

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6448 OF 2003

Shantaram G. Choudhary and Ors.

...Petitioners

V/s.

M/s. Teksons Limited and Anr.

...Respondents

Mr. V.P. Vaidya, for the Petitioner.

Mr. Kiran S. Bapat, Senior Advocate with Mr. Dhruv Dandekar, Ms. Avantika Mehndiratta & Ms. Chaya Bhadkamkar i/b. Veritas Legal, for the Respondent.

CORAM: SANDEEP V. MARNE, J.

Reserved On: 3 July 2026.

Pronounced On: 13 July 2026.

Judgment:

1) By this Petition, Petitioners have challenged the judgment and order dated 28 October 1993 passed by the Industrial Court to the limited extent of non-acceptance of their case of non-tendering of resignations and leaving the issue of reinstatement dependent on non-tendering of resignations. The Petitioners have also challenged order dated 29 September 2000 passed by the learned Member Industrial Court dismissing Complaint (ULP) No. 151 of 1994, which was instituted by them seeking declaration of non-tendering of resignations and consequent reinstatement. They have also challenged order dated 10

February 2003 dismissing the Miscellaneous Applications filed for implementation of Order dated 28 October 1993.

2) Respondent is an engineering concern having its establishment at Thane. In the year 1981, employees of the Respondent joined the Association of Engineering Workers and there was an Industrial strife. According to Petitioners, about 315 employees were suspended leading to Industrial action by the employees. The employer treated the action as illegal strike whereas the Union treated the same as illegal lockout. The then Union filed a Complaint of unfair labour practice contending that the company had resorted to illegal lockout from 11 May 1981. In Complaint (ULP) No. 337 of 1985, the Court appointed an enquiry/investigating officer to verify and report to the Court in respect of veracity of allegation of strike vis-a-vis lock out. According to Petitioner, the Court directed by order dated 11 August 1986 that the employees be permitted to resume duties. The employees apparently resumed the work in February 1987 and continued to work till December 1987. According to Petitioners, the employees were prevented from joining duty without giving an undertaking that they have resorted to illegal strike from 11 May 1981.

3) In the above background, Kamgar Utkarsha Sabha filed Complaint (ULP) No. 459 of 1987 alleging unfair labour practice before Industrial Court. A settlement was signed by 5 representatives of the employees with the Respondent on 12 October 1990. 42 employees got aggrieved by the settlement and filed Intervention Application at Exh-UA-2 for their impleadment to Complaint (ULP) No. 459 of 1987 contending that they had not resigned and that the terms of settlement were not acceptable.

The Application of 42 employees was allowed, and they prosecuted Complaint (ULP) No 459 of 1987. By judgment and order dated 28 October 1993, the Industrial Court virtually allowed the Complainant and held that the action of the Respondents in demanding declaration as a condition precedent for allowing them to resume work from 4 December 1987 onwards amounted to imposition of illegal lock out. Though the Industrial Court held that Respondent committed unfair labour practices under Item 6, 9 and 10 of schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**), it refused to accept the contention of 42 workers that they had not resigned in term of settlement and instead left that issue open. The Industrial Court directed that only those employees were entitled to resume duties who had not resigned from services.

4) Respondent-employer took a stand that all 42 workers had resigned and refused to permit them to resume duties. Therefore Shri. Shantaram Chaudhary filed fresh Complaint (ULP) No. 151 of 1994 on behalf of the 24 employees complaining that the Respondent had committed unfair labour practice by not permitting them to resume the duties. Complainant (ULP) No. 151 of 1994 was dismissed as not maintainable by order dated 29 September 2000. Those employees were thereafter advised to file Miscellaneous Applications under Section 50 of the MRTU & PULP Act for implementation of the judgment and order dated 28 October 1993. However, by common order dated 10 February 2003, the Applications were dismissed holding that Industrial Court lacked jurisdiction to determine the issue as to whether employees had indeed resigned from service or not.

5) After being unsuccessful in getting back their jobs, 22 employees have filed present Petition challenging the orders passed by the Industrial Court on 28 October 1993 in Complainant (ULP) No. 459 of 1987, Order dated 29 September 2000 in Complainant (ULP) No. 151 of 1994 and Order dated 10 February 2003 dismissing the Misc. Applications filed under Section 50 of the MRTU & PULP Act.

6) I have heard Mr. Vaidya, the learned counsel appearing for Petitioners who submits that the Petitioners have practically succeeded before the Industrial Court in Complainant (ULP) No. 459 of 1987. He submits that Issue No. 1 about illegal lockout is answered in favour of the Petitioners. That the issue of violation of conditions of service is also answered in favour of the Petitioners. That the Labour Court also held that the Respondent-Employer committed unfair labour practices. That however while answering issue No. 5 relating to entitlement for resumption of duty, the Industrial Court erred in not accepting the contention of the 42 employees that they have not resigned from services. That if the 42 workers had resigned from services, they would not have sought their impleadment or prosecuted the Complaint after the same was virtually given up by the Union.

7) Mr Vaidya further submits despite succeeding in Complainant (ULP) No. 459 of 1987, the Petitioners have not secured final relief of reinstatement on account of deliberate misinterpretation of the order of Industrial Court by the employer. That the subsequent Complaint of unfair labour practice was dismissed on the ground that the same was not maintainable. Similarly, implementation proceedings are also dismissed holding that the issue of resignation cannot be determined in

those proceedings. He submits that the employer did not produce resignation letters. That employees cannot prove negative that they had indeed resigned from services. The resignation letters ought to have been produced on record. That Shri. Shantaram Chaudhary led evidence on behalf of all the workers about absence of resignations. He therefore submits that a declaration be issued that the Petitioners did not resign from services so that they can enjoy the fruits of their success in Complaint (ULP) No. 459 of 1987.

8) The Petition is opposed by Mr. Bapat, the learned Senior Advocate appearing for Respondent-employer. He questions maintainability of the Petition. That the Petition is filed after inordinate delay and order dated 28 October 1993 cannot be permitted to be challenged in the Petition filed 10 years later in 2003. That Petitioners have accepted the order dated 28 October 1993 and sought its implementation by filing two subsequent proceedings. Now they cannot turn around and challenge that order. He submits that Petitioners did not produce an iota of evidence to prove that they have not tendered resignations. That it is Respondent's specific case that all workers had tendered their resignations and that the settlement was entered only after ensuring that resignations were secured from all the employees. He submits that the number of the aggrieved employees has substantially come down. That earlier 42 employees had agitated their grievances which number got reduced to 24 by the time Complaint (ULP) No. 151 of 1994 was filed. The present Petition is filed only by 22 workers and that some of the workers have passed away. He therefore submits that this Court need not interfere in the impugned orders. He prays for dismissal of the Petition.

9) Rival contentions raised on behalf of the parties now fall for my consideration.

10) It must be observed at the very outset that the petition is grossly delayed so far as challenge to the order dated 28 October 1993 passed by the Industrial Court in Complaint (ULP) No. 459 of 1987 is concerned. The petition is filed after 10 long years after passing of order dated 28 October 1993. However the objection of delay needs to be ignored since this Court is satisfied that there are no laches on the part of the Petitioners. There are particularly two reasons for not dismissing the petition on the ground of delay and laches. Firstly, the petition has been admitted by this Court on 10 December 2003 and has remained pending in this Court for over 23 long years. Secondly, Petitioners had virtually succeeded in Complaint (ULP) No. 459 of 1987 and there was actually no reason for them to challenge the Order dated 28 October 1993. However, Respondent's interpretation of that order made the Petitioners to file subsequent litigations. Petitioners were required to file proceedings for implementation of the order in Complaint (ULP) No. 459 of 1987, they cannot enjoy the fruits of their success on account of actions of the Respondent. Their Applications filed under Section 50 of the MRTU & PULP Act came to be dismissed on 10 February 2003 where after Petitioners finally realized that the order dated 28 October 1993 is being interpreted against them. In that view of the matter, therefore the Petition cannot be dismissed on the ground of delay or laches.

11) Complaint (ULP) No. 459 of 1987 was initially filed by Kamgar Utkarsha Sabha. The said Union apparently entered into settlement during pendency of the Complaint, and it is the case of the Respondent-

employer that all the concerned employees tendered their resignations and after ensuring their resignations, the Settlement was signed on 12 October 1990. On the other hand, it is the contention of the 42 employees that they did not tender resignations and that they were opposed to the Settlement. With this grievance, they sought intervention in Complaint (ULP) No. 459 of 1987 for prosecution of the Complaint which otherwise would have been given up by the Union. Their intervention was allowed and those 42 employees ultimately prosecuted Complaint (ULP) No. 459 of 1987.

12) The Industrial Court answered the first four issues in favour of the 42 employees/complainants. This is clear from the issues and answers to them which are set out below:

1. Whether the impleaded employees prove that the Respondents' action of demanding alleged declaration as a condition precedent for allowing them to resume work from 4th December, 1987 onwards amounts to imposition of illegal lockout against them ?	Yes
2. Whether the impleaded employees prove that by their aforesaid action, the Respondents violated their conditions of service?	Yes
3. Whether the impleaded employees prove that by their aforesaid action the Respondents exercised force against them?	Yes
4. What unfair labour practices, if any, the Respondents prove to have committed ?	Yes. The Respondents are proved to have committed unfair labour practice under Items 6,9 and 10 of Schedule IV of the Act.

5. Are the impleaded employees entitled to claim resumption of duty and consequential relief of payment of full back wages, as claimed in the Complaint?	Yes, only those impleaded employees who have not resigned from the employment of the Respondents shall be entitled to resumption of duty with full back wages.
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13) Thus, the Industrial Court has held that an illegal lockout was imposed against the Complainants and that there was violation of conditions of their service. It is held that force was exercised on them for tendering resignations and thereby unfair labour practices were committed. Thus the first four issues are answered in favour of the complainants. Even the Issue No. 5 is answered in their favour. However, the Industrial Court restricted the relief of resumption only for those who did not tender resignations. While doing so, the Industrial Court itself did not enquire as to who had resigned and who had not. The Industrial Court has recorded following reasons while answering Issue No.5:

ISSUE NO.5:

13. I have hold above that the impleaded employees have proved that the Respondents illegally shunned them from resuming work and the Respondent's said action amounts to illegal lock-out. I have also held above that the Respondent's action is in breach of the service conditions of the concerned employees I'm that, their contract of employment was never validly terminated. I have also found that the said Respondent action has implied exercise of force. The important question that now arises for consideration is whether proof of unfair labour practices committed by Respondent, the impleaded employee would be entitled to claim the relief or resumption of duty and payment of back wages. It may be stated that on the on the day the impleaded employees filed pursis. Exh. UA-2 and sought their dimpleading as party to the Complaint, the original parties to the Complaint filed pursis Ex.CU-1 , stating therin that they had resolved the dispute involved in

the Complaint by amicable settlement signed under Section 2(p) of the Industrial Disputes Act, 1947. The pursis was signed by the Director of the Respondents and five committee members and representatives of the employees. The also placed on record copy of the settlement dated 12th October, 1990. It appears that in terms of the said settlement, the Respondents extended certain monetary benefits to the employees listed in Annexure "A" to the said Settlement. It further appears that the benefits under the said settlement were extended to those of the employee who tendered their resignation and resigned from the employment. It is, therefore, clear that pending the hearing of the dispute in the Complaint, the concerned employees, by their own act, brought about termination of their contract of employment. There is also admission in the joint petition, Ex.UA-2 dated 31st October, 1990, that the impleaded employees had resigned from the employment though they have alleged that their resignation letters were obtained by deceit. The witness Shantaram Choudhary (LW-1) did not even remotely whisper in his evidence about the alleged deceit practised by the Respondents and the Union obtaining resignation letters from the concerned employees. There is also no material on record to suggest that any fraud was committed upon the concerned employees by the Respondents or the Complainant Union in arriving at the settlement in question. The settlement in question appears to be a package deal, which is accepted by majority of the employees. In the absence of any evidence that the settlement in question is invalid for any reason, it is not possible to strike down the settlement as invalid. **However, as the terms of the settlement go, it would not be binding to those of the employees who did not submit their resignation letters. To this extent, the contract of employment of such employees, who have not resigned from service, would continue to subsist and such employees would be entitled to claim resumption of duty with full back wages.**

In the result, Issue No.5 is answered accordingly.

(emphasis added)

14) In my view, the Industrial Court has grossly erred in leaving open the issue of tendering of resignations. If the Industrial Court intended to grant the relief of resumption to those Complainants who had not tendered resignations, it ought to have conducted a factual enquiry into that dispute. The Industrial Court was fully aware of the stand taken by the employer that all 42 Complainants had tendered their resignations. On the other hand, it was the case of the 42 Complainants that they had

not tendered resignations. In the light of this rival positions taken by the parties, it was incumbent upon the Industrial Court to determine this factual dispute and to give a clear answer as to whether the 42 complainants or any of them had indeed tendered resignations or not. The error on the part of the Industrial Court has resulted in a situation where despite succeeding in the Complaint, none of the 42 workers have ultimately received any benefit. This is clear from further litigation, which some of them were required to adopt for the next 10 years, details of which are discussed in paragraphs to follow.

15) As observed above, the employer had always adopted a position that all 42 workers had tendered their resignations and had participated in the Settlement. Therefore, the employer refused to allow any of the said 42 workers to resume duties. Mr. Bapat has submitted that the payments due to the said 42 workers have been ultimately deposited with the office of Labour Welfare Commissioner.

16) Refusal by the employer to permit resumption of duties, forced 24 employees to undertake further litigation by filing Complaint (ULP) No. 151 of 1994 (*Shri. Shantaram Chaudhary filed it on behalf of 24 employees*). Ordinarily, it is impermissible to file a fresh complaint of unfair labour practice claiming the very same relief of resumption of duties which was already considered by the Court in previous Complaint. The Complaint was therefore dismissed as not maintainable by Order dated 29 September 2000.

17) This forced the employees to file Miscellaneous Applications seeking implementation of the order dated 28 October 1993. The

Industrial Court faced a unique conundrum where it lacked jurisdiction to conduct factual inquiry about tendering of resignations by the employees under Section 50 proceedings. It has therefore dismissed the Misc. Applications vide order dated 10 February 2003.

18) Petitioners thus face a unique situation where despite virtually succeeding in Complaint (ULP) No. 459 of 1987, they have received no benefit out of such success. The Industrial Court granted the relief of resumption of services only to those employees who had not resigned in terms of Settlement dated 12 October 1990. The operative part of the order dated 28 October 1993 reads thus:

It is hereby declared that the Respondents are guilty of unfair labour practices under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971.

The Respondents are hereby directed to cease and desist from engaging in the aforesaid unfair labour practices by allowing those of the impleaded employees who have not resigned from service in terms of the settlement dated 12th October, 1990 to resume work and pay them full back wages for the period for which they were not allowed to work.

There shall be no order as to costs.

19) The employer has flatly refused to recognize the position that any of the 42 employees had not tendered resignations. In the Affidavit-in-Reply filed in the present petition, the Respondent-employer has taken the following defence:

6. I say that from the documents and evidence on record, it is amply clear that the Petitioners have submitted their respective resignations. I further say that the only defence taken by the Petitioners is about the alleged deceit practiced by the then representatives of the union. I say that in spite of the knowledge of the said resignations and in spite of the fact that they filed the application before the Learned Industrial

Court on 31.10.1991, none of the Petitioners came forward to lead oral evidence in respect of the aforesaid alleged deceit practiced. I say that therefore the learned member of the Industrial Court has rightly held that there is no material on record to suggest that any fraud even once committed upon the Petitioners by the Respondents and/or said complainant union.

20) As observed above, Respondent claims to have deposited the legal dues with the Labour Welfare Commissioner which is clear from the following averments in para-4 of the reply:

4. I say that accordingly the Petitioners along with other co-workers submitted their respective resignations on 15.10.1990, which were duly accepted by the Respondent Company and deposited their respective legal dues with the Labour Welfare Commissioner. I say that none of the workers, including the Petitioners, made any complaints and/or grievances in respect of the aforesaid resignations. I further say that at no point of time neither of the Petitioners withdrew their resignation. I say that therefore at this belated stage, the Petitioners cannot make any grievance about the said resignations by making false and baseless allegations.

21) The petition is now being pursued by 22 workers. Many of them have passed away and their legal heirs are prosecuting the petition. The net result of the situation is that by opposing the Settlement, Petitioners have neither received the benefit of settlement nor have got their jobs back. The Respondent-employer did not challenge the order dated 28 October 1993 passed in Complaint (ULP) No. 459 of 1987 which is virtually passed against it. In these circumstances, in my view, the Respondent is required to be directed to pay to the Petitioners/their legal heirs all financial benefits arising out of Settlement.

22) As observed above, the Petitioners were left high and dry despite virtually succeeding in Complaint (ULP) No. 459 of 1987. The Industrial Court left open the issue of tendering of resignation but did not specify

the authority who could determine the said issue. Respondent-employer took undue advantage of this open-ended process left by the Industrial Court and though the order dated 28 October 1993 went against it completely, Respondent thought it appropriate not to challenge the same but took a convenient stand that all 42 employees had actually tendered their resignations. Their resignations are not put on record at any point of time by the Respondent. Even before this Court, the Respondent has not produced for my perusal resignations tendered by these employees. The Industrial Court after having left open the issue of resignations, refused to exercise jurisdiction either under Section 28 or under Section 50 of the MRTU & PULP Act to conduct factual inquiry into the aspect of resignations. It dismissed Complaint (ULP) No. 151 of 1994 and also dismissed Misc. Applications filed under Section 50 of the MRTU & PULP Act. This has resulted in a situation where Petitioners are left with no remedy in respect of the stand adopted by the Respondent that all 42 complainants had tendered resignations.

23) One course of action open for this Court is to set aside either the order dated 28 October 1993 or order dated 29 September 2000 or order dated 10 February 2003 and direct the Industrial Court to conduct a factual inquiry in either of the three proceedings as to whether Petitioners had indeed tendered resignation or not. However, period of 36 long years has elapsed from the date of Settlement (12 October 1990). It would be unjust for both the parties to now expect to lead evidence for determination of that factual issue. It is only on account of these peculiar circumstance that this Court is not disturbing the order dated 28 October 1993, 29 September 2000 or 10 February 2003. However, leaving Petitioners without grant of any relief is also not warranted in the facts

and circumstances of the present case. They must at least receive what their counterparts received out of settlement dated 12 October 1990. This benefit the Petitioners could have otherwise received even if they were not to litigate for the last 36 long years. The only benefit that I proceed to add to those entitlements is in the form of some interest at least from the date of filing of the petition so that Respondent is made to suffer consequences of its action of not challenging order dated 28 October 1993.

24) I am conscious of the position that Respondent may have deposited the legal dues with the office of the Labour Welfare Commissioner. However, making the Petitioners/legal heirs run behind the Labour Welfare Commissioner to secure their dues after fighting the litigation for over 36 long years (from the date of settlement) would be clearly unjust to the Petitioners and their legal heirs. Therefore, the extraordinary measure needs to be adopted by directing the Respondent to pay to the Petitioners/their legal heirs all benefits flowing through the settlement and approach the office of the Labour Welfare Commissioner for seeking refund of the amount deposited with the office. It would also be appropriate to award some interest to the Petitioners/their legal heirs who have suffered despite virtually succeeding in the initial Complaint (ULP) No. 459 of 1987. In my view, simple interest @ 6% p.a. needs to be awarded from the date of filing of the present petition, i.e. w.e.f. 29 April 2003. Such course of action would balance the equities between the parties. Respondent is also at some fault who has virtually nullified the fruits of success of order dated 28 October 1993 by taking a unilateral position that all the 42 complainants had tendered their resignations. The Tribunal did not accept this position which is clear from the ultimate

relief granted by it. However, it left open the issue of tendering of resignation. The Industrial Court subsequently refused to decide the said issue despite taking out two proceedings in the year 1994 and 2000. In these circumstances, the Respondent needs to be made liable to pay at least the benefits of Memorandum of Settlement dated 12 October 1990 alongwith simple interest @ 6% p.a. from the date of filing of the present petition.

25) The petition succeeds in part and I proceed to pass the following order :

(i) Orders dated 28 October 1993 passed in Complaint (ULP) No. 459 of 1987, order dated 29 September 2000 passed in Complaint (ULP) No. 151 of 1994 and orders dated 10 February 2003 passed in Misc. Applications filed under Section 50 of the MRTU & PULP Act are not disturbed.

(ii) Respondent is directed to pay to the Petitioners/the legal heirs all financial benefits arising out of Memorandum of Settlement dated 12 October 1990 alongwith simple interest @ 6% p.a. w.e.f 29 April 2003 (*date of filing of the petition*).

(iii) The Labour Welfare Commissioner shall refund to the Respondent the entire amount deposited by the Respondent towards amount payable to the 42 complainants in terms of Memorandum of Settlement dated 12 October 1990.

26) With the above directions, the petition is **partly allowed**. Rule is made partly absolute. There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]