



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12517 OF 2024

**Ms H.h. Patel And Company Through Its Authorized Officer
VERSUS**

Suryachap Jarda Shramik Sangh Through Is Secretary Pandit Jamsing Patil

Mr. V. D. Hon, Senior Counsel h/f Mr. A. V. Hon, Advocate for Petitioner
Mr. P. V. Barde, Advocate for Respondent

CORAM : R. M. JOSHI, J.

DATE : 01st April, 2025

PER COURT :-

1. This petition takes exception to the judgment and order dated 08.08.2024 passed by Industrial Court, Jalgaon in Complaint ULP No. 19 of 2017 whereby the respondent/petitioner herein is directed to pay subsistence allowance to the workmen concerned along with interest at the rate of 6 % per annum.

2. Parties are referred to as “employer and employees” for the sake of convenience.

3. Complaint ULP No. 19/2017 came to be filed before the Industrial Court by respondent-Trade Union on behalf of the employees of petitioner-employer. It is averred in the said complaint that concern employees are the

members of the complainant-Union and that there is challenge to the order dated 11.01.2017 by which the employees were suspended by the employer. Employees made grievance to the complainant-Union about non payment of allowances so also their suspension being caused without any sufficient cost. It is also specifically pleaded in the complaint that the employer has directed employees to mark attendance at the place of work, which condition according to the employees is illegal as it is not supported by the law. There is specific pleading with regard to the non-payment of subsistence allowance with these averments. In the complaint prayer was made in Clause No. 19B that the order of suspension dated 11.01.2017 be declared as illegal and set aside.

4. Employer filed written statement denying the locus standi of the complainant-Union to file complaint. Apart from this, it is claimed that the complainant-Union is not a registered Trade Union nor representing the employees of the employer. It is alleged by the employer that the employees are purposely delaying enquiry proceedings, and, therefore, they have no right to claim any subsistence amount. During the pendency of the complaint, concerned employees were dismissed from service on conducting departmental enquiry against them. Learned Industrial Court rendered finding that the issue of the legality of suspension order has become redundant, however proceeded to direct the employer to pay subsistence allowance along with interest at the

rate of 6 % per annum.

5. At the outset, learned senior counsel appearing on behalf of employer contended that respondent-Union is not trade union registered under Trade Unions Act and also not representing employees of employer. According to him, on this count alone the complaint deserves to be dismissed. Learned counsel for the respondent-Union drew attention of Court to the findings recorded by Industrial Court about the payment of membership fees by employees and passing of resolution on. He placed on record copy of registration certificate of Union under Trade Union's Act. Perusal of the record indicates that the findings of Industrial Court with regard to the membership is based on evidence on record and hence can't be termed as perverse. Similarly, though it is observed that the witness of Union has not produced registration certificate on record but in view of certificate placed before this Court, leaves no room for doubt that respondent-Union is duly registered under Trade Unions Act and represents employees of employer. The objection raised to the complaint on these grounds is without substance and hence rejected.

6. On merit, learned senior counsel appearing on behalf of the petitioner-employer submits that the relief granted by the Industrial Court without any prayer being made to that effect and as such the direction is not

sustainable. To support his submission, he placed reliance on the judgment of Hon'ble Supreme Court in case of **Manohar Lal Vs. Ugrasen (2010) 11 Supreme Court Cases 557** and in case of **Akella Lalitha Vs. Konda Hanumantha Rao, 2022 SCC OnLine SC 928**. By referring to the observations made by the Hon'ble Supreme Court in these judgments, it is contended that in absence of any prayer made calling upon the Industrial Court to direct grant relief of payment of subsistence allowance, no such relief could have been granted. In response to the case law cited on behalf of the learned counsel for Union, it is contention that those judgments were passed in a reference as well as referring to the provisions of Section 10 A of the Industrial Employment (Standing Orders) Act, 1946 (for short "**the Act**"), it is his submission that absence of any issue involved in these judgments have no application to the same.

7. Learned counsel for Union supported the impugned order. He draw attention of the Court to the pleadings which clearly indicates about non payment of subsistence allowance. It is his submission that in the Labour jurisprudence, principals of pleadings would not apply. According to him, parties were fully conscious of the fact that the Union is seeking direction for the payment of subsistence allowance which according to him can be reflected from Paragraph 22 of the order wherein the submissions to that effect are duly

recorded by the Industrial Court. It is his submission that Industrial Court has rightly taken into consideration the fact that there is no payment of subsistence allowance and by invoking provisions of Section 13 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short “**MRTU and PULP Act**”), consequential relief has been rightly granted. To support his submissions, he placed reliance on the judgment of Bombay High Court in case of *Vijaykumar Laxman Kabir Vs. N. R. C. Limited & others 2004 (2) Bom. C. R. 563* and also on the judgment of Bombay High Court in case of *Hindustan Level Employees Union Vs. Hindustan Unilever Limited 2024 DGLS (Bom.) 104.*

8. There cannot be any dispute made with regard to the proposition sought to be canvassed on behalf of the learned counsel for Union that strict rules of pleadings may not apply to the complaint filed under the MRTU and PULP Act. However, at the same time, it cannot be ignored that in the instant case, there is no relief sought of payment of subsistence allowance. Though, there are pleadings in the complaint with regard to the non payment of subsistence allowance so also, the condition imposed being illegal, these pleadings are made in the complaint in order to substantiate the case of the Union that the suspension order dated 11.01.2017 is not legal and to support relief of quashment thereof. However, as a matter of fact, no subsistence

allowance is claimed therein. Non application of strict rules of evidence, does not mean, that the relief which can be asked for by making prayer, need not be sought at all.

9. As far as powers of the Industrial Court to grant consequential relief is concerned, the same cannot be stretched to the extent that the relief could be granted, which could have been sought, but not asked for. Section 30 of MRTU and PULP Act, which deals with power of Court reads thus :-

30. Powers of Industrial and Labour Courts :-

“(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order -

(a) declare that an unfair labour practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without backwages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

(c) where a recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all or any of its rights under sub-section (1) of section 20 or its right under section 23 shall be suspended.

(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision:

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

(3) For the purpose of holding an enquiry or proceeding under this Act, the Court shall have the same powers as are vested in Courts in respect of -

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person, and examining him on oath;

(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses.

(4) The Court shall also have powers to call upon any of the parties to proceeding before it to furnish in writing, and in such forms as it may think proper, any information, which is considered relevant for the purpose of any proceedings before it, and the party so called upon shall thereupon furnish the information to the best of its knowledge and belief, and if so required by the Court to do so, verify the same in such manner as may be prescribed.”

This provision entrusts power to Industrial Court and Labour Court to declare engagement of unfair labour practices and direction to ceasation thereof. An affirmative action including payment of compensation,

reinstatement with or without backwages could be passed. This provisions is enabling provision that the relief sought could be modified and in appropriate cases reasonable compensation also could be directed. It however cannot be construed to be a power to grant a relief which was capable of being prayed but not prayed/excluded from relief sought. It is settled law that whenever particular relief which was required to be prayed specifically and not prayed, is not open to be granted by the Court. The reason therefor is that the party against whom such relief is to be granted has not been made aware of such relief. At the cost of repetition, even if, the contention of the complainant is considered to the effect that there is non payment of subsistence allowance, the said contention could be considered for purpose of declaration of order of suspension as illegal. In case, specific prayer was made, it was open for the employer to resist the said prayer and to lead evidence in that regard. This opportunity has been lost by employer. There was specific argument advanced before the Industrial Court with regard to there being no prayer made for grant of subsistence allowance, during the period of suspension. It was open for complainant to add prayer in the complaint. However, complainant has chosen not to do so.

10. Even though it may appear to be technical issue, however it has bearing on the basic right of party to know what order is sought against it.

Once the employer was never given to know that the Union-employees are seeking direction for payment of subsistence allowance, in absence of such prayer, it would not be open for the Industrial Court to pass order directing such payment.

11. Consequently, impugned judgment and order stands set aside. However, having regard to the fact that there are specific pleadings made by the complainant with regard to the non payment of subsistence allowance, it would be in the interest of justice that the Union is permitted to amend complaint to incorporate prayer of payment of subsistence allowance and complaint is decided afresh.

12. In the result, petition stands allowed in following terms :-

- i) Impugned order is set aside.
- ii) Complaint ULP No. 19/2017 is relegated back to the Industrial Court for decision afresh.
- iii) Complainant is permitted to amend the complaint to incorporate prayer of payment of subsistence allowance.
- iv) If parties so desire, said Court to permit them to lead additional evidence.
- v) Parties are directed to appear on 30.04.2025 before the

Industrial Court. No separate notice shall be issued to them.

vi) Since, complaint is of year, 2017, the same be disposed of in accordance with law within a period of 6 months.

(R. M. JOSHI, J.)

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