

(2004) 07 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No's. 5481 of 1996 and 537 of 1997

Vasudeo Dharanidhar Joshi

APPELLANT

Vs

Bombay Textile Research Association and Shri P.S. Ghose,
Member of Industrial Court
 Bombay Textile Research
Association Vs Vasudeo Dharanidhar Joshi and T.S. Ghose,
Member, Industrial Court

RESPONDENT

Date of Decision : 27-07-2004

Acts Referred:

Arbitration Act, 1940 — Section 30
Bombay Industrial Relations Act, 1946 — Section 44, 78, 79
Industrial Disputes Act, 1947 — Section 18(1), 2
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28, 28(1), 5, 7

Citation : (2004) 4 ALLMR 694 : (2005) 1 BomCR 261 : (2005) 105 FLR 515

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : S.N. Despande, in Writ Petition Nos. 5481 of 1996 and 6275 of 1996, A.V. Bukhari and P.M. Pashikar, in Writ Petition Nos. 537 and 538 of 1997, for the Appellant; S.N. Despande, in Writ Petition Nos. 537 and 538 of 1997, A.V. Bukhari and P.M. Palshikar for Respondents No. 1 in Writ Petition Nos. 5481 of 1996 and 6275 of 1996, for the Respondent

Judgement

Nishita Mhatre, J.—The Petitioners in Writ Petition No. 5481 of 1996 and Writ Petition No. 6275 of 1995 were employed with the Respondent-Bombay Textile Research Association (BTRA) as workmen for a number of years. The grievance made by them in the Writ Petitions filed by them is that although the Industrial Court while deciding the Complaints filed by them has held that the Respondent-BTRA has committed an unfair labour practice by retiring them at the age of 58 years, no wages have been granted to them for two years when their contention that they were entitled to continue till the age of 60 years has been accepted. The Petitioners in Writ Petition No. 537 of 1998 (which is a cross petition to Writ Petition No. 5481 of 1995) and Writ Petition No. 538 of 1997 (which is a cross

petition to Writ Petition No. 6275 of 1995) have also challenged the orders of the Industrial "Court as, according to them, they have committed no unfair labour practice whatsoever and the Industrial Court has erred in deeming the retirement age of the workers concerned as 60 years rather than 58 years.

2. The facts giving rise to the, present Petitions are not disputed. The workmen were employed with the BTRA and continued as such in employment till they attained the age of 58 years. The workman in Writ Petition No. 5481 of 1996 was issued a memo on 30.9.1984 informing him that he would be retired on 30.12.1989 when he would be 58 years of age. The workman in Writ Petition No. 6275 of 1995 was informed by a letter of 2.6.1987 that he would be retired on 6.7.1987 on completion of 58 years. Both these workmen, therefore, were accordingly, retired at the age of 58 years and had no cause to make a grievance till they filed their complaints on 24.11.1995 and 22.11.1995 respectively. The contention raised by each of the Petitioners in their complaints was that the BTRA had retired them at the age of 58 years in violation of the model standing orders which were applicable. According to them, they were entitled to continue till the age of 60 years. Furthermore, according to the workmen, some other workmen continued in service till the age of 60 years after the petitioners were retired. This they claimed was discriminatory and, therefore, submitted that there was an unfair labour practice under Item 5 of Schedule IV of the MRTU & PULP Act. They also claimed that by issuing them the notices terminating their services, the BTRA had committed unfair labour practice under Item 1 of Schedule IV of the MRTU & PULP Act. The claim was also made that in the case of one G.D. Kamath, A.R. Gadigaonkar and V.P. Shetye they were deemed to have been continued in service upto the age of 60 years and they were paid two years wages and other benefits by the BTRA. According to the Petitioners, BTRA ought to have complied with the orders of this Court in Writ Petition No. 2665 of 1991 in respect of G.V. Kamath and in Writ Petition No. 2324 of 1994 in respect of A.R. Gadigaonkar where the learned Single Judge of this Court had taken the view that the Model Standing Orders were applicable and that the age of retirement for the workmen of BTRA was 60 years. The Petitioners, therefore, claimed by their Complaints that they were entitled to have been deemed to be in service till they attained the age of 60 years and accordingly, ought to be paid wages upto that age.

DATED : 27TH JULY 2004

3. The Written Statement filed by BTRA before the Industrial Court was to the effect that the Circular which was issued by BTRA on 2nd December 1971 and which has been signed by individual workers specifies that the age of retirement for Scientific and Research Officer would be 60 years and 58 years for other workmen. According to BTRA, the Complainants having signed this Circular, it constituted a contract between the parties and, therefore, the workmen could not resile from that contract stipulating the age of retirement as 58 years. BTRA also pleaded that the Model Standing Orders permitted them to fix an age of retirement lower than 60 years and the age has been fixed by a document which

constituted an agreement, albeit not u/s 2(p) of the Industrial Disputes Act, 1947. It was also pleaded in the Written Statement that the Complaints were not maintainable as they had been filed six years after the age of retirement in the case of Joshi and eight years after the retirement in the case of Kondary." Therefore, according to BTRA, the Complaints were barred" by limitation. Moreover, no application for condoning the delay had been filed as required under the Act. A contention was also raised that the Petitioners were not employees within the meaning of the MRTU & PULP Act, 1971 since they were working in a supervisory capacity and also because after retirement they ceased to be employees as defined under the Act. The maintainability of the Complaints was also challenged on the ground that the Complainants had invoked the provisions of Item. 1 of Schedule IV while preferring the Complaints before the Industrial Court.

4. Evidence of the workmen and the officer of BTRA was led before the Industrial Court. The Industrial Court while allowing the Complaints directed BTRA to deem the Petitioners in service upto the age of sixty years for the payment of provident fund, gratuity, leave encashment and other monetary benefits. However, the Industrial Court did not grant any wages for the period from the date on which they were retired till the date they attained the age of sixty years. The Industrial Court held that BTRA has committed an unfair labour practice under Items 5 and 9 of Schedule IV and also under Items 1(a), (b), (d) and (f) of Schedule IV of the MRTU & PULP Act, 1971. The Industrial Court was of the view that since in the Complaints filed in the case of Kamath, Ghadigaonkar and Shetye the Court had decided that the age of retirement was sixty years based on the Model Standing Orders, BTRA could not now retire persons at the age of 58 years. The Industrial Court also held that the Complaints were not barred by limitation since there was a continuing offence and continuing cause of action from the date when the Petitioners were retired from service at the age of 58 years. According to the Industrial Court, BTRA had not complied with the Model Standing Orders by retiring the workmen at the age of sixty years and, therefore, there was a continuing cause of action which entitled the Petitioners to file a Complaint at any time. Furthermore, it held that the relationship between the Petitioners and the Respondents was one of employer and employee and merely because the Petitioners were employed as Senior Technical Assistants, it could not mean that they were not covered by the definition of employee u/s 2(s) of the Industrial Disputes Act, 1947. Moreover, it was held that even retired employees are considered workmen u/s 2(s) of the Industrial Disputes Act, 1947.

5. Both parties have argued on the maintainability of the Complaints as well as the merits of the case. However, I feel it necessary to decide whether the Complaints itself were maintainable first. Mr. Bukhari, learned Advocate for BTRA, submits that in the case of Joshi the Complaint was filed on 24th November 1995 i.e. six years after he was retired from service on 30th December 1989 and in the case of Kondory the Complaint was filed on 22nd November 1995 i.e. eight years and five months after he had been retired pursuant to the letter issued to

him on 2nd June 1987. This, according to the learned Advocate, is a delay which has not been explained at all by the Petitioners nor have they filed any application for condoning the delay. He submits that such an unreasonable delay cannot be condoned and the Complaints ought not to have been entertained. He submits that the cause of action for the Petitioners to file Complaints arose on the date when they were terminated from service and, therefore the Complaints ought to have been filed immediately or atleast within three months of the termination of their services on account of retirement. He places reliance on the judgment of the Single Judge of this Court in *Pune District Co-operative Bank Ltd. v. Hiralal Ramchandra Gaikwad*, 1999 (81) FLR 611 . He further submits that the Model Standing Orders were made applicable to BTRA in view of the amendment to the Bombay Shops and Establishments Act of 1948. Therefore, according to him, if the workmen had a grievance about the Circular issued to them regarding the age of retirement, they ought to have voiced their grievance much earlier and not waited for six or eight years after retirement to file the Complaints. He further places reliance on the judgments in the case of *Ratam Chandra Sammanta and Ors. v. The Union of India and Ors.*, 1993 I CLR 1072, *Asha Kaul and Anr. v. State of Jammu and Kashmir and Ors.*, 1993 I CLR 966, *Association of Engineering Works v. Oriental Rubber Industries and Ors.*, 1994 I CLR 319, *National Textile Corporation (South Maharashtra) Ltd. v. P. Gams (Mrs.) and Ors.*, 1995 I CLR 84 and *Ratnagiri District Central Co-op. Bank Ltd. v. Dinkar K. Watve and Ors.*, 1989 II CLR 202. He further urges that unless an application is made for condoning the delay the Court cannot entertain a Complaint by condoning the delay. He relies on the judgment of this Court in the case of *Ballumal A. Jaisingh v. J.J. Builders and Ors.*, 2003 (3) M.L.J. 238.

6. The learned Counsel then urges that the Complaints are also otherwise not maintainable on various grounds. He submits that a Complaint filed challenging the termination of services cannot lie before the Industrial Court as only the Labour Court has jurisdiction to deal with a Complaint filed under Item 1 of Schedule IV of the MRTU & PULP Act. He submits that the industrial Court has erred in coming to the conclusion that the Complaint was maintainable before him although the breach committed was under Item 1 of Schedule IV of the MRTU & PULP Act. He places reliance on the judgments in the case of *Pepsico India Holdings Pvt. Ltd. v. Noshir Elavia and Anr.*, 2002 I CLR 953, *Shankarprasad S/o. Gopalprasad Pathak v. Lokmat Newspapers Pvt. Ltd.*, Nagpur, 1997 I CLR 212 and *Abhudaya Co-op. Bank Ltd. v. S.L. Mehendale and Ors.*, 2003 I CLR 1025. According to him, the cessation of employment was not on account at illegal retrenchment since the termination of service was effected on the day the Petitioners reached the age of retirement.

7. In reply to the contentions raised by Mr. Bukhari regarding maintainability of the Complaints, Mr. Deshpande, learned Advocate for the Petitioners, submits that there was a continuing cause of action available to the Petitioners and, therefore, they were entitled to file the Complaints at any time till the relief which they sought was given to them. He submits that by terminating the

services of the Petitioners at the age of 58 years, BTRA had committed an unfair labour practice by violating the provisions of the Model Standing Orders which required the Respondents to continue the Petitioners in service till the age of 60 years unless a lower age was agreed to by the workmen by entering into a settlement u/s 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947. He submits that the Model Standing Orders constitute a contract between the parties and there was no evidence or material on record to show that the parties entered into an agreement or that there was a custom, usage or practice to retire a workman at 58 years. He submits that since there was a continuing cause of action against BTRA, they having breached the provisions of law by retiring the Petitioners at the age of 58 years, the Petitioners were entitled to file a Complaint after they were retired. According to the learned Advocate, two learned Single Judges of this Court in Writ Petition No. 2665 of 1991 and Writ Petition No. 2324 of 1994 held that the Industrial Employment Standing Orders Act, 1946 was applicable and under that Act the age of retirement was 60 years. He urges that once those judgments were delivered by this Court, BTRA ought to have complied with the same and retired employees only after completion of sixty years. He submits that BTRA having failed to comply with the judgments as well as the Model Standing Orders, they have committed an unfair labour practice under Item 9 of Schedule IV of the Act. He then submits that BTRA should not be permitted to take advantage of its own wrong by terminating the services of the Petitioners at, the age of 58 years when this Court had declared in the two Writ Petitions mentioned above that the age of retirement was 60 years and not 58 years. According to the learned Advocate, therefore, the Complaints were maintainable and the Industrial Court had rightly adjudicated upon it.

8. u/s 28 of the MRTU & PULP Act, 1971, a Complaint can be filed by an employee within ninety days of the occurrence of such unfair labour practice before the Court competent to deal with such Complaint either u/s 5 or Section 7 of the Act i.e. either before the Labour Court or the Industrial Court. Sub-section (1) of Section 28 provides that the Court may entertain a Complaint after the period of ninety days from the date of the alleged occurrence of an unfair labour practice, if good and sufficient reasons are shown by the complainant for filing the Complaint late. In the present case, when the entire cause of the Petitioners is based on the letters issued to them terminating their services on account of superannuation, I fail to see how there can be a continuing cause of action. The letters very clearly stipulate that the services were being brought to an end on account of the Petitioners reaching the age of superannuation of 58 years. If that be the position, the cause of action would arise, if not when the letters were issued to them, atleast when they complete the age of 58 years. In the case of Krishna Ganapat Kasar v. India United Mills No. 2 and Anr., 2004 II CLR 430 the question of limitation arose before the Court. The contention of the Complainant in that case was that he was entitled to continue upto the age of 63 years just like Mill workers although he was working in the retail shop and that the Mill had

committed an unfair labour practice under Items 5, 9 and 10 by retiring him at the age of 60 years. The Complaint was filed well beyond the period of limitation. The retirement memo was issued to the Complainant in that case in November 1989 and he was retired on 9th June 1990. The question, therefore, was whether the limitation run from the date of the receipt of the retirement memo or from the actual date of termination of service. I have already taken a view in that case that the cause of action in such a case would arise immediately on the receipt of the retirement memo and, not on the date of retirement itself and, therefore, held that the Complaint in that case was barred by limitation.

9. In the present case, there is no doubt that the action which the Petitioners challenge is the action of BTRA of terminating their services contrary to the provisions of the Model Standing Orders as claimed by them. Therefore, the act of the employer questioned is that, of termination of service. In such a situation, once the order or letter was issued to the Petitioners stipulating that their services would be dispensed with on their attaining the age of superannuation i.e. 58 years, it obviously means that the action which is challenged is that of termination of service. It may be that the termination of service effected by the employer is contrary to the Standing Orders as claimed by the Petitioners. However, there is no doubt that the act of employer in terminating the services of the Petitioners is what is challenged. The substance of the cause of action is the termination of service. Clever drafting cannot change the ground realities. The submission of Mr. Deshpande that the Petitioners by their Complaints only sought payment of wages for two years and, therefore, the cause of action was continuing till the payment of those wages was made in accordance with the Standing Orders is without any merit. The question of payment of wages would arise only if it is found that the termination of service is illegal. A continuing cause of action would be one where workman may be entitled to receive a certain amount or benefit under either a Settlement, Award, appointment letter or the Standing Orders applicable, etc. So long as that benefit, amenity, payment, etc., is not extended to a workman, the action would be a continuing cause of action and till such time as the employer makes the requisite payment or provides the amenity or benefit, the employer could be held to have been continuing to indulge in an unfair labour practice thereby giving scope to the workman to file a Complaint till such time his grievance was redressed. However, in the present case, the action of termination of service is an action which is complete and which has occurred on account of an overt act by the employer. The overt act of the employer may be in contravention of the Standing Orders and, therefore, may be illegal but that would not mean that it gives rise to continuing cause of action or that the workman can file a Complaint at any time he chases by submitting that till his grievance is redressed, the employer having continued to indulge in an unfair labour practice, he can file a Complaint even beyond the period of ninety days.

10. In the case of Raj Behari Singh and Another Vs. Chandrika Singh and Others, , the Patna High Court while deciding the issue as to when time begins to

run under the Limitation Act, has held that whether any particular facts constitute a cause of action has to be determined with reference to the facts of each case, the substance rather than the form of the action determines whether the cause of action still arises. If infringement of right occurs at a particular time, the whole cause of action would be said to have arisen then and there and it is not open to a party to sit tight over his rights by filing a Suit for declaration after his right is extinguished by lapse of time.

11. In the case of Asha Kaul (supra), the Apex Court considered whether the delay in moving the High Court after a lapse of twenty months disentitles the Petitioners in that case from claiming any relief. The Apex Court held that to wait for a period of twelve to twenty months to approach the High Court in exercise of their rights, the Petitioners were not entitled to any relief in the facts and circumstances of the case.

12. Again, in the case of Ratam Chandra Sammanta (supra), the Apex Court has held that a gross delay of filing a Writ Petition claiming direction for re-employment, disentitles the workman from claiming re-employment. The Apex Court was of the view that delay itself deprives a person of his remedy available in law and in the absence of any fresh cause of action, a person who has lost his remedy by lapse of time, loses his right as well. This Court in the case of Association of Engineering Works (supra) and National Textile Corporation (supra) has held that when there is a delay, each day's delay must be explained by the person who approach the Court of law. Condonation of delay depends on the facts and circumstances of each case.

13. In the case of Ratnagiri District Central Co-op. Bank Ltd. (supra), the Division Bench of this Court has held that a delay in making an approach under the Bombay Industrial Relations Act, 1946 cannot be condoned if there is no satisfactory explanation for it. The Division Bench has held that the application filed u/s 78 read with Section 79 of the Bombay Industrial Relations Act is barred by limitation. It cannot be said that merely by submitting the application the period of limitation is waived.

14. In the case of Pune District Central Co-op. Bank Ltd. (supra), the learned Single Judge of this Court had taken a view that delay of four years and seven months in filing a Complaint after dismissal could not be condoned. The learned Single Judge has observed thus:

"5. The only reason which seems to have weighed with the Labour Court for condoning the long delay is the Supreme Court's observations made in the case of Collector, Land Acquisition, Anantnag and Anr. v. Katiji and Ors 1987 (55) FLR 609. In that judgment, the Supreme Court made certain general observations with regard to the attitude of the Court while confronted with the question of condoning delay. Most interestingly, the delay in the said case was only of 4 days and in order to condone the said delay, the Supreme Court went into proposition of general import. (One wonders what the Supreme Court's reaction would have

been if it was confronted with the delay of more than four and half years). In any case, I am not satisfied that the present is a case where the power of condonation of delay ought to have been exercised in favour of the Respondent. If the Respondent had a good case on merits, he ought to have moved the Court within reasonable time, even if not within the period of 90 days from the date of cause of action. Condoning a delay of this nature would only encourage such improbable stories being put forward. I am of the view, therefore, that the Industrial Court ought to have exercised its power u/s 44 of the Act and interfered with the order of the Labour Court. It erred in not doing so."

15. Therefore, in all these cases, delay can be condoned only if it is reasonably explained. A reasonable explanation can be found either in the Complaint itself or an application for condonation of delay. Under the Rules and Regulations framed under the MRTU & PULP Act, 1971, an application for condonation of the delay is required to be filed along with the Complaint if it is filed beyond ninety days of the cause of action having arisen. In the present case, no such application has been filed presumably because the Petitioners assumed that there was continuing cause of action for them to file a Complaint at any time they pleased. In the case of Ballumal A. Jaisingh (supra), a learned Single Judge of this Court has taken a view while considering a matter arising out of an Award u/s 30 of the Arbitration Act, 1940 that if the challenge to the Award is under the provisions of the Limitation Act, the Court is prevented from taking cognizance of the matter and it gets jurisdiction only if an application to condone the delay is made. According to the learned Judge, the Court has no jurisdiction to hear the matter and consequently will have no power to condone the delay if no application is made since such an action would be an action without jurisdiction. Although the provisions of the Limitation Act are not applicable to the present proceedings or to a Complaint filed under the MRTU & PULP Act, 1971, there is no gainsaying that the period of limitation has been prescribed and the Rules and Regulations framed under the Act also prescribe that an application for condoning the delay must be filed. In the present case, there is no such application filed and, therefore, the Court ought not to have considered the Complaints unless there was an application on record and the delay had been condoned. There should at least have been a pleading in the Complaint stating the reasons for delay and a prayer for condoning the same.

16. The submission of Mr. Deshpande that the action of BTRA amounts to a continuing cause of action and, therefore, there was no need to make an application for condoning the delay cannot be accepted. As I have held, the action of the employer cannot be considered to be inchoate when there was cessation of employment on account of overt act of the employer. Once this was so, it was necessary for the Petitioners to file a Complaint within the period prescribed under the Act i.e. within a period of three months of the occurrence of the alleged unfair labour practice. Mr. Deshpande then submits that the High Court in a Writ Petition filed by BTRA against Ankush R. Ghadigaonkar (Writ Petition No. 2324 of 1994) had held that non-compliance of the Standing Orders

framed under the Industrial Employment Standing Orders Act, 1946 amounted to an unfair labour practice and that there was a continuing cause of action and, therefore, the Industrial Court was right in holding that BTRA had committed an unfair labour practice. He submits that the Industrial Court was bound by the findings of the High Court in Writ Petition No. 2324 of 1994 where the High Court had come to the conclusion that if there was a termination in breach of the Standing Orders, there was a continuing cause of action and the Complaint can be filed at any time. He relies on the judgment in the case of Central Bank of India v. Central Government Industrial Tribunal-cum-Labour Court end Anr., 2003 (3) ALL 250, to submit that under Article 141 the Industrial Court was bound by the orders of the High Court and it could not take a different view in the matter. The Industrial Court, according to the learned Advocate, could not be faulted for having held that it was a continuing cause of action. Mr. Deshpande attempted to persuade me to take the same view by submitting that the order passed by the High Court in Writ Petition No. 2324 of 1994 at the stage of Admission was a judgment in rem and not a judgment in personam. Me submits that such a judgment was binding on the parties and, therefore, BTRA ought to have complied with the findings of this Court that the age of retirement was 60 years and not 58 years and that it was a continuing cause of action. He relies on the judgments in the case of Shah Babulal Khimji Vs. Jayaben D. Kania and Another, and State of U.P. and Anr. v. Labh Chand, 1991 I CLR 723, to submit that the order passed by the High Court in Writ Petition No. 2665 of 1991 and Writ Petition No. 2324 of 1994 are judgments which were required to be followed by BTRA.

17. Assuming this to be so, that the orders passed on 2nd September 1991 and 30th November 1994 in Writ Petition No. 2665 of 1991 and Writ Petition No. 2324 of 1994 respectively are judgments, can they be applicable to the facts of the present case? Undisputedly, the Complaint filed by Gopal v. Kamath i.e. the Respondent in Writ Petition No. 2665 of 1991 was filed before he retired from service. Ankush R. Ghadigaonkar i.e. Respondent in Writ Petition No. 2324 of 1994 filed his Complaint one year and ten months after being issued the order of termination of service but before attaining the age of 60 years. Therefore, in such a case, probably the workman had a continuing cause of action because he had not attained the age of 60 years when he filed the Complaint. This fact has probably impressed the learned Judge in Writ Petition No. 2324 of 1994. However, in the present case, the Petitioners have filed. their Complaints six to eight years after receiving the letters terminating their services at the age of 58 years. These Complaints are filed even beyond the date when they attained the age of sixty years which, according to them, ought to be the retirement age under the Model Standing Orders. In such circumstances, it is difficult to accept the submission made by Mr. Deshpande that there was a continuing cause of action and that the Complaints were maintainable. The Petitioners were aware that their services had been terminated due to the overt act of the employer. Therefore, it could not be said that merely because they claimed wages for two

years, the cause of action continues. The claim for two years wages is made obviously on the footing that their services had wrongly been terminated at the age of 58 years. If that be so, then the Complaints ought to have been filed within the period of limitation or atleast three months after they attained the age of 60 years. The Petitioners have failed to do so. Therefore, in my view, the Industrial Court was not right in deciding the entire issue when the Complaints itself were barred by limitation.

18. Furthermore, as rightly submitted by Mr. Bukhari, the Complaints having been filed under Item 1 of Schedule IV of the MRTU & PULP Act, they were not maintainable before the Industrial Court. The Industrial Court, therefore, could not have given any declaration regarding these Complaints. In the case of Pepsico India Holdings Pvt. Ltd. (supra), I have already taken a view that a Complaint which is filed under Item 1 of Schedule IV cannot be entertained by the Industrial Court and no declaration can be given by the Industrial Court in respect of those items over which only the Labour Court has the jurisdiction. In the case of Abhudaya Co-op. Bank Ltd. (supra), a learned Single Judge of this Court has taken a similar view.

19. Therefore, the action taken by BTRA of terminating the services of the Petitioners by issuing them letters in 1987 and 1989 cannot be challenged by the Petitioners by filing Complaints before the Industrial Court under Item 1 of Schedule IV and Items 5, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. The Industrial Court cannot give a declaration in respect of unfair labour practices over which it has no jurisdiction to adjudicate. The industrial Court, therefore, ...has erred in declaring that BTRA has committed an unfair labour practice under Items 1(a), (b), (d) and (f) of Schedule IV of the MRTU & PULP Act, 1971, This declaration was given based on the fact that the workmen claimed that their services had been wrongly terminated at the age of 58 years which amounted to an illegal retrenchment.

20. Since I have held that the Complaints were not maintainable for various reasons as stated above, there is no need to go into the issue as to whether there is any merit in the case of the Petitioners. I, therefore, need not consider the other issues raised by the parties as to whether the age of retirement is 60 years or 58 years and whether the Circular issued in 1979 constitutes an agreement in view of the judgment of the Supreme Court in the case of The Workmen and Others Vs. Hindustan Lever Ltd., .

21. Viewed from any angle, the Complaints were not maintainable as they were barred by limitation and no declaration could have been made by the Industrial Court in respect of Item 1 of Schedule IV of the MRTU & PULP Act, 1971.

22. Writ Petition No. 5481 of 1996 and Writ Petition No. 6275 of 1996 rejected. Rule in both the Writ Petitions discharged. No order as to costs.

23. Writ Petition No. 537 of 1997 and Writ Petition No. 538 of 1997 allowed. Rule in both the Writ Petitions made absolute. No order as to costs.

24. Certified copy expedited.