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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14102 OF 2022

- 1. The Municipal Corporation of
Greater Mumbai.**
- 2. The Municipal Commissioner,
Mahapalika Building, Mahapalika
Marg, Mumbai 400 001**
- 3. The Chief Engineer, Solid Waste
Management Department (SWMD),
The Municipal Corporation of Greater
Mumbai, 368, Luv Groovers,
Dr. Annie Besant Road, Worli,
Mumbai 400 018**
- 4. Dy. Chief Officer (Enquiry),
Head Office, The Municipal
Corporation of Greater Mumbai,
Head Office, Mumbai 400 001**

... Petitioners

Vs.

**Suresh Rajaram Kadam,
Jai Hind Coop. Housing Society,
422, Plot No.R No.21, Charkop,
Kandivali (West), Mumbai 400 067.**

... Respondent

**WITH
WRIT PETITION NO.2651 OF 2023**

**Suresh Rajaram Kadam,
Jai Hind Coop. Housing Society,
422, Plot No.R No.21, Charkop,
Kandivali (West), Mumbai 400 067.**

... Petitioner

Vs.

ATUL
GANESH
KULKARNI

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by ATUL GANESH
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Municipal Corporation of Greater Mumbai, A body corporate, through Municipal Commissioner, constituted under the provisions of the Mumbai Municipal Corporation Act, 1888, having its office at Municipal Head Office, Mahapalika Marg, CST, Mumbai 400 001 ... **Respondent**

Mr. S.N. Pillai with Mr. Santosh Parad for the petitioner-MCGM in WP/14102/2022 & for the respondent in WP/2651/2023.

Mr. Prakash Devdas with Mrs. Vidula S. Patil for the petitioner in WP/2651/2023 & for the respondent in WP/14102/2022.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 16, 2026.

PRONOUNCED ON : APRIL 18, 2026

JUDGMENT:

1. Both the present writ petitions, instituted under Articles 226 and 227 of the Constitution of India, seek to assail the order dated 19 December 2019 passed by the Industrial Court at Mumbai in Complaint (ULP) No.110 of 2016.

2. The facts and circumstances giving rise to the institution of the present writ petitions, as set out by the petitioner, are that one Suresh Kadam instituted a complaint alleging commission of unfair labour practice by the respondents, namely the Municipal Corporation of Greater Mumbai, under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of

Unfair Labour Practices Act, 1971 (for short, “the MRTU and PULP Act”). It is the case of the complainant that he came to be appointed by respondent No.1 in the Motor Shop Garage under the Executive Engineer, Transport (City), with effect from 5 January 1987, and was thereafter promoted to the post of Fitter Grade II at Worli Garage with effect from 1 December 1994. Respondent No.1 is stated to be a Corporation constituted under the provisions of the Mumbai Municipal Corporation Act, 1888, whereas respondent Nos.2 and 3 are the Chief Executive and Chief Engineer (Solid Waste Management), respectively.

3. According to the complainant, respondent No.3 illegally placed him under suspension with effect from 23 October 2008. It is his case that prior thereto, on 16 October 2008, he had been arrested by the police in connection with a complaint lodged by one of his co-workers at Borivali Police Station, though he was released on bail on the very same day. The complainant asserts that in the criminal proceedings arising out of the said complaint, he was ultimately acquitted by the Court of the Metropolitan Magistrate, 26th Court, Borivali, by judgment and order dated 18 September 2014. It is, therefore, his contention that the suspension imposed upon him from 23 October 2008 was illegal and without lawful authority.

4. It is further the case of the complainant that during the subsistence of his suspension, the respondents issued a charge-sheet dated 27 April 2011. According to him, the said charge-sheet was not issued in conformity with the Model Standing Orders applicable to respondent No.1 establishment. The complainant

alleges that false charges were levelled against him and a departmental enquiry came to be conducted, pursuant to which the Enquiry Officer submitted his findings on 27 March 2012. It is his grievance that, despite the conclusion of the enquiry, no punishment was imposed upon him till 27 February 2016 and he continued to remain under suspension even after his acquittal in the criminal proceedings. The complainant further states that thereafter, by order dated 3 November 2012, the respondents imposed upon him the punishment of fine in the sum of Rs.5,000/-. Subsequently, by another order dated 8 January 2016, the period of suspension was directed to be treated as leave due. According to the complainant, the aforesaid actions amount to imposition of two separate punishments for the same alleged misconduct. It is his contention that the respondents had no authority either to suspend him, or to impose a fine, or to direct that the suspension period be treated as leave due. The complainant, therefore, asserts that the said acts and omissions on the part of the respondents constitute unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act, 1971, and on that basis has challenged the orders dated 3 November 2012 and 8 January 2016 in the complaint proceedings.

5. Upon service of notice, the respondents appeared in the proceedings and filed their written statement below Exhibit C-4. In the said written statement, the respondents denied all adverse allegations levelled by the complainant. It is their stand that the actions taken by them were strictly in accordance with law and that no unfair labour practice whatsoever has been committed by

them. A preliminary objection has also been raised that the complaint is barred by limitation. On merits, the respondents contend that while the complainant was on duty at Grih Garage on 16 October 2008, he assaulted one Mohan Dhanawade, who was working in the same garage, by means of an iron rod and thereby caused grievous injuries to him. Consequently, a complaint came to be lodged against the complainant at Borivali Police Station vide C.R. No.413 of 2008 for offences punishable under Sections 323, 324 and 504 of the Indian Penal Code. It is stated that the complainant was produced before the Metropolitan Magistrate for remand and was thereafter released on bail upon furnishing bail in the sum of Rs.3,000/-. The respondents admit that the complainant was acquitted in the said criminal proceedings by judgment dated 18 September 2014. It is, however, their case that pending departmental enquiry, the complainant was placed under suspension with effect from 23 October 2008 and such suspension was subsequently revoked with effect from 18 June 2011 by office order dated 21 June 2011. According to the respondents, while under suspension, the complainant was subjected to departmental enquiry in accordance with the applicable Service Rules, and he participated in the said enquiry without raising any objection. Since the charges levelled against him were proved in the enquiry, punishment order dated 3 November 2012 came to be passed imposing a fine of Rs.5,000/- upon him for the misconduct established against him.

6. In so far as the period of suspension from 23 October 2008 to 18 June 2011 is concerned, the respondents contend that a

decision was taken in accordance with Rule 75(3) of the Municipal Service Regulations to treat the said period as leave due. It is their case that since the complainant was acquitted in the criminal proceedings by extending to him the benefit of doubt, the period of suspension was not liable to be regularised or condoned. The respondents, therefore, maintain that the action taken by them is just, legal and proper and does not warrant any interference.

7. Mr. Pillai, learned counsel appearing on behalf of the petitioner, submitted that Clause 32 of the Model Standing Orders, which provides that the said Standing Orders shall not operate in derogation of the provisions of any other law for the time being in force, has not been taken into consideration by the Coordinate Benches of this Court while deciding the matters of *Sitaram Tukaram Walunj vs. Municipal Corporation of Greater Mumbai* in Writ Petition No.8711 of 2007 decided on 15 April 2008 and *Municipal Corporation of Greater Mumbai and Others vs. Smt. Nilima Sunil Nadkarni* in Writ Petition No.5077 of 2012 decided on 4 March 2012.

8. Inviting attention to the Industrial Employment Standing Orders prevailing in various other States, learned counsel submitted that no provision analogous to Clause 32 of the Model Standing Orders applicable in the State of Maharashtra is found in the Standing Orders of such other States. He further invited attention to Clause 32 of the U.P. Industrial Employment Model Standing Orders and submitted that even the said provision is materially distinct from Clause 32 of the Model Standing Orders applicable in the State of Maharashtra. He further submitted that

in so far as the punishment of fine of Rs.5,000/- is concerned, the same had been imposed in the years 2012 and 2016, whereas the complaint came to be instituted by the respondent only in the year 2016. According to him, in the absence of any prayer seeking condonation of delay, or any sufficient explanation for not assailing the imposition of the said punishment at the relevant point of time, the complaint, to that extent, was clearly barred by limitation. It was, therefore, contended that the impugned judgment and order, insofar as it holds that in the absence of a specific provision in the Model Standing Orders the petitioner has no authority to suspend a workman, deserves to be quashed and set aside.

9. Per contra, Mrs. Vidula Patil, learned counsel appearing for the respondent, submitted that this Court has consistently taken the view that the Model Standing Orders govern the service conditions of the employees of the petitioner Municipal Corporation. She submitted that the Industrial Court has rightly held that the provisions of the Industrial Employment (Standing Orders) Act would prevail over the provisions of the Municipal Corporation Act in matters relating to service conditions. Placing reliance upon the judgment of this Court in *Sitaram Tukaram Walunj* (supra), learned counsel for the respondent submitted that in the absence of any enabling provision in the Model Standing Orders authorising suspension of an employee merely on the ground of registration of a criminal offence against him, or on account of his being taken into custody, such employee could not have been placed under suspension. She further submitted that the

finding recorded by the Industrial Court in Part I holding the enquiry to be fair and proper cannot be sustained, particularly when the Industrial Court itself has observed that there exists no provision in the Model Standing Orders permitting suspension of an employee merely because a criminal case has been registered against him. According to her, once the very foundation of the action is found to be legally unsustainable, the issue framed in Part I ought necessarily to have been answered in favour of the respondent. She further submitted that although the punishment of fine of Rs.5,000/- was imposed in the year 2012, the said punishment was in fact given effect to only in the year 2016 by deduction of the said amount from the salary payable to the respondent. It was, therefore, submitted that Writ Petition No.14102 of 2022 deserves to be dismissed, whereas Writ Petition No.2651 of 2023 challenging the findings recorded in Part I deserves to be allowed.

REASONS AND ANALYSIS:

10. Having heard the learned advocates appearing for the respective parties at considerable length, and having carefully perused the pleadings, documentary material, and the impugned order placed on record, I find that the principal contention arising for determination in the present proceedings revolves around the scope, meaning and legal effect of Clause 32 of the Model Standing Orders and the consequences which legally flow from its interpretation. The petitioner has strenuously contended that the earlier decisions of this Court rendered in the matters of *Sitaram Tukaram Walunj* and *Smt. Nilima Sunil Nadkarni* do not lay down

the correct legal position for the reason that the said judgments have not specifically adverted to or considered Clause 32 of the Model Standing Orders while deciding the question of suspension. It is thus urged that those precedents should not be treated as binding in the present case. On the contrary, the respondent has submitted that Clause 32 neither enlarges nor creates any disciplinary authority in favour of the employer, but merely preserves rights and obligations otherwise flowing from law or pre-existing service arrangements.

11. Clause 32 of the Model Standing Orders reads thus:

“Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement or award applicable to the establishment.”

12. In my considered opinion, Clause 32 cannot be read as a source of disciplinary or administrative power. The language employed therein indicates that it is merely in nature of a saving provision. The clause specifically provides that nothing contained in the Standing Orders shall operate in derogation of any law for the time being in force or prejudice any right arising under contract of service, custom, usage, settlement, agreement or award. Such phraseology preserves existing rights and legal provisions. It does not confer any fresh power upon the employer to take disciplinary measures, including suspension, where such power is otherwise not independently traceable to any statutory provision, rule, regulation, or binding condition of service. A saving clause, by settled principles of interpretation, saves what

already exists; it does not create what otherwise never existed.

13. The argument advanced on behalf of the petitioner that the Industrial Court failed to consider Clause 32 and thereby committed error cannot be accepted as answer to the complaint raised by the respondent-workman. Even if Clause 32 is read in its entirety, the conclusion would remain unaltered. The clause recognizes that if any law, service rule, agreement, or enforceable condition grants a right or imposes an obligation, then the Standing Orders cannot be interpreted so as to destroy the same. It is thus declaratory in nature. Suspension is serious service consequence affecting the civil rights and emoluments of the employee. Therefore, the power to suspend must be shown from a statutory provision, service regulation, certified standing order, or lawful contractual term. In the present matter, despite repeated opportunity, no specific provision has been demonstrated before this Court by the petitioner conferring such authority in the standing orders. In service jurisprudence, powers affecting rights of employees must have legal source.

14. The further reliance placed by the petitioner upon the standing orders prevailing in other States and the comparative reference made to the U.P. Industrial Employment Model Standing Orders also does not advance the petitioner's case. In my view, such comparative exercise is of little assistance while deciding the controversy in hand. Merely because the language of standing orders in another State may differ, or because similar clause may or may not be found elsewhere, cannot determine the legal rights of parties governed by the Model Standing Orders applicable

within the State of Maharashtra. The issue before this Court is not what other State legislatures or authorities have chosen to provide in their respective service frameworks, but whether under the service regime binding upon the petitioner-establishment, there exists sanction for suspension in the facts of the case. The comparison with the U.P. Standing Orders does not establish that Maharashtra Model Standing Orders impliedly confer any suspension power. In fact, presence of Clause 32 in Maharashtra rather reinforces the respondent's submission that the clause is preservative of rights otherwise flowing from legal source and does not permit the employer to import into the Standing Orders a power which is not provided.

15. In *Municipal Corporation of Greater Mumbai v. Mumbai Mahanagarpalika Karyalayeen Karmachari Sanghatana*, a learned Single Judge of this Court, while deciding by order dated 21 September 2017, has taken a view that the provisions contained in the Industrial Employment (Standing Orders) Act and the Model Standing Orders framed thereunder would have overriding effect over the provisions of the Municipal Corporation Act as well as the Municipal Service Rules, Regulations and even the Manual of Departmental Enquiries. This finding is based upon the scheme of the enactments. The Standing Orders Act is a special legislation enacted with a specific object to regulate service conditions of workmen in industrial establishments in a uniform and binding manner. On the other hand, the Municipal Corporation Act and the service rules framed thereunder are general in nature, dealing with administration of the Corporation and its employees at large. It is a

settled principle that where there is a conflict between a special law and a general law, the special law must prevail. The learned Judge rightly held that even if the Corporation has framed its own rules or departmental manuals, such provisions cannot override or dilute the statutory mandate of the Standing Orders Act. Thus, the ratio of this judgment supports the view that the field relating to service conditions of workmen is already occupied by the Standing Orders, and any inconsistent provision must give way.

16. These very principles came to be examined again in the case of *M.C.G.M. v. Madhusudan S. Kanth*, where another learned Single Judge of this Court, by order dated 13 December 1990, reaffirmed the same legal position. The learned Judge reiterated that the Model Standing Orders are applicable to the Municipal Corporation and that they would prevail over the Corporation's Service Regulations while conducting a domestic enquiry. The reasoning appears to proceed on the footing that domestic enquiries, which directly affect the rights and livelihood of workmen, must strictly adhere to the procedures prescribed under the Standing Orders. If the Corporation were permitted to rely on its own service regulations in disregard of the Standing Orders, it would defeat the very purpose for which the Standing Orders Act was enacted, namely, to ensure uniformity, certainty, and fairness in service conditions.

17. The same learned Single Judge, in yet another decision in *Municipal Corporation of Greater Mumbai v. Dr. Shivajirao T. Kawale*, by order dated 17 January 2011, has once again considered the issue and has rejected the contention of the

Corporation that its Municipal Rules, which permitted imposition of a particular punishment, would prevail even if such punishment was not contemplated under the Model Standing Orders. The Court has taken a firm view that where the Standing Orders do not authorise a particular form of punishment, the Corporation cannot resort to its own rules to impose such punishment. If the Standing Orders are to prevail, then they must prevail in substance. Allowing the Corporation to impose punishments not sanctioned by the Standing Orders would amount to defeating the statutory scheme. This line of reasoning supports the conclusion that the Standing Orders form the governing code, and any action taken outside them cannot be sustained in law.

18. In the case of *Sitaram Tukaram Walunj v. Municipal Corporation of Greater Mumbai*, decided on 15 April 2008, another learned Single Judge of this Court has held that there is no doubt that as between the Municipal Corporation Act and the Industrial Employment (Standing Orders) Act, 1946, it is the latter which would govern the service conditions of workmen to whom it applies. The learned Judge has taken into account that once the Standing Orders become applicable to an establishment, they attain binding force akin to statutory conditions, and neither employer nor employee can act contrary to them. Therefore, even if the Municipal Act or the rules framed thereunder provide certain powers to the Corporation, such powers cannot be exercised in a manner inconsistent with the Standing Orders. This judgment thus lays down a guiding principle that the source of power for regulating service conditions must be traced to the Standing

Orders.

19. The judgment of this Court in *Sitaram Tukaram Walunj* also, in my considered view, cannot be disregarded merely because the petitioner asserts that Clause 32 was not discussed therein. It is well settled that a judgment does not lose its precedential value merely because every statutory provision was not quoted therein, provided the principle decided therein remains directly applicable. The ratio laid down in the said judgment continues to hold field and is consistent with settled service law jurisprudence. The Industrial Court, while relying upon the said decision, has correctly examined the substance of the matter. The Industrial Court has returned a finding, based on appreciation of the record, that the suspension in present matter was occasioned because criminal complaint had been registered against the respondent and not because of any standing order authorizing such suspension. Such factual finding is borne out by the material available and no perversity therein is demonstrated. Once the very source of authority to suspend is not shown, the suspension order cannot survive merely because the employer considered such course administratively desirable.

20. In so far as the disciplinary enquiry is concerned, I am unable to accept the submission of the respondent that the enquiry itself stood vitiated because suspension was unlawful. The material on record prima facie indicates that departmental enquiry was conducted, opportunity of participation was afforded to the workman, and findings were ultimately rendered by the Enquiry Officer. Thus, on procedural aspect, the enquiry appears to have

proceeded in accordance with required form. However, that by itself does not conclude the controversy in favour of the petitioner. It is settled that even if procedural fairness is maintained in conduct of enquiry, that cannot cure a defect going to root of jurisdiction. If the suspension and consequential initiation of process is without legal sanction, then mere procedural propriety in enquiry cannot sanctify illegality. The Industrial Court was therefore justified in examining legality of enquiry process and legality of suspension power. Both questions are conceptually distinct. A procedurally fair enquiry may exist, yet the action preceding it may still fail if undertaken without lawful authority.

21. Likewise, the order directing that the suspension period be treated as leave due cannot independently survive once the underlying suspension itself is found to suffer from want of authority. If suspension is unauthorized, then subsequent adjustment of that period as leave due also becomes vulnerable unless lawful justification is shown. No independent basis has been satisfactorily demonstrated before this Court for treating the said period as leave apart from the suspension order itself. Therefore, once the foundation fails, the consequential order must ordinarily fail with it.

22. The petitioner has further contended that the complaint itself was barred by limitation, at least in so far as challenge to punishment of Rs.5,000/- is concerned, because the punishment order was originally passed in the year 2012, whereas complaint was instituted in the year 2016. This submission, in my opinion, carries force and deserves acceptance. Undoubtedly, where a

litigant seeks to challenge an order passed years earlier, and no explanation is offered for delayed approach, the Court cannot ignore the limitation prescribed. Law of limitation is founded on public policy to ensure finality in legal proceedings. The respondent has contended that though punishment order may have been passed earlier, actual monetary deduction and implementation thereof took place only in the year 2016, when the amount was deducted from salary. If that be so, then it may not be entirely correct to hold that cause of action arose only on date of original punishment order. Where adverse financial consequences are actually inflicted subsequently, the cause of grievance may continue or revive when such implementation takes place. Thus, while challenge to the original 2012 order is barred by limitation.

23. The challenge to the punishment order dated 3 November 2012, whereby a fine of Rs.5,000/- came to be imposed upon the respondent-workman, is held to be barred by limitation. The complaint, in so far as it seeks to assail the said punishment order, having been instituted in the year 2016 without any application for condonation of delay or sufficient cause shown for such belated challenge, cannot be entertained in law. The Industrial Court, to that extent, committed an error in entertaining and adjudicating upon the validity of the said punishment.

24. Taking an overall and cumulative view of the matter, I am of considered opinion that the Industrial Court committed no error in holding that the petitioner had no lawful authority to suspend the respondent-workman merely because criminal proceedings had been initiated against him, in absence of any express enabling

provision in the Model Standing Orders or any other binding service rule. No perversity, patent illegality, or jurisdictional error is demonstrated in the impugned findings. The petitioner has failed to make out any case warranting interference in writ jurisdiction. The principal challenge raised in the writ petitions, therefore, must fail.

25. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (i) The writ petitions are partly allowed;
- (ii) The impugned judgment and order dated 19 December 2019 passed by the Industrial Court, Mumbai in Complaint (ULP) No.110 of 2016 is quashed and set aside to the limited extent it interferes with the punishment order dated 3 November 2012 imposing fine of Rs.5,000/-;
- (iii) It is held that the challenge to the said punishment order dated 3 November 2012 is barred by limitation and could not have been entertained;
- (iv) The impugned judgment and order, in all other respects, including the findings relating to illegality of suspension and consequential treatment of suspension period, is upheld;
- (v) Rule is made partly absolute in the aforesaid terms.
- (vi) There shall be no order as to costs.

(AMIT BORKAR, J.)