

Filed on :- 24/01/2018
Registered on :- 24/01/2018
Decided on :- 11/06/2018
Period Yrs./Months/Days :- 00 Y 04 M 18 D

IN THE INDUSTRIAL COURT MAHARASHTRA AT NASHIK

(BEFORE SHRI. S. R. BHADGALE, MEMBER)

MISC. COMPLAINT (ULP) NO. 01 OF 2018.

(CNR NO. MHIC15-000014-2018)

Shri Bapu Laxman Desale.

... **Complainant**

... **V/s** ...

Divisional Controller, Nashik Division,
Maharashtra State Road Transport
Corporation, Nashik-422 001 and another. ...

Respondents

Coram

:- SHRI. S. R. BHADGALE, Member,
Industrial Court, Nashik.

Appearances

:- 1. Adv. Shri V.P. Andhale, for Complainant.
2. Adv. Shri S.S. Gangurde, for Respondents.

:- J U D G M E N T :-

(Delivered on 11th June, 2018)

- 1) The present miscellaneous application filed by the complainant for condonation of delay to file complaint of unfair

labour practices in this court under Item Nos. 9 and 10 of Schedule-IV of the MRTU & PULP Act, 1971 against the respondents, as respondents have not released regular scale after completion of 180 days of the service and failed to comply terms of the settlement.

- 2) The complainant further stated that, he has requested the said regular scale time to time, but respondents have denied to release the said regular scale and have not complied the condition of settlement as per the Rule 49 of Settlement 1956. As the compliance of settlement is continuous process and non-compliance is unfair labour practice, therefore the complainant has not filed the complaint within time. Hence, pray that condonation of delay application may be allowed.
- 3) Notice issued to the respondents. Respondents MSRTC appeared through Adv. Shri S. S. Gangurde and filed their say. Respondents denied the contents of the application and came with the case that, there are 28 years delay for filing the complaint against the respondents under Item Nos. 9 and 10. There is no reason explained in application for condonation of delay. Such delay cannot be condoned. Hence, respondents pray that, application be dismissed with cost.
- 4) While considering the case of the complainant as well as the case of the respondents, following issues are arises as per Exh. O-4 and my findings to each of them are as under :-

	<u>ISSUES</u>		<u>FINDINGS</u>
1	Does the complainant prove that, the delay caused in filing the complaint be considered as per the reasons stated in application ?	☞	In the affirmative.
2	Do respondents prove that, the delay application filed by the complainant is not maintainable ?	☞	In the negative.
3	What order ?	☞	As per final order

REASONS

- 5) **AS TO ISSUE NOS. 1 AND 2** : In view of the issues, both the advocates have filed the affidavits on record in support of their case and argued the application as well as relied on the case laws, to support their argument.
- 6) I have heard Adv. Shri Andhale. He argued that, the complainant was in the service of the respondents. He was praying regular pay scale after completion of 180 days, but the respondents have not considered their prayed and give the assurance time to time. As there was an agreement took place between Union of the complainant and the respondents in the year 1956. As per the Rule 49, the complainant is entitled to get the regular scale. Even though, the claim of the complainant has not considered by the respondents till filing this application. The Hon'ble Bombay High Court have held in number of Judgments that, the term of settlement and their benefits is continuous action till benefits release or till new settlement came into existence. In

present case, there is no new settlement took place after 1956. Therefore, the cause of action of the complaint is continuous cause of action, therefore there is no question of delay. Even though, for safer side complainant filed this application for condonation of delay. To support his argument Adv. Shri Andhale relied the case of Maharashtra State Road Transport Corporation, Nagpur through its Divisional Controller, Bhandara V/s. Premlal s/o. Khatri Gajbhiye (2003 II CLR 387). Hon'ble Bombay High Court held in this case as under :

"24. The decision of the Division Bench of this Court in Regional Manager, Maharashtra State Road Transport Corporation, Nagpur and another is also of no help to the appellants. Therein it was specifically ruled that "the respondent has invoked Item 9 of Schedule-IV of the act No. 1 of 1972, which entry relates to failure of implementing the settlement which according to both the parties is still in force and binding upon them. Therefore, in our opinion the unfair labour practice will continue to recur so long as the settlement remains unimplemented." As already held above, Clause 49 of 1956 settlement is still in force and, therefore, non-compliance thereof would amount to unfair labour practice by the appellants and it will continue to recur till and until the appellants grant the benefit under said Clause 49 of 1956 settlement to the respondents."

- 7) Adv. Shri Andhale further relied on the case of the Maharashtra State Road Transport Corporation, Through it's Divisional Controller, MSRTC, Aurangabad Division, Aurangabad and V/s. Maharashtra State Road Transport Kamgar

Sanghatana, Aurangabad, Through its Divisional Secretary (Writ Petition No. 3537 of 1994 decided on 10.09.2015). Hon'ble Bombay High Court have held as under. :

"16. If the contentions of both the learned Advocates are taken into account in the light of the ratio laid down by the Apex Court in the case of MSRTC V/s. Premlal (Supra) and by this Court in the case of MSRTC, Amravati V/s. Dwarkadas (Supra), I do not find that the impugned judgment of the Industrial Court deserves to be interfered with. The Industrial Court has, by allowing the complaint, issued the following direction to the Petitioner:-

"The respondents are directed to give timescale to those 204 workmen shown in annexure under clause 49 of the settlement dated 25.04.1956, from the date of completing 180 days by them from their initial joining and to give all benefits available to those on timescale."

8) Adv. Shri Andhale further relied on the case of Life Insurance Corroboration of India V/s. Union of India [LAWS (SC)-1980-11-7]. The Hon'ble Supreme Court has held in this case, while giving direction to the Life Insurance Corroboration to give effect to the terms of settlement of 1974 relating to the bonus until superseded by a fresh settlement, an industrial award or relevant legislation. Considering this ratio, Adv. Shri Andhale pray that application be allowed.

9) I have Adv. Shri S. S. Gangurde for the respondents. He argued that, the application filed by the complainant after 28 years delay. There is no any reason explained for alleged delay. The application filed by the complainant is false application. Hence, he pray that application be dismissed, with costs. To

support his argument, he relied the case of Chanda Khand Sahakari Shetkari Kharedi Vikri Sanstha V/s. Shri Dattatraya Ramchandra Gaund and another [2016 (2) Bom.L.C.624 (Bom)]. Hon'ble Bombay High Court have held in this case that, the application is made after a period of almost 20 years. After going through the same, I do not find any explanation for the delay so caused in making an application for payment of gratuity. Even if it is assumed that there is no period of limitation prescribed, the application has to be made within a reasonable period. The period of 20 years cannot be said to be a reasonable period. While considering this ratio Adv. Shri Gangurde argued that, the same ratio is applicable to the present case. Hence, pray that, application be dismissed with cost.

- 10) While considering the argument of both the advocates, after perusal of application and say, as well as the case law of both sides, the facts of the complainant's case is not disputed by the respondents that, he was not getting regular scale after completion of 180 days of joining his service and he was demanding since then. Respondents disputed the fact that, the complainant has not filed his complaint within time and there is delay of 28 years. To this point, the complainant relied the case law of the Hon'ble Bombay High Court have held in MSRTC, Nagpur V/s. Premal Gajbhiye that, the decision of the Division Bench of this Court in Regional Manager, Maharashtra State Road Transport Corporation, Nagpur and another is also of no help to the appellants. Therein it was specifically ruled that "the respondent has invoked Item 9 of Schedule-IV of the act No. 1 of 1972, which entry relates to failure of implementing the

settlement which according to both the parties is still in force and binding upon them. Therefore, in our opinion the unfair labour practice will continue to recur so long as the settlement remains unimplemented.” As already held above, Clause 49 of 1956 settlement is still in force and, therefore, non-compliance thereof would amount to unfair labour practice by the appellants and it will continue to recur till and until the appellants grant the benefit under said Clause 49 of 1956 settlement to the respondents.

- 11) While considering this ratio, the complainant make out the prima-facie case to condone the delay, as non-compliance of terms of the settlement is continuous cause of action. Therefore, the objection raised by the respondents of 28 years delay is not considerable on merit. While considering the case law cited by the complainant, the complainant is entitled to file his complaint in this court for his reliefs. Therefore, there is a prima-facie case make out by the complainant to adjudicate the issue of the complainant and respondents case on merit. It is justifiable to condone the delay of the complainant prayed in application to file and register his complaint. Hence, in the interest of justice, I answer the Issue No. 1 raised by the complainant is in the affirmative and Issue No. 2 raised by the respondent is in the negative and I proceed to pass the following order.

: ORDER

- 1) Misc. Application No. 01 of 2018 for condonation of delay is hereby allowed and delay is condoned.
- 2) Assistant Registrar, shall registered the complaint after due scrutinizing the complaint,

as per the Rules.

- 3) Judgment and order is dictated and pronounced in open court.
- 4) Misc. application is disposed-of accordingly.

Sd/-

Place :- Nashik.
Date :- 11.06.2018.

(S. R. BHADGALE)
Member,
Industrial Court, Nashik.

Argued on :- 05/06/2018
Judgment Dictated on :- 11/06/2018
Judgment transcribed on :- 12/06/2018
Judgment check & signed on :- 12/06/2018
Ssp/-

INDUSTRIAL COURT