

kps

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

WRIT PETITION NO. 7276 OF 2015

M/S BEED DISTRICT CENTRAL COOP BANK LTD, BEED
VERSUS
NANDKUMAR NARAYANRAO JADHAV

...

Advocate for Petitioner : Shri Upadhye Vinayak Narayan

Advocate for Respondent : Shri Kawre B.R..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th December, 2015

Per Court:

1 On 05.12.2015, this Court had heard the submissions of the learned Advocates and had passed the following order:-

- “1 *I have heard the learned Advocates for the respective sides for sometime.*
- 2 *Shri Upadhye, learned Advocate for the Petitioner, strenuously criticizes the impugned order of the Labour Court dated 18.10.2012 in Complaint (ULP) No.15/2007 and the order of the Industrial Court dated 10.11.2014 in Revision (ULP) No.65/2012.*
- 3 *Shri Upadhye submits that the domestic enquiry conducted by the Petitioner/ Management against the Respondent has been held to be vitiated only on the ground of non payment of subsistence allowance. He places reliance on the judgment of the Apex Court in the case of Indra Bhanu Gaur vs. Committee, Management of M.M. Degree College and others, AIR.*

2004 SC 248 : AIR 2003 SCW 5959, to contend that unless any prejudice is proved/ established by the employee, non payment of subsistence allowance cannot ipso-facto be a ground to vitiate the enquiry proceedings on the ground of violation of the principles of natural justice.

- 4 Shri Kawre, learned Advocate for the Respondent/ Employee, submits that ever since his suspension on 01.07.2002 till his dismissal on 01.11.2006, the Petitioner/ Employer has not paid him any subsistence allowance despite having been kept under suspension till his dismissal. The Respondent moved several representations dated 16.08.2003, 03.10.2003, 03.11.2003 and 14.11.2003 praying for payment of subsistence allowance as he is without any wages. Yet, the subsistence allowance was not paid.
- 5 Shri Kawre submits that the Respondent, therefore, preferred Complaint (ULP) No.55/2004 before the Industrial Court at Aurangabad and further prayed for a direction to the Petitioner to pay the subsistence allowance. Despite the Industrial Court having issued such directions by which the Petitioner was obliged to pay the subsistence allowance, no such subsistence allowance was paid. The Respondent was tired out.
- 6 I find that the Apex Court, in the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Limited, AIR 1999 SC 1416, has concluded that denial of subsistence allowance by keeping an employee on suspension is penal in nature and shall vitiate the enquiry. Prior to this, the Apex Court had arrived at a similar conclusion in Dr.Ramesh Chandra Tyagi vs. Union of India, 1994 (2) SCC 416. So also, the Apex Court has taken such view in J.N.Srivastava vs. Union of India, AIR 1999 SC 1571; Daya Ram vs. State of U.P., 1987 (7) SCC 443; Dipti Prakash Banerjee vs. Satyendra Nath Bose, AIR 1999 SC 983 and State Bank of India vs. T.J.Paul, AIR 1999 SC 1994.
- 7 Shri Upadhye has strenuously canvassed that unless

some prejudice is shown by the Respondent, the enquiry cannot be vitiated as has been done by the Labour Court and the view of the Labour Court has been upheld by the Industrial Court.

- 8 *I do not find the said submissions worth consideration for the reason that prejudice caused to the Respondent is writ large from the various representations that he made to the Petitioner Employer virtually begging for his subsistence allowance. The Standing Orders prescribe completion of the departmental proceedings in a period of three months. In the instant case, the enquiry was conducted over a period of more than three years and pursuant to the suspension of the Respondent on 01.07.2002, the final order of dismissal, by which the enquiry proceedings were concluded, is passed on 01.11.2006. This shows that the Petitioner has virtually made the Respondent starve for a period of almost four years and four months.*
- 9 *I am, therefore, unable to concur with the submissions of Shri Upadhye, learned Advocate for the Petitioner.*
- 10 *At this juncture, Shri Upadhye submits that he would take instructions from the Petitioner as to whether, they are inclined to pay the entire subsistence allowance from 01.07.2002 to 01.11.2006 expeditiously.*
- 11 *Shri Kawre prays for interest at the rate of 13% per annum.*
- 12 *In the light of the above, stand over to 18.12.2015.*
- 13 *The Petitioner shall make a statement as to whether, it is inclined to pay the subsistence allowance to the Respondent for the period 01.07.2002 to 01.11.2006 with simple interest at the rate of 6% per annum within a period of three weeks.*

14 *If the said subsistence allowance is paid by the Petitioner which will cure the illegality, the issue of remanding the matter back to the Labour Court for deciding the second issue “whether, the Complainant proves that the findings of the Enquiry Officer are vitiated?” shall be considered.*

15 *Needless to state, if the Petitioner is not so inclined to pay the subsistence allowance, further orders in this matter would be passed.*

16 *The parties to note that this matter is likely to be heard finally on the next date of hearing.”*

2 Shri Upadhye, learned Advocate for the Petitioner, submits today that the Petitioner is willing to deposit the entire suspension allowance (subsistence allowance) for the period 01.07.2002 till 01.11.2006 with simple interest at the rate of 6% per annum.

3 Shri Kawre, learned Advocate for the Respondent, submits that if the said amount is deposited in the Labour Court in Complaint (ULP) No.15/2007, the Respondent would withdraw the said amount and issue Nos.1 and 2 framed by the Labour Court would then be decided afresh.

4 Shri Upadhye is agreeable.

5 In the light of the above, this Writ Petition is partly allowed.

The impugned order of the Industrial Court dated 10.11.2014 and the order of the Labour Court dated 18.10.2012 are set aside on the following conditions:-

- (a) The Petitioner shall deposit the unpaid subsistence allowance for the period 01.07.2002 to 01.11.2006 with simple interest at the rate of 6% per annum from the date of the dismissal of the Respondent, before the Labour Court on or before 16.01.2016.
- (b) After the amount is deposited, the Respondent will be at liberty to withdraw the said amount without conditions.
- (c) Even after the deposit of money by the Petitioner, if the Respondent/ Employee has any grievance about unpaid suspension allowance, he may take up the said ground while addressing the Labour Court on the first two issues.
- (d) On the condition of depositing the amount as directed above, both the litigating sides are permitted to address the Labour Court on Issue Nos.1 and 2 afresh in the light of the ratio laid down by this Court in the case of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v/s Vasant Ambadas Deshpande*, **2014(1) CLR 878 : 2014(3) Mh.L.J. 339.**
- (e) If the amount as directed is not deposited, the Labour Court

shall then proceed to decide Complaint (ULP) No.15/2007 on its own merits and the earlier order dated 18.10.2012 shall stand restored.

(RAVINDRA V. GHUGE, J.)