

(2016) 10 BOM CK 0137
In the Bombay High Court
Case No : Writ Petition No. 10266 of 2016

The Gram Panchayat Office	Vs	APPELLANT
Ramdas Asaram Kalhapure		RESPONDENT

Date of Decision : 10-10-2016

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44

Citation : (2017) 1 CLR 103

Hon'ble Judges : Mr. Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri Barde Parag Vijay, Advocate, for the Respondent No. 1; Shri Bide Dnyaneshwar A, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Ravindra V. Ghuge, J. (Oral) - In this single Writ Petition, the Petitioner/ Gram Panchayat has challenged the following judgments/ orders:-

(a) The judgment of the Labour Court dated 24.10.2008 in Complaint (ULP) No.104/2003.

(b) The judgment and order dated 17.03.2012 delivered by the Labour Court allowing Application (IDA) No.2/2011.

(c) The judgment dated 17.03.2012 delivered by the Labour Court allowing Complaint (ULP) No.5/2011.

(d) The order dated 14.09.2016 delivered by the Industrial Court refusing to condone the delay in filing the revision petition for challenging the judgment dated 24.10.2008.

2. Since the judgment of the Labour Court dated 24.10.2008 is subject matter of the impugned order dated 14.09.2016, I am entertaining this petition only to the extent of the said cause of action.

3. Insofar as the judgment of the Labour Court dated 17.03.2012 in Application (IDA) No.2/2011 is concerned, the Petitioner is at liberty to file an independent Writ Petition. Insofar as the judgment of the Labour Court dated 17.03.2012 in Complaint (ULP) No.5/2011 is concerned, the Petitioner is at liberty to prefer a revision petition before the Industrial Court.

4. It is to be noted that the Revision Petition No.53/2012 filed by the Respondent for seeking full back wages and continuity, has been rejected by the Industrial Court vide judgment dated 20.11.2013.

5. In the light of the above, I have heard the learned Advocates.

6. The Petitioner had challenged the judgment of the Labour Court dated 24.10.2008 by filing the revision petition in January, 2016 which is after about eight years. Though Section 44 of the MRTU & PULP Act, 1971 does not prescribe limitation, the Industrial Court considered the Miscellaneous Application filed by the Petitioner seeking condonation of delay.

7. This Court has considered a similar issue in the matter of the Maharashtra State Road Transport Corporation v. R.D. Toplewar, Ex-Conductor and another, 1986(3) Bom.C.R. 689 : 1987 Mh.L.J. 85, as regards the scope and jurisdiction of the Industrial Court under Section 44 of the MRTU & PULP Act, 1971. It is concluded that though limitation is not applicable, the Industrial Court may entertain a revision petition if it is convinced that the reasons assigned would justify the filing of the revision petition notwithstanding the passage of time.

8. The observations of this Court in the MSRTC v. R.D. Toplewar case (supra) in paragraphs 7, 8, 9, 10, 11 and 12 read as under:-

"7. In considering the above submissions made on behalf of the petitioner, it is first necessary to understand the true nature of the proceedings contemplated by section 44 of the Act. It may be seen that section 44 of the Act does not in terms provide for a remedy of "revision" against the Order passed by the Labour Court, as the expression "revision" is known and understood in law. Although the proceedings under section 44 of the Act are described as "revisional proceedings" a perusal of section 44 would show that a power of superintendence is conferred upon the Industrial Court over all the Labour Courts. The phraseology used in section 44 of the Act is similar to the phraseology of section 85 of the Bombay Industrial Relations Act and also of Article 227 of the Constitution of India. In regard to the proceedings under Article 227 of the Constitution of India as well as in regard to the proceedings under section 85 of the Bombay Industrial Relations Act, the power of superintendence conferred upon the Industrial Court includes judicial power of superintendence and, therefore, the applications which are described as revisions against the orders passed by Labour Courts are entertained by the Industrial Court under section 44 of the Act. The concept of the power of superintendence is well settled by various decisions under Article 227 of the Constitution of India. The exercise of power of superintendence is always discretionary and since it is an equitable power conferred upon the Court,

it has to be exercised upon equitable considerations. It is, therefore, necessary that when a power of superintendence of the Industrial Court is invoked, the party invoking such a power must act diligently and expeditiously, and it would be open to the Industrial Court to dismiss the applications filed under section 44 of the Act in its discretionary jurisdiction if it finds that there is an inordinate delay in filing the said applications. Even after entertaining the said applications under section 44 of the Act, it is open to the Industrial Court to modulate the relief in such a manner so as to avoid any hardship or injustice being caused to the opposite party by reason of the delay in invoking its jurisdiction.

8. Bearing in mind the above nature of the proceedings under section 44 of the Act, it can be seen that the very apprehension entertained by the petitioner that hardship and injustice would be caused because of the inordinate delay, would lose its basis, because although there may not be a period of limitation prescribed for entertaining the proceedings under section 44 of the Act, it is open to the Industrial Court not to entertain a proceeding thereunder on the ground of inordinate delay. The learned Counsel for the petitioner-corporation has also not been able to show to me that prescribing a period of limitation is obligatory upon the statute-making authority when a remedy is provided under a statute. The above contention on behalf of the petitioner that the provisions of section 44 of the Act should be struck down because they are arbitrary and unjust and, are, therefore, violative of Article 14 of the Constitution of India, is rejected.

9. The next contention which is raised on behalf of the petitioner is that, the revision application filed by the respondent-conductor should have been dismissed by the learned Industrial Court on the ground of inordinate delay which has not been properly explained by the respondent. It may be seen that no such specific contention was raised by the petitioner before the learned Industrial Court. It is clear from the reply filed by the petitioner to the application for condonation of delay filed by the respondent-conductor before the Industrial Court that, according to the petitioner, there was a period of limitation of 90 days for filing a revision under section 44 of the Act and since the revision in the instant case was filed after an inordinate delay of about two years which was not explained satisfactorily the instant revision should be dismissed as barred by time. Since this was the only contention raised before the learned Industrial Court, the learned Industrial Court rejected the same on the ground that no limitation is prescribed for a revision under section 44 of the Act and, therefore, no question of condonation of delay would arise. The learned Industrial Court, therefore, entertained the revision and, after hearing the parties, passed the Order on merits.

10. The question, therefore, to be considered in the instant writ petition would be whether the revision which was entertained by the learned Industrial Court should now be rejected on the ground of inordinate delay as urged on behalf of the petitioner-Corporation. The learned Counsel for the respondent-conductor has urged before me that a satisfactory explanation for filing the revision after a

period of about two years from the date of the impugned Order, was given by him in his application for condonation of delay. A perusal of the said application shows that according to the respondent-conductor he was not aware of the date on which the Order was passed by the Labour Court, because on the date his representative appeared in the Labour Court, he was informed that the Order would be passed afterwards, and for which no specific date was given.

11. I have perused the Order-sheets of the complaint case in the Labour Court, which to say the least, disclosed unsatisfactory working of the said Court in the said proceedings. After the order-sheet dated 21-2-1976, on which date the case was adjourned for evidence on 31-3-1976, there are no order-sheets till 17-3-1977, on which date, the order-sheet mentioned that the worker and the employer were absent and that the Order was passed. In this state of affairs of the proceedings before the Labour Court, it is not possible altogether to reject the contention raised on behalf of the respondent-conductor that he was not aware of the date when the Order was passed by the learned Labour Court in the instant case. However, that cannot absolve him wholly why he should not have taken diligent steps to ensure and make himself aware of the Order instead of warranting the same for a long period of about two years.

12. In so far as the question of entertaining the revision is concerned, in my view, for two reasons effect cannot be given to the said contention raised on behalf of the petitioner-corporation that the revision should be dismissed on the ground of inordinate delay. My first reason is that when the revision was already entertained and when at the threshold no such plea was raised in the exercise of my discretion under Article 227 of the Constitution of India I should now set at naught the act of entertaining the revision on merits by the Industrial Court. Secondly, as pointed out above, it cannot be said that the reason given by the respondent-conductor for not filing the revision application in proper time is wholly unfounded because the record of the Labour Court in this regard is totally unsatisfactory. However, since the respondent had not acted diligently in making himself aware of the order of the learned Labour Court, the period of delay can be taken into consideration in considering his claim about back wages if ultimately it is held that the dismissal of the respondent-conductor was illegal and that he was entitled to reinstatement and back wages. The said submission which is alternatively urged on behalf of the petitioner-Corporation would, therefore, be taken into consideration if and when I come to the conclusion that the impugned order of the Industrial Court holding that the dismissal of the respondent-conductor is liable to be set aside is correct."

9. In the matter of Emperor v. Balkrishna Hari Phansalkar, 1932 The Bombay Law Reporter (Vol.XXXIV) 1528, the Special Bench (Before Sir John Beaumont, Kt., Chief Justice, Mr. Justice Broomfield and Mr. Justice Nanavati) held as under:-

"..... Thus, the power of supervision has been treated as the power of considering judicially, and, if necessary, of interfering with the orders of the Courts which are subordinate to the appellate jurisdiction of the High Court.

Where Courts entirely independent are established, which have nothing to do with the High Court and it is expressly enacted that the High Court has nothing to do with such Courts, the High Court may not have jurisdiction over them."

10. In *Mahila Griha Udyog Lijjat Papad v. Kamgar Congress and others*, 1983 (46) FLR 244, it has been concluded that the revisional jurisdiction of the Industrial Court under Section 44 of the MRTU & PULP Act, 1971 invests the Court with the power to examine the legality of an order that has been passed by the Labour Court. It is further concluded that the power of superintendence of the Industrial Court over the Labour Court entitles the Industrial Court to note errors apparent on the face of the record or perversities in the order passed by the Labour Court. Merely because a second view is possible, would not enable the Industrial Court to allow a revision petition. As is held by the Honourable Apex Court in *Syed Yakoob v. K.S. Radhakrishnan*, AIR 1964 SC 477 and *Surya Dev Rai v. Ram Chander Rai*, AIR 2003 SC 3044, unless the impugned order is perverse, erroneous and likely to cause grave injustice, no interference is called for.

11. However, though no limitation has been prescribed under Section 44 of the MRTU & PULP Act, 1971 for filing a revision petition, a sleeping litigant cannot be permitted to pose a challenge to an order passed by the Labour Court after a long passage of time. Having not assailed the order of the Labour Court for a considerable time, would also be construed to be an indicator of the fact that the Petitioner does not desire to question such an order. Nevertheless, the Industrial Court, while considering a revision petition filed after passage of considerable time from the date of the Labour Court's order, will have to scrutinise on case to case basis and the facts of each case as to whether, it should entertain a revision petition which may appear to have been filed belatedly.

12. In the instant case, the judgment of the Labour Court was delivered on 24.10.2008. The said judgment was implemented by reinstating the Employee on 07.03.2009. This is the first indicator that the Petitioner was aware of the said judgment.

13. The Petitioner then once again terminated the Respondent on 29.11.2010. His Complaint (ULP) No.5/2011 was allowed partly by the judgment of the Labour Court dated 17.03.2012. Pursuant to the said judgment, the Petitioner reinstated the Respondent on 17.08.2016.

14. Pursuant to the judgment dated 24.10.2008, the Respondent preferred Application (IDA) No.2/2011 claiming unpaid wages as per the minimum wages prescribed. That application was allowed on 17.03.2012 wherein the Labour Court has specifically observed that the claim of the Respondent/ Employee was based on the judgment dated 24.10.2008. This also indicates that the Petitioner was aware of the said judgment.

15. The Respondent/ Employee then initiated the proceedings for recovery of amount and the Tahasildar was also at the door-step of the Petitioner for

recovering the said amount. The Revenue Recovery Certificate (RRC) was issued on 13.03.2014 under Section 33(1) of the Industrial Disputes Act, 1947. This also would remind the Petitioner that the whole litigation has commenced from the judgment dated 24.10.2008 in Complaint (ULP) No.104/2003.

16. In addition to the above, the judgment dated 01.10.2015 delivered by the Labour Court in Criminal Complaint No.17/2013, has led to the conviction of the Sarpanch of the present Petitioner Gram Panchayat for disobedience of the judgment dated 24.10.2008 and she is sentenced to suffer simple imprisonment for one month. This issue is pending in appeal under Section 42 before the Industrial Court.

17. It is, therefore, apparent that after all the above events have occurred, the Petitioner woke up from deep slumber and filed the revision petition before the Industrial Court challenging the judgment of the Labour Court in Complaint (ULP) No.104/2003 delivered eight years ago.

18. Though Section 44 of the MRTU & PULP Act, 1971 does not lay down limitation, it would not mean that a litigant can go into deep slumber and wake up after a long period and lodge a revision. If the circumstances indicate that the Revision Petitioner has no idea at all about any judgment delivered by the Labour Court which can be subjected to a revision under Section 44 of the MRTU & PULP Act, 1971, such a revision could be entertained. But, as like in this case, despite a series of events, several judgments and orders having been delivered, did not wake up the Petitioner to prefer a revision petition, it would, therefore, justify refusal to entertain such a revision petition.

19. In the light of the above, this Writ Petition, which is restricted to the challenge to the order dated 14.09.2016 delivered by the Industrial Court in Miscellaneous Application No.1/2016, is devoid of merit and is, therefore, dismissed.