010 in Writ Petition No.7756/2009 and therefore, this Court, following its earlier order dated 29.09.2010 in Writ Petition No.7756/2009, should, allow this petition i.e. W.P.No.704/2014 and dismiss Writ Petition No.6136/2016.

6. Mr.Dankh, learned Counsel for the employer, however, submits that in this case, the application for restoration was made on 37th day from the date of the order. He submits that such an application could have been allowed by the the Industrial Court only if the same had been made within 30 days from the date of impugned order. He submits that on plain reading of Section 31 of MRTU & PULP Act, as also several rulings of this Court, it is quite clear that the Industrial Court lacks powers to condone any delay and, therefore, an application for restoration,

made beyond 30 days from the date of order, is not condonable and has to be dismissed as not maintainable. He submits that the finding to the contrary made by the Industrial Court in the impugned order is, therefore, beyond jurisdiction and is liable to be set aside.

7. Mr.Dankh has relied upon the following decisions in support of his submission that the Industrial Court has no power to to condone delay in filing an application for restoration under Section 31 of the MRTU & PULP Act:

(a) In the case of Rangrao Chandekar Vs. The Regional Manager, MAIDC Ltd., Nanded (L.P.A.

No.03/2004, decided by Division Bench of this Court on 05.01.2004;

(b) In the case of Dilip Jogdand Vs. Vaidyanath Co-Op. Bank Ltd. & others, 2007 (6) LJSOFT 186;

(c) In the case of Baban Dongare Vs. Pravara Medical Trust, 2014 (8) LJSOFT 192;

(d) In the case of Popat Routray Vs. Zilla Parishad,;

(e) Anand Samant Vs.M/s Kansai Nerolac Paints Ltd & others, 2016 1 CLR 88;

8. Mr.Dankh submits that in any case the Industrial Court has quite correctly held that there was no sufficient cause shown to seek restoration. This is a finding of fact based upon evidence led by the parties and since there is no perversity, there is no case made out to interfere with the same. On this basis, Mr.Dankh urges that Writ Petition No.704 of 2014 be dismissed and Writ Petition No.6136 of 2016 be allowed.

9. In order to evaluate rival contentions, reference to the facts and circumstances, in which such contentions arise, is quite necessary.

10. About 125 workmen employed at Bajaj Auto Limited (employer) filed Complaint (ULP) No.140/1999 before the Industrial Court at Aurangabad, complaining that the employer is indulging in unfair labour practices as described at items no.5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 ("ULP Act").

11. The Industrial Court, by an order dated 21.08.2004, allowed the Complaint in respect of most of the complainants but dismissed the Complaint for default i.e. for failure to lead evidence insofar as complainants no.08, 16, 19, 50, 52, 56, 60, 80, 98 and 100, are concerned. These complainants, who are petitioners in Writ Petition No.704/2014, on 28.09.2004, i.e. within a period of about 38 days from the date of Industrial Court's order dated 21.08.2004, filed an application seeking restoration of Complaint (ULP) No.140/1999, so that even they could get the same benefits as were awarded to the remaining workmen in terms of order dated 21.08.2004.

12. In the application seeking restoration, 10 workmen pointed out that they

reside in rural parts of Maharashtra and, therefore, access to the Industrial Court at Aurangabad, was not quite easy. They pointed out that advocate Mr.Kekan, engaged by them, was appointed as a Judge and after that, the workmen were pursuing their own matters, being unable to offer fees of advocate Mr.Gondikar, who was engaged by certain other workmen - complainants. They pointed out that they were diligent in pursuing the Complaint and since on most of the dates, the matter would get adjourned, there may have been some lapses on their part in attending the proceedings on some dates after March-2004.

13. They pointed out that they came to know on 24.09.2004 that the relief has been granted to their co- complainants, but the complaint came to be dismissed insofar as they are concerned, on account of their failure to lead evidence in the matter. On next day i.e. on 25.09.2004, they contacted

advocate Mr.Yateen I. Thole to file an application for restoration. Since, 25th, 26th and 27th September 2004 were holidays, they could not secure certified copy of the order dated 21.08.2004. Such certified copy was secured on 28.09.2004 and application for restoration was made on the same day. In the application, it was pointed out that there is no difference between the case of these complainants and others who were awarded relief/compensation in terms of the order dated 21.08.2004.

14. The application for restoration dated 28.09.2004 came to be dismissed by the impugned order dated 19.11.2011. The delay in disposal of this application was primarily because the employer contested the factual averments in the application, forcing the workmen to lead oral evidence. The employer also questioned the maintainability of the application for restoration on the ground that it was filed 37 days after the Industrial Court made its order on 21.08.2004, dismissing the Complaint for default as against these 10 workmen but granting relief/compensation to over 100 workmen i.e. co-complainants, whose case was, in no manner, different from that of these complainants. The employer contended that such application had to be filed within 30 days and the Industrial Court has no jurisdiction to entertain an application for restoration, if made even on the 31 st day, since, the Industrial Tribunal lacked power to condone the delay.

15. The Industrial Court, overruled employer's objection as to the maintainability of the application for restoration and held that the application was maintainable. However, the Industrial Court, by impugned order, also held that the reasons i.e.

appointment of workmen's advocate Mr.Kekan as a Judicial Officer or the fact that the workmen were residing in rural parts of Maharashtra having no easy access to the Industrial Court at Aurangabad, were not good enough reasons to explain the delay of 07 days in applying for restoration of the Complaint. On this basis, workmen's application for restoration dated 28.09.2004 came to be dismissed.

16. Initially, this Court, by judgment and order dated 30.01.2015, dismissed Writ Petition No.704 of 2014, primarily on the ground that services of 10 workmen i.e.

petitioners were already terminated with effect from January-1999 and since, such termination was never challenged by the petitioners, there was no point in allowing the application for restoration of the Complaint (ULP) No.140/99.

17. Review Application No.134/2015 was taken out by the petitioners, in which, they pointed out that the termination of their services with effect from January-1999 was not at all a bar, since, the Industrial Court was, adjudicating the issue of unfair labour practices and awarding them relief of compensation. It was pointed out that the services of remaining complainants in Complaint (ULP) No.140/99 had also been similarly terminated and the Industrial Court had no difficulty in awarding them relief/compensation. It was pointed out that the award of relief/compensation, insofar as co-complainants are concerned, came to be upheld up to the level of the Hon'ble Apex Court.

18. The petitioners also placed reliance upon the decision

of this Court in Writ Petition No.7756/2009, where, in similar circumstances or rather where, delay in applying for restoration was much greater than the so called delay in the present case, relief of restoration came to be granted. On this basis, petitioners urged that the order dated 30.01.2015, dismissing Writ Petition No.704/2014, called for review. This Court, by its order dated 16.03.2016, accepting most of the contentions of the petitioners, reviewed its order dated 30.01.2015 and restored Writ Petition No.704/2014 to the file.

19. It is pertinent to mention that until 16.03.2016, when, this Court allowed the Review Petition No.134/2015 and restored Writ Petition No.704/2014 to the file, the employer had not instituted any petition to question the Industrial Court's impugned order dated 19.01.2011, even though the impugned order had overruled employer's objection as to the maintainability. After a period of almost five years, however, the employer instituted Writ Petition No.6136/2016 on 13th June, 2016, seeking a following substantive relief:

(C) By issuing suitable writ, order or direction, quash and set aside the Findings on Issue no. (01) framed in the Judgment dated 19/01/2011 at page no. 83 in Misc/ULP/53/2004 and the Misc/ULP/53/2004 may kindly be dismissed on this count alone.

20. Mr.Tekale, learned Counsel for the workmen, is

justified in his contention that the Industrial Court, after holding that the workmen's application for restoration was very much maintainable, quite erroneously, failed to take into account that there was more than sufficient cause made out to order restoration. In this case, there is really no serious dispute that the case of the petitioners is virtually similar to the case of other co-complainants in Complaint (ULP) No.140/1999, who, as noted earlier, have already been granted relief/compensation. The record indicates that petitioners were substantially diligent in pursuing the Complaint atleast up to March 2004. There is also no dispute that advocate Mr.Kekan, who was originally engaged by

the petitioners, came to be appointed as a Judicial Officer during the pendency of proceedings before the Industrial Tribunal. There is also no dispute that the petitioners are residing in rural parts of Maharashtra and have been agitating for relief/compensation since the year 1999. In these facts and circumstances, it is apparent that access to the Industrial Court at Aurangabad must not have been easy for these petitioners-workmen. The impugned order granting benefit to over 100 similarly placed workmen but denying the relief to the petitioners on the ground of their failure to individually lead evidence in the proceedings, was made on 21.08.2004. Petitioners have explained, how from the date of knowledge, they have acted with utmost dispatch and applied for restoration, within a period of hardly 37 days from the date of Industrial Court's order and well within 30 days from the date of its knowledge. As if this was not enough, petitioners-workmen produced documentary evidence as well as led oral evidence in support of the statements made in the application seeking restoration. Petitioners were subjected to cross examination but

withstood the same. In these circumstances, the Industrial Court was entirely unjustified in concluding that no sufficient cause was shown for ordering restoration and consequently, denying opportunity to establish that the petitioners were also entitled to the same relief/compensation, as has been awarded to over 100 of their co-complainants in Complaint (ULP) No.140/1999. This is a classic case of overlooking material evidence on record and being swayed by irrelevant considerations. On this ground itself, the impugned order dated 19.01.2011, to the extent it holds that there was no sufficient cause for restoration, is liable to be set aside.

21. There is more than ample evidence on record that advocate Mr.Kekan, who was originally engaged by the petitioners, was appointed as a Judicial Officer. In fact, this position was not disputed. Despite this, the Industrial Court, has refused to exercise discretion in favour of petitioners-workmen on the specious plea that the petitioners-workmen failed to examine their advocate, meaning thereby advocate Mr.Kekan, who had already been appointed as a Judicial Officer, in support of their case for restoration. There was absolutely no necessity to examine advocate Mr.Kekan, who, by then, had admittedly been appointed as a Judicial Officer. On account of non examination of advocate Mr.Kekan, the Industrial Court was not at all justified in denying restoration.

22. The Industrial Tribunal has also, quite unjustifiably observed that the petitioners never took care to inquire about the progress of Complaint (ULP) No.140/1999, until it was dismissed against them on 21.08.2004, but have applied for restoration on

29.09.2004 i.e. after about 37 days. The material on record indicates that the proceedings in the Complaint have gone on for over six years from the year 1999. Atleast up to March 2004, petitioners were attending the proceedings. There is some truth in the case of petitioners that the proceedings would get adjourned from time to time and, therefore, they did not expect expedition, post

March 2004. In any case, petitioners have pointed out that their advocate was appointed as a Judicial Officer and they had no means to engage a new advocate or pay fees of the new advocate engaged by their co-complainants. There was absolutely no reason or justification to overlook this explanation, which was made good by the petitioners by way of oral as well as documentary evidence. The impugned order dated 19.01.2011, to the extent, it refuses to restore proceedings in Complaint (ULP) No.140/1999, is liable to be set aside.

23. From perusal of the impugned order, it is not quite clear as to whether the decision of this Court in Shrirang s/o Pandurang Tadas Vs. Bajaj Auto Ltd. (Writ Petition No.7756/2009, decided on 29.09.2010) was placed before the Industrial Court. Atleast the impugned order makes no reference to the same. The said decision covers the case of petitioners on all fours. The said petition had been instituted by workmen, who are, again, the co-complainants in Complaint (ULP) No.140/1999. By the same order dated 21.08.2004, the Complaint was dismissed for default as against the said petitioners as well. The said petitioners also applied for restoration on 28.09.2004. The said application was dismissed by the Industrial Court by order dated 08.05.2009, again, on the ground that the same was barred by limitation and

there was no sufficient explanation to seek restoration. This Court, by its judgment and order dated 29.09.2010, set aside the Industrial Court's order dated 08.05.2009, refusing to restore the Complaint by observing that the Industrial Court ought not to have ignored ground realities. Even in the said decision, this Court accepted the case of the petitioners-workmen that there was difficulty on their part to contact their advocate because subsequently, he had joined Judicial service. Following the decision in Shrirang Tadas (supra), therefore, the impugned order dated 19.01.2011, to the extent, it refuses to restore Complaint (ULP) No.140/1999 against the petitioners, will have to be set aside and the Complaint will have to be restored as against petitioners.

24. There is no reason to non suit petitioners-workmen in pursuing Complaint (ULP) No.140/1999 on the ground that petitioners' services were allegedly terminated in the year 1999 and they have failed to challenge such termination. In fact, on this ground, this petition was dismissed by an order dated 30.01.2015. However, later on, order dated 30.01.2015 was reviewed by this Court on 16th March, 2016, thereby recalling the order dated 30.01.2015 and restoring this petition to its file. This Court, in its order dated 16th March, 2016, at paragraphs no.13 and 14, has made following observations, which answer this contention against the employer.

13 Mr.Dankh, learned Counsel for the respondent-employer would strenuously urge that the present review application is not maintainable, as the grounds that are sought to be canvassed were not raised in Writ Petition, when the petition was dismissed. He would

then submit that the law, as holds the field governing the issues, which are

raised herein above, are answered by catena of judgments against the applicants, particularly entitlement of employees for relief in case they have not questioned their termination. According to him, even if the complaint is permitted to be restored, still the fact remains that the termination effected in 1999 is not questioned by the applicants till date.

14 Having bestowed my anxious thoughts to the submissions made, it is not in dispute that in similar set of facts between the same employer and similarly placed employees, this Court while allowing the Writ Petition No.7756 of 2009 has considered the object and statute under which the application for restoration was made before the learned Industrial Court. Mr.Tekale, learned Counsel for the applicants, in my opinion, is right in pointing out that the delay caused in moving restoration application in the said petition was very much more than the one caused in the facts of the present case. It is further required to be noted that the issue that was required to be adjudicated was whether the case for restoration and condonation of delay before the learned Industrial Court was made out or not and whether the Industrial Court was right in refusing the relief of restoration. In my opinion, even if the case of the respondent- employer is that of termination, the repercussion of such termination or the claim of the present applicants - employees and the fact that the applicants herein have made out strong case for restoration, particularly in the background of the reasons cited for absence of their lawyer, before the learned Industrial Court warrants invoking jurisdiction of review vested in this Court.

25. Reference is necessary to the decision of this Court in

the case of R.P.Sawant & others Vs Bajaj Auto Ltd. & another, 2002 (1) Mh.L.J. 626, in which, it has been held that the Complaint filed by the workmen under items 5, 6, 9 and 10 of Schedule IV before Industrial Court does not become infructuous due to removal of workman during pendency of complaint. The Industrial Court retains jurisdiction to grant relief even in such a case, if necessary by molding the relief. By respectfully following this ruling also, it can be safely said that the petitioners-workmen could not have been non suited on the ground of their termination in the year 1999.

26. Further, the material on record does indicate that there was no difference between the position of the petitioners- workmen and their co-complainants numbering over 100 in Complaint (ULP) No.140/1999. If, the termination of services of the co-complainants and their non challenge by the co- complainants had not precluded the Industrial Court from granting them relief/compensation in Complaint (ULP) No.140/1999, then, surely, there is no reason to treat the case of these petitioners by some different or an unequal yardstick. For this reason as well, it can not be said that petitioners are liable to be non suited to pursue the Complaint (ULP) No.140/1999 on the alleged ground that their services came to be terminated in the year 1999 and that they have not questioned such termination before the appropriate forum.

27. Insofar as Writ Petition No.6136/2016, instituted by the employer is concerned, Mr.Tekale, learned Counsel for the

workmen submits that such petition was instituted almost five years after the Industrial Court made the impugned order dated 19.01.2011. Mr.Tekale submits that there is no explanation for the inordinate delay and considering peculiar facts and circumstances of this case, the discretion may not be exercised in favour of the employer. Mr.Tekaler submits that none of the decisions relied upon by the employer suggest that the date of knowledge of an order is irrelevant for the purpose of computing the period of 30 days, within which an application is to be lodged for setting aside such order or for restoration of the proceedings. He submits that none of the orders, relied upon by the employer, take cognizance of the provisions contained in Section 29(2) of the Limitation Act, 1963. He submits that there is absolutely nothing in the text or for that matter, in the context of Section 31 of the MRTU & PULP Act to expressly exclude the application of provisions in Sections 4 to 24 (inclusive) of the Limitation Act, 1963. He submits that the MRTU & PULP Act is a welfare legislation and the same, should therefore, not be interpreted so as to render access to industrial justice extremely difficult or cumbersome. He submits that none of the decisions relied upon by the learned Counsel for the employer take into consideration the decisions of the Hon"ble Supreme Court in Mangu Ram Vs. Delhi Municipality, AIR 1976 SC 105, State of West Bengal and others Vs. Kartick Chandra Das and others, AIR 1996 SC 2437, Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5; and Akshaya Kumar Parida (dead) through L.Rs. Vs. Union of India & others, AIR 2015 Orissa 49 (FB), which have taken the view that unless the provisions of a special law expressly exclude application of provisions of Sections 4 to 24 (inclusive) of the Limitation Act,

1963, such provisions should be held applicable. For all these reasons, Mr.Tekale submits that Writ Petition No.6136/2016 is liable to be dismissed.

28. Mr.Tekale further submits that injustice will result if the technical objections raised by the employer at this point of time are considered and upheld. He submits that the workmen have been agitating for their just demands in a just manner right from the year 1999. Most of the co-complainants have already received the benefits/compensation. Such receipt of benefits/compensation has been upheld right up to the level of Hon"ble Apex Court. If on account of alleged and marginal delay of 07 days, the workmen are deprived the opportunity of even satisfying the Tribunal that their case is virtually identical to the case of over 100 co-complainants, then, severe injustice would result. Mr.Tekale submits that the purpose of writ jurisdiction is to promote justice and this is an additional reason why the employer"s writ petition, belatedly instituted, may be dismissed with costs.

29. As noted earlier, the employer did not institute Writ Petition No.6136/2016 within reasonable time from the Industrial Tribunal"s impugned order dated 19.01.2011. Writ Petition No.6136/2016 was not even instituted within

reasonable time from the date of institution of Writ Petition No.704/2014 by the workmen. Writ Petition No.6136/2016 was instituted almost 18 months after this Court, by its order dated 30.01.2015, allowed the Review Petition and restored Writ Petition No.704/2014 to the file. If the employer was indeed aggrieved by any finding recorded by the Industrial Court in its order dated 19.01.2011, then, it was the

duty of the employer to institute a petition to question the same within reasonable time from the date of institution of Writ Petition No.704/2014 by the workmen. The employer, however, took its chance and has chosen to institute Writ Petition No.6136/2016 after inordinate and unexplained delay. This is, by itself, a sufficient ground to dismiss Writ Petition No.6136/2016. However, apart from delay and laches, there are other reasons which warrant dismissal of Writ Petition No.6136/2016.

30. Although, it may not be open to this Court to take any divergent view from the view taken in the decisions relied upon by Mr.Dankh, learned Counsel for the employer, it is to be noted that the fact situation in the said decisions was not the same as the fact situation in the present case. In the present case, the statement, that the workmen obtained knowledge of the Industrial Court's order dated 21.08.2004, on 24.09.2004, has neither been seriously controverted nor has the evidence to that effect led by the workmen demolished. From the date of such knowledge, the application for restoration has been filed within hardly four days. In fact, certified copy of the order was received by the workmen on 25.09.2004 and from that date, the application for restoration has been virtually filed within three days. Taking into consideration this significant fact, it cannot be said that the application for restoration, made by the workmen on 28.09.2004, was barred by limitation, simply because the same was filed on 37 th day, as computed from the Industrial Court's order dated 21.08.2004. None of the decisions relied upon by Mr.Dankh, advocate, suggest such a pedantic construction.

31. No doubt, it is true, as contended by Mr.Tekale, that the decisions relied upon by the employer make no reference to the provisions in Section 29(2) of the Limitation Act. The decisions also make no reference to the authorities relied upon by Mr.Tekale, learned Counsel for the workmen. In Mangu Ram (supra), the provisions of Section 5 of the Limitation Act were held applicable to filing of Special Leave under Section 417 (3) of Criminal Procedure Code, 1898. In Mukri Gopalan (supra), the provisions of Section 5 of the Limitation Act were held applicable to appeals before the District Court under the provisions of Kerala Buildings (Lease and Rent Control) Act, 1965. In Kartick Chandra Das (supra), the provisions of Section 5 of the Limitation Act were held applicable to filing of Letters Patent Appeals against the order issuing contempt notice. In Akshaya Kumar Parida (supra), the Full Bench of the Orissa High Court has held that the tribunal has power to condone delay beyond 30 days in filing review petition under the Administrative Tribunal's Act, 1985. All these decisions rely upon the

provisions in Section 29(2) of the Limitation Act, 1963. However, apart from the restrictions on this Court, it is really not necessary to go into this issue in the facts and circumstances of the present case taking into consideration its distinguishing feature. It is settled position of law that even a single distinguishing feature is sufficient to distinguish a precedent. Besides, precedents are never required to be applied without examination and evaluation of the facts in the context in which they came to be rendered. This is an additional reason which warrants dismissal of Writ Petition No.6136/2016.

32. Finally, it is necessary to note that jurisdiction under

Articles 226 and 227 of the Constitution of India is discretionary and discretion is not required to be exercised unless substantial injustice has ensued or is likely to ensue. (See: Sangram Singh Vs. Election Tribunal, AIR 1955 SC 425). The extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India is intended to enable the High Court to issue writs in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of principles of natural justice, or refuse to exercise jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess "has resulted in manifest injustice". (See: Veerappa Vs. Raman & Raman Ltd., AIR 1952 SC 92). This principle was reiterated in D.N.Banerjee Vs. P.R.Mukherjee, AIR 1953 SC 58, wherein, the Hon"ble Supreme Court, speaking through Chandrasekhara Aiyar, J., said: "Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Articles 226 and 227 of the Constitution to interfere."

33. In this case, if the technical objection raised by the employer in Writ Petition No.6136/2016 is to be upheld and the 10 workmen are to be left in lurch only on the ground that their application for restoration was allegedly instituted 07 days beyond prescribed period of limitation, even though more than sufficient cause was shown by these 10 workmen in order to seek restoration, then, it would result in manifest injustice to these 10 workmen. As noted earlier, the case of these 10 workmen is not, in any manner, different from the case of 100 co-complainants in Complaint (ULP) No.140/1999. All such 100 co-complainants have

already been granted relief/compensation by the Industrial Court. The proceedings before the Industrial Court went on from 1999 to 2004. Only on the ground that these 10 workmen failed to remain personally present or lead evidence, they have been excluded from the benefit of compensation, which came to be awarded to over 100 of the co-complainants who were more or less in the same position as the 10 workmen. As if this was not sufficient, the workmen's application for restoration was contested vehemently by the employer and such contest, took almost five years for disposal of the application for restoration. Here again, the Industrial Court ruled against the employer and held that the application for restoration was very much maintainable but, for the

reasons which border on perversity, held that the cause shown by the 10 workmen for restoration was not sufficient to order actual restoration. To uphold technical objection now raised by the employer in a petition, which has been instituted almost five years after the finding of maintainability was rendered against the employer, would certainly, not constitute any promotion of justice, which is the very purpose for which such extraordinary powers to issue writs have been vested in the High Court.

34. In the case of *Roshan Deen V. Preeti Lal*, (2002) 1 SCC 100, dealing with an order passed by the High Court setting aside an order of the Commissioner for Workmen's Compensation, the Supreme Court stated: "Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to

injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became to by- product of an erroneous view of law the High Court is not expected to erase such injustice in the name of correcting the error of law."

35. In *S.D.S. Shipping (P) Ltd. V. Jay Container Services*, (2003) 9 SCC 439, the Supreme Court has held that, "powers under Articles 226 and 227 of the Constitution of India may be exercised only if there is "supreme need" for the exercise. Hence, even if legal flaws might be electronically detected, a writ court may not interfere save manifest injustice or miscarriage of justice."

36. In *Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society, Jaipur and others*, (2013) 5 SCC 427, the Hon"ble Supreme Court has held: "While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Thus, it is evident that a writ is not issued merely as is legal to do so. The court must exercise its

discretion after examining pros and cons of the case.

37. In *Municipal Board, Pratabgarh and another Vs. Mahendra Singh Chawla and others*, (1982) 3 SCC 331, the Supreme Court has ruled that Laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly, rule of law must prevail but as is often said, rule of law must run akin to rule of life. And life of law is not logic but

experience. The Supreme Court has further observed that the demands of social justice are paramount while dealing with the industrial disputes and, therefore, even though the Tribunal may not have been right in allowing the application of the respondents, discretion was declined and the order of the Tribunal, directing the employer to pay certain amount to the workers was not upset. The Supreme Court held that, "While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render this Court a normal court of appeal which it is not."

38. To the query posed to Mr.Dankh, learned Counsel for the employer, as to what will be the remedy of the workmen who, despite existence of sufficient cause, failed to file application for restoration before the Industrial Court within a period of 30 days from the date of Industrial Court's order, Mr.Dankh replied that the remedy will perhaps lie in instituting a petition under Article 227 of the Constitution of India, before this Court. This means

that the workmen undoubtedly had a remedy to question the Industrial Court's order dated 21.08.2004 dismissing the Complaint as against them but granting relief to their co- complainants by instituting a petition under Articles 226 and 227 of the Constitution, before this Court. Now that this Court has recorded a conclusion that there was more than sufficient cause for the 10 workmen to seek restoration of Complaint (ULP) No.140/199, it will certainly not be proper to non suit the 10 workmen on the specious plea that their application for restoration before the Industrial Court was delayed by 07 days and since, the Industrial Court lacks jurisdiction to condone the delay, their struggle to receive the same compensation as victims of unfair labour practices by the employer, which commenced in the year 1999, should die in vain. This is certainly not the purpose for which the extraordinary writ jurisdiction has been vested in this Court.

39. In Mohammad Swalleh & others Vs. Third Additional District Judge, Meerut & another, (1988) 1 SCC 40, an erroneous order passed by the prescribed authority refusing to grant eviction of tenant, was set aside by the District Court in appeal. The Supreme Court, after accepting tenant's contention that an appeal to the District Court was not maintainable, refused to interfere with the order since justice was done even though, technically, the tenant had a point that the order of District Court was illegal and improper. The Supreme Court held that it is true that there has been some technical breach because if there is no appeal maintainable before the District Judge, the order of the District Judge, setting aside the erroneous order made by the

prescribed authority, may be improper. However, the Supreme Court added that the High Court was exercising its jurisdiction under Article 226 of the Constitution. The High Court had already come to the conclusion that the order of the prescribed authority was invalid and improper. The High Court itself could

have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned earlier, technically the appellant had a point that the order of the District Judge was illegal and improper."

40. All this discussion means that the powers under Articles 226 and 227 of the Constitution of India should be exercised to advance justice and not to thwart it. The very purpose of conferment of such Constitutional power on the High Court is to ensure that no man is subjected to injustice. The lookout of the High Court, should therefore, not be merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

41. Similarly, a writ court is not bound to interfere with the action complained of or an order impugned, even if it is satisfied that the action is not strictly lawful or the order is not in accordance with law. Since the powers are discretionary and the jurisdiction exercised by the writ court is equitable, the Court must also be convinced that such interference is called for in the interest of justice, equity and good conscience.

42. Applying the aforesaid principles to the facts and circumstances of the present case, Writ Petition No.704/2014, instituted by the workmen, will have to be allowed and Writ Petition No.6136/2016, instituted by the employer, will have to be dismissed.

43. Accordingly, Rule is made absolute in Writ Petition No.704/2014. The impugned order dated 19.01.2011, made by the Industrial Court, is set aside. The Workmen's application for restoration is allowed. The Complaint (ULP) No.140/1999 is restored insofar as the workmen i.e. petitioners in Writ Petition No.704/2014 are concerned. The Industrial Tribunal is directed to dispose of such Complaint in accordance with law and on its own merits, as expeditiously as possible and in any case, within a period of four months from the date of production of authenticated copy of this order. The parties are directed to remain present before the Industrial Court on 05.02.2018 at 10.30 a.m. and produce authenticated copy of this order.

44. Rule is discharged in Writ Petition No.6136/2016. In the facts and circumstances of this case, there shall be no order as to costs.