BEFORE THE MEMBER INDUSTRIAL COURT, MAH., AT SANGLI

Complaint (ULP) No.26 Of 2019

Shri Sampat Shamrao Suryawanshi ..Complainant

V/s

1) Vasantdada Shetkari Sahakari Sakhar Karkhana Ltd. and Anr. ..Respondents

Order Below Ex.C-22

(Date : 10th January 2023)

This application has been filed by the respondents requesting to frame preliminary issue of limitation and to decide the same. According to respondents, complaint is not filed within a period of 90 days as required u/s 28(1) of MRTU & PULP Act,1971 nor there is any delay condonation application filed by complainant. According to respondents there is delay of about more than six years and nine months in filing the present complaint and the said fact has been concealed by the complainant. According to respondents the complainant has not followed the provisions of Regulation 100 and 101 of the Industrial Court Regulations, 1975 and officer of this court failed to scrutinize the complaint properly. The respondents have raised this legal objection in its written statement which is going to the root of the matter and hence preliminary issue is required to be framed ans decided first and complaint is liable to be dismissed.

2. The respondents filed say on the said application at Ex.U-10. It

is contended that application is false and it has been filed as a part of delatory tactics. According to complainant, he is claiming unpaid lawful wages and related monetary benefits which are illegally not paid by the respondents. According to complainant the unfair labour practice engaged by the respondents is continuous and recurring in nature. The cause of action being continuous and recurring one referable to Item 9 of Sch.IV of the MRTU & PULP Act, 1971, hence there is no need to file delay condonation application. The complainant has relied upon following Judgments in his say.

a) Warden and Co. v/s Akhil Maharashtra Kamgar Union, Thane (2001 II CLR 359)

b) Maharashtra State Co-Op. Cotton Growers Marketing Federation Ltd. v/s Maharashtra State Co-Op. Cotton Growers Marketing Federation Employees Union (1992 I CLR 350)

c) Cipla Ltd. v/s Anant Ganpat Patil (2008 I CLR 102)

d) Indian Smelting and Refining Co. Ltd. v/s Sarva Shramik Sangh (2009 I CLR 590)

e) Maharashtra State Road Transport Corporation v/s Maharashtra Motor Kamgar Federation (1986 Mah.LJ 802)

f) Vasudeo Dharanidhar Joshi v/s Bombay Textile Research Association (2005 (105) FLR 515)

3. Considering rival contentions following points for my determination and I record my findings thereon as follows -

	Points	**Findings**
(1)	Whether preliminary issue requires to be framed as prayed by respondents ?	In the Negative
(2)	What Order ?	As Per Order Below

Reasons

4. **As to Point No.1** :- Heard learned advocate Mr.S.S. Mutalik for respondent and learned advocate Mr.D.S. Yadav for complainant. It is vehemently submitted that complaint is barred by limitation and there is delay of more than six years caused in filing the complaint. Therefore, the complaint ought to have been accompanied with delay condonation application. Since no delay condonation application is filed the complaint cannot be entertained in view of Regulation 100 and 101 of Industrial Court Regulations. The complaint therefore liable to be dismissed at threshold. Hence it is prayed to frame preliminary issue of maintainability of complaint.

5. *Per contra*, learned advocate Mr.D.S. Yadav for complainant submits that cause of action in the present matter is continuous and recurring and there is no delay as alleged by the respondents. It is submitted that non payment of wages gives continuous and recurring cause of action and it amounts to continuous unfair labour practice under Item 9 of Sch.IV of the MRTU & PULP Act, 1971. Therefore, there is no need to frame preliminary issue as prayed by the respondents.

6. Upon hearing the parties, I have gone through pleadings of

complaint and written statement, the application and say of the parties. The learned advocate for respondents has relied upon Judgment of ***Pauni Shikshan Sanstha and Anr. v/s Sunil Rajaram Uparikar (Shri) and Ors.(2000 Legal Eye(Bom.) 568)***, in which it is held by Hon'ble Bombay High Court that when a preliminary objection regarding jurisdiction is raised the School Tribunal is required to take it as preliminary issue. In another Judgment relied upon by the respondents in the case of ***Municipal Corporation of City of Amaravati v/s Ashok Ramkrishna Kamble (1994 Legal Eye (Bom.) 378)***. It is held by Hon'ble Bombay High Court that when there is issue of status of employee is raised the Labour Court shall decide the question of jurisdiction as preliminary question and then to proceed to decide application for interim relief. Third Judgment is of ***Hon'ble Bombay High Court in the case of D.C. Tonge v/s Divisional Secretary, Maharashtra State Transport Kamgar Sanghatana, Nagpur (1984 Legal Eye (Bom) 330)***.

7. Learned advocate Mr.D.S. Yadav relied upon Judgment of ***Hon'ble Bombay High Court in Indian Smelting and Refinery Co. Ltd. v/s Sarva Shramik Sangh (2009 I CLR 590)*** in which it is held that non payment of wages on par would give rise to the recurring cause of action and complaint is not barred by limitation.

8. The question involved in the present matter is regarding non payment of unpaid wages, amount of bonus. The complainant in the

present case has claimed that cause of action in the present complaint is continuous and recurring and hence complaint is within limitation. Whereas the respondents in its written statement resisted the complaint on various grounds and one of the ground of objection is that the complaint is not within limitation.

9. The Judgments referred to by the respondents are on the front of the jurisdiction of the court and since the issue of jurisdiction goes to the root of the matter the Hon'ble High Court has held that the said aspect should be decided as preliminary question. In the complaint in hand the respondents are trying to raise issue of limitation and insisted upon the court to decide it as preliminary issue. However, the said issue being mixed question of facts and law cannot be decided as preliminary issue and it can be conveniently decided after parties led their evidence. The ***Hon'ble Supreme Court in the case of D.P. Maheshwari v/s Delhi Administration and Ors. (1984 AIR 153)*** has held that piecemeal decisions always protract litigation and therefore piecemeal decisions are not encouraged. Under such circumstances and considering the fact that the complaint is of more than three years old. It is not supposed to decide any issue as preliminary issue. From the record it appears that the respondents have taken more than three years for filing written statement and now praying to frame preliminary issue after lapse of three years. Considering the nature of issue which is sought to be framed as

preliminary issue I think it proper to decide the same alongwith all other issues finally on merit. Hence the application of the respondents is required to be rejected. Hence the following order.

Order

(i) Application at Ex.C-22 stands rejected.

(ii) Complaint to proceed further.

(iii) Dictated and pronounced in Open Court.

Digambar Marutirao Patil
Digitally signed by Digambar Marutirao Patil
Date: 2023.01.16 13:41:09 +0530

Date : 10th January 2023. (D.M. Patil)
Member
Place : Sangli. Industrial Court, Sangli.