

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7237 OF 2014

Shri Deelip Manga Chaudhary,
Age-60 years, Occu-Nil,
R/o. Plot No.12,
Jai Hind Colony,
Deopur, Dhule.

PETITIONER

VERSUS

1. The Managing Director,
The Maharashtra State Co-operative
Marketing Federation Ltd.,
Head Office at Kanmoor House,
4th floor, Narsenatha Street,
Masjid Bunder,
Mumbai-400 009.

2. The District Marketing Officer, Dhule,
The Maharashtra State Co-operative
Marketing Federation Ltd.,
Office at 101, Jai Hind Colony,
Deopur, Dhule 424002.

RESPONDENTS

Mr.Shrikant S.Patil, Advocate for the petitioner.
Mr.D.N.Suryawanshi, Advocate for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 08/09/2015

ORAL JUDGMENT :

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

2. By order dated 28/07/2015, the respondent had been directed to deposit an amount of Rs.75,000/- in this Court. The said amount has been deposited vide DD No.953120 dated 05/08/2015.

3. The point for determination in this petition is as to whether the respondent employer can carry out deductions from the subsistence allowance ?

4. The petitioner is an employee of the respondent Federation and was working as a "Senior Office Assistant". He was placed under suspension pending disciplinary proceedings by order dated 08/08/2007 which continued till 23/09/2010, when he was terminated from employment by way of punishment.

5. The petitioner has raised a grievance that the respondent/Management has been deducting money from the suspension / subsistence allowance being paid to him under various heads like Provident Fund, Union Contribution, Repayment of Provident Fund Loan installments, Profession Tax, Co-operative Society Loan deductions and other deductions.

6. It is submitted that these deductions were normally carried out

from the monthly wages payable to the petitioner prior to his suspension, as is demonstrated by the ready reference chart for the months of January-2010 till March-2011 placed on record. For the sake of clarity, the said ready reference chart is marked as Exhibit "X" for identification.

7. Being aggrieved with the deductions being carried out from the suspension allowance, the petitioner preferred Complaint (ULP) No.2/2010 before the Industrial Court. It was stated that the suspension allowance cannot suffer deductions. At best, statutory deductions on pro-rata/proportionate basis like P.F. Contributions and/or E.S.I.C. Contributions could be permissible. The petitioner raised a grievance as regards all other deductions being carried out by the respondent / Management.

8. It is further submitted that the respondents have taken a specific stand through their written statement at Exh.C-4 by which they have admitted that various deductions have been carried out as per Exhibit "X", noted above. It is, therefore, submitted that the issue before the Industrial Court was as to whether such deductions from the subsistence allowance would be permissible in law.

9. Mr.Patil further submits that the Industrial Court, vide the impugned judgment dated 05/07/2014 has dismissed Complaint (ULP) No.2/2010 on the ground that no interference is called for. He, therefore, submits that the impugned judgment is perverse and erroneous.

10. Mr.Suryawanshi, learned Advocate appearing on behalf of both the respondents has strenuously supported the stand taken by the Management in its written statement at Exh.C-4 and has supported the impugned judgment. He submits that subsistence allowance needs to be presumed to be a part of the wages and hence all deductions earlier carried out from the monthly wages by the respondents towards various heads as noted above in Exh.X, need to be continued and there cannot be any embargo on such deductions.

11. It is further submitted that the complaint filed by the petitioner before the Industrial court was vague and ambiguous. He had not specifically pleaded under what heads, had the respondents carried out the deductions from the subsistence allowance and the amounts of such deductions. In the absence of pleadings, the complaint naturally deserved to be dismissed and the Industrial Court has, therefore, rightly dismissed the same.

12. Mr.Suryawanshi further relies upon the charge sheet issued to the petitioner dated 01/11/2007 wherein it has been mentioned in Charge No.2 that the petitioner was charged with having misappropriated money and had indulged in financial irregularities. It is, therefore, submitted that in the backdrop of these charges, the petitioner cannot raise any grievance about the deductions carried out in the subsistence allowance, being paid to him. It is, therefore, prayed that this petition be dismissed with costs.

13. He further adds that the petitioner has now been terminated / dismissed by way of punishment on account of proved mis-conducts w.e.f. 23/09/2010 and his Complaint (ULP) No.30/2010 is pending before the Labour Court, at Dhule.

14. I have considered the rival submissions of the litigating sides, as have been recorded hereinabove.

15. The grievance of the respondent in response to the complaint was that the complaint did not divulge the details of the deductions carried out. I am not convinced that this objection deserves to be entertained. The petitioner had specifically averred in the complaint that unauthorized deductions are being carried out from the

subsistence allowance under various heads. It would be difficult for an employee to calculate the exact amount of deductions.

16. The respondent, has specifically taken a stand in its written statement Exhibit C-4 that deductions have been carried out under various heads besides the Provident Fund Contribution. All those heads, as noted above, find place in Exhibit "X". In this backdrop, I find that the Industrial Court has fallen in a grave error in concluding that the complaint does not deserve to be entertained since minute details have not been furnished by the petitioner.

17. The core issue in this matter is as to whether subsistence allowance can be termed to be 'wages' paid to an employee. It is trite law that subsistence allowance is aimed at enabling the suspended employee to sustain his family in the light of the stoppage of payment of wages. It is also well settled that non-payment of subsistence allowance would weaken the suspended employee and would, therefore, cause grave hardships and manifest inconvenience to such an employee. Subsistence allowance, therefore, stands on a different footing.

18. Under Section 7 of The Payment of Wages Act, 1936, it has

been specifically provided that suspension allowance shall not be deemed to be a deduction from wages in any case. Section 7 enables the employer to carry out deductions as may be authorized by the provisions of Law.

19. In the case of Karnataka Central Co.op.Bank Ltd., Dharwad Vs. S.D.Karpi, [1988 LAB.I.C. 111], it has been held that subsistence allowance is paid to an employee so as to ensure that he survives and faces the enquiry. The said payment is not on account of any service rendered to the employer. Subsistence allowance is not paid by way of wages, but is only aimed at ensuring that the suspended employee is not made to starve or struggle to survive while facing the domestic enquiry.

20. In the case of K.Varadraja Vs. Corporation Bank, Manglore and another, 2004(III) CLR 623, the Karnataka High Court held that deduction of loan installments from the suspension allowance is unauthorized as the rules do not permit such deductions from the subsistence allowance. It was further concluded that if the service rules applicable to the employee suspended, permit deduction from the subsistence allowance, the employer may then cause such deductions.

21. In the instant case, the respondent has been unable to point out any specific rule from its Standing Orders or its Service Regulations / Conditions whereby the respondents could be permitted to deduct loan installments / salary advances from the suspension allowance. There is no averment in the written statement that such deductions, as have been carried out by the respondents, are permitted under the Service Rules applicable to the petitioner.

22. This Court, in the matter of A.C.D'Mello Vs. Shipping Corporation of India Limited, [1988 MH.L.J. 78], has dealt with a similar aspect. Considering the act of deduction from suspension allowance, this Court in the said case, scrutinized the rules to find out whether there was any provision indicating existence of a power vested in the employer to deduct amounts under different heads from the suspension allowance. It was, therefore, concluded that unless the rules provide for such deductions, there could not be any power to withhold any part of the basic salary and dearness allowance from an employee placed under suspension.

23. The Apex Court, in the case of O.P.Gupta Vs. Union of India, [AIR 1987, SC 2257] has heavily criticized the act of the employer of

carrying out deductions under different heads from the suspension allowance payable to an employee. It was concluded that the employer cannot be permitted to pay inadequate quantum of subsistence allowance to a suspended employee.

24. In the case of Vijaykumar Laxman Kabir Vs. N.R.C. Limited and others, [2004(2) BCR 563], this Court considered the scope of section 10-A of the Industrial Employment (Standing Orders) Act, 1946, which provides for payment of subsistence allowance and a remedy as against the inadequate payment of suspension allowance. While concluding that the failure to pay adequate suspension allowance is a breach of Section 10-A, it was held that the same would amount to an unfair labour practice under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. As such, a complaint u/s 28(1) was maintainable.

25. In the case of Jagdish V.Gursahani Vs. Air India Limited and others, [2001(1) BCR 576], this Court has concluded that though income tax or statutory deductions like provident fund could be permitted from the suspension allowance on pro-rata basis, there could not be any other deduction since the suspension allowance is not deemed to be salary / wages within the meaning of the Payment

of Wages Act. It was concluded that any deduction made from the subsistence allowance would be in violation of the principles of natural justice.

26. The definition of “Wages” under Section 2 (vi) of the Payment of Wages Act, 1936, has to be ascribed a meaning as is found in the expression under Section 2(rr) of the Industrial Disputes Act, 1947. “Wages” necessarily mean all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, are fulfilled, and is payable to an employee for the service performed. It is trite law that suspension allowance is aimed at softening the rigours of non-payment of wages and the said allowance is not towards any service performed by an employee, but is purely aimed at keeping his body and soul together (which includes his family) while facing a departmental enquiry.

27. In my view, in the light of the crystallized position of law, suspension / subsistence allowance payable to a workman, who is under suspension pending disciplinary proceedings, would not amount to wages. Deductions carried out by the respondent/Management from the subsistence allowance paid to the petitioner in the light of Exh.X from 08/08/2007 till 23/09/2010 is

legally impermissible.

28. Having considered the impugned judgment of the Industrial Court dated 05/07/2014 in the light of the the position in law discussed as above, I have no hesitation in concluding that the impugned judgment is perverse and erroneous.

29. As such, this petition is allowed. The Judgment and order dated 05/07/2014 delivered by the Industrial Court in Complaint (ULP) No.2/2010 is quashed and set aside. Complaint (ULP) No.2/2010 stands allowed.

30. The respondent is, therefore, directed to calculate the deductions carried out from the subsistence allowance of the petitioner barring provident fund contributions and shall forward the said calculations to the petitioner within 3 (three) weeks from today.

31. The petitioner is permitted to withdraw Rs.75,000/- deposited by the respondent in this Court with accrued interest and without conditions, by producing tangible proof of identity in the nature of an Election Identity Card and PAN Card (Income Tax).

32. The respondent shall, accordingly, adjust this amount being withdrawn by the petitioner from this Court and shall accordingly pay the residual amount to the petitioner or before 30/10/2015. Failure to do so, shall invite interest @ 6% p.a. on the unpaid amount from the month of September 2007 till its actual payment to the petitioner.

33. Rule is, accordingly, made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)