IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5178 OF 2013

Vilas Savaleram Vitnor,
Age-40 years, Occu-Service,
R/o Manjari, Taluka Rahuri,
Dist.Ahmednagar — PETITIONER

VERSUS

1. Manjari Vividh Karyakari Sahakari (Vikas) Seva Sanstha Maryadit, At Post Manjari, Taluka Rahuri, Dist. Ahmednagar, Through its Chairman,

2. The Secretary, Manjari Vividh Karyakari Sahakari (Vikas) Seva Sanstha Maryadit, At Post Manjari, Taluka Rahuri, Dist. Ahmednagar, — RESPONDENTS

Mr.P.V.Barde, Advocate for the petitioner.
Mr.A.N.Kakade, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/08/2015

ORAL JUDGMENT :

1. Notice of final disposal was issued by this Court on 04/08/2014 and made returnable on 01/09/2014.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. A short issue as regards unilateral deduction in the monthly wages of the petitioner has been raised for my consideration. However, certain factors in connection with this case are required to be noted, which as as under :-

a. The petitioner was granted permanency in employment on 08/07/2000 by which his wages were fixed at Rs.2,665/- per month.
b. As on 30/11/2004, the last pay drawn by the petitioner was @ 4,200/- per month.
c. The New Managing Committee, which took charge of the respondent/Society in 2005, has disputed the mode of appointment of the petitioner and the rise in wages from 3,600/- per month to 4,200/- per month.
d. The petitioner was terminated on 07/07/2005.
e. He preferred Complaint (ULP) No.38/2005 before the Labour Court and was granted reinstatement on 27/11/2005.
f. On filing Criminal Complaint No.41/2005 before the Labour Court, the petitioner was permitted to resume duties on 25/01/2006.
g. Because there was a unilateral deduction in wages from December 2004 and which continued for each month thereafter bringing down the wages of the petitioner to Rs.1,100/- per month, he preferred Complaint (ULP) No.35/2006 alleging change in service conditions u/s 9-A of the Industrial Disputes Act, 1947 (For short, I.D.Act) and violation of Item 9 of Schedule IV of the MRTU and PULP Act, 1971.
h. By order dated 01/01/2008, application for interim relief was allowed by the Industrial Court directing payment of

Rs.3,600/- per month till the pendency of the complaint.

i. The respondent/employer preferred W.P.No.3122/2008 challenging the interim order, which was dismissed by order dated 09/07/2008 passed by this Court.

j. In Contempt Petition No.291/2008, this Court, by its order dated 26/02/2010, directed the respondent/employer to deposit Rs.80,000/- and the petitioner was permitted to withdraw the said amount, owing to which the contempt petition was subsequently disposed of as there was a substantial compliance of the interim order passed by the Industrial Court and since the main ULP complaint was pending.

k. Subsequently, the petitioner has been terminated on 01/04/2008 and his complaint (ULP) No. 3/2011 is pending.

4. The petitioner raises two issues. Firstly, no notice of hearing was issued to the petitioner before unilaterally reducing his monthly wages. Secondly, the act of the respondent amounts to a change in service conditions in violation of Item 1 of Schedule IV under Section 9-A of the I.D.Act.

5. The petitioner makes a grievance against the impugned judgment and order dated 01/02/2013 by which Complaint (ULP) No.35/2006 has been dismissed. He points out that the complaint has been primarily dismissed for 3 reasons. Firstly, the complaint

suffers from vague pleadings. Secondly, there is a delay and thirdly, that as the complaint is filed under the MRTU and PULP Act, 1971, provisions of the I.D. Act cannot be invoked.

6. Mr.Kakade, learned Advocate has vehemently opposed the petition. He submits that the petitioner was granted regularization de-hors the rules under the orders of the Secretary of the respondent, who coincidentally is the father of the petitioner. No resolution to appoint him, has been passed. The Secretary has fabricated the records. Neither any advertisement was published calling for applications, nor was the due procedure followed while appointing the petitioner. No permanent vacant post of a "Clerk" was available at the relevant time.

7. He further submits that after the newly elected body took over the administration of the respondent in 2005, it realized the infirmities and deficiencies in the appointment of the petitioner. Therefore, steps were taken to terminate his services. He was reinstated under the orders of the Court. By following the due procedure laid down in Law, the petitioner has now again been terminated on 01/04/2008 and the matter is subjudice.

8. He further submits that as the respondent realized that the petitioner was being wrongly paid the salary as is indicated, the said salary has been reduced in order to be in tune with the equally placed employees. He, therefore, prays for the dismissal of the petition as the impugned judgment is neither perverse nor erroneous.

9. By considering the submissions of the learned Advocates, I have gone through the petition paper book and the record.

10. A document dated 24/09/2007 at page No.29 in the petition paper book, was placed before the Industrial Court by the respondents. It indicated that the petitioner was lastly paid salary @ Rs.4,200/- per month as in November 2004 and which was reduced to Rs.3,000/- and then to Rs.1,100/- per month from March 2005.

11. The Industrial Court, while dealing with the complaint, has concluded in paragraph No.14 that the complaint suffers from vague pleadings. Rs.80,000/- were received by the petitioner under the orders of this Court. The petitioner has suppressed the fact of having received Rs.80,000/- under orders of the High Court, in the complaint before the Industrial Court.

12. It is also held that the complaint suffers from delay and the delay caused has not been condoned. It is also concluded that the complaint is preferred under the State Act and the judgments cited by the petitioner pertain to Section 9-A of the I.D.Act, and therefore the ratio laid down in the said reports is of no assistance to the petitioner.

13. I am unable to concur with the conclusions of the Industrial Court. Item 1 of Schedule IV u/s 9-A of the I.D.Act prohibits alteration in the amount of wages as well as the mode of payment of wages without issuance of notice u/s.9-A. It is undisputed that the respondents have neither issued a notice u/s 9-A, nor have they issued even a simple notice of hearing to the petitioner before reducing his salary/wages from 4,200/- per month to Rs.3,000/- and then to 1,100/- per month. On this count alone, the action of the respondents is rendered unsustainable.

14. Reduction of wages/salary without compliance of norms is a recurring cause of action. Had the petitioner being heard through a notice u/s.9-A and had the employer passed an order on compliance of Section 9-A, the limitation period would have commenced from the date of the passing of the order. No such compliance has been

made and without hearing the petitioner, wages have been deducted in every month, during which period the petitioner was working. As such, such an unauthorized deduction in each month while making the monthly payments, would be a recurring cause of action.

15. In the light of the above, the impugned judgment of the Industrial Court dated 01/02/2013 in Complaint (ULP) No.35/2006 is rendered perverse and erroneous. The same is, therefore, quashed and set aside. The said complaint, therefore, stands allowed.

16. The respondent has paid an amount of Rs.80,000/- to the petitioner, which was considered as substantial compliance by the Industrial Court

17. As such, the respondents are hereby directed to calculate the shortfall in the payment of wages to the petitioner for the period he has worked, as is indicated from the document dated 24/09/2007 at page No.29 of the petition paper book, within a period of 8 weeks from today and make the payment of difference in wages after setting of the amount of Rs.80,000/- that the respondent has already paid to the petitioner.

18. In the event, any amount is payable by the respondents, same shall be done within a period of 12 weeks from today. In the event, it is revealed that an excess amount is paid to the petitioner, the respondents shall accordingly communicate it to the petitioner, who shall have to refund the excess amount subject to the legal remedies available to him.

19. In the light of the above, this petition is partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)