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

WRIT PETITION NO.4362 OF 2014

- 1 Navnath Bhimraj Shinde,
Age : 40 years, Occ : Service,
R/o Achalgaon, Post Karanji,
Taluka Kopargaon,
District Ahmednagar.
- 2 Baban Matu Pathak,
Age : 40 years, Occ : Service,
R/o At Post Yesgaon,
Taluka Kopargaon,
District Ahmednagar.

...PETITIONERS

-VERSUS-

- 1 Yashwant Sahakari Kukkut Sanstha Ltd.,
Yesgaon, Taluka Kopargaon,
District Ahmednagar.
Through its Chairman.
- 2 The Manager,
Yashwant Sahakari Kukkut Sanstha Ltd.,
Yesgaon, Taluka Kopargaon,
District Ahmednagar.

...RESPONDENTS

...

Advocate for Petitioners : Shri Barde Parag Vijay.

Advocate for Respondents : Shri Hon Ashwin V. a/w Shri Ajinkya
Deshmukh.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th October, 2015

Oral Judgment:

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

2 The Petitioners assail the judgment of the Industrial Court dated 11.09.2013 delivered in Complaint (ULP) No.6/2008 by which the complaint has been dismissed primarily on the ground that the Petitioners have put forth a vague and ambiguous claim in the complaint.

3 Shri Barde, learned Advocate for the Petitioners, submits that the Industrial Court has concluded in paragraphs 7, 8 and 9 that the complaint contains vague and ambiguous pleadings. The Industrial Court Regulations, 1975 r/w Section 28(1) of the MRTU & PULP Act, 1971 mandates a specific pleading since the Complainants would not be entitled to any benefits unless the Court comes to a conclusion that the Respondents have committed unfair labour practice.

4 Shri Barde draws my attention to paragraphs 3(b) and 3(c) of the complaint to indicate that the bonus for the years 2006-2007 were not paid and the minimum wages were also not paid. Though the Petitioners were working from 01.04.1999 and 11.04.2001, respectively, the overtime was not paid.

5 He then draws my attention to Annexure-A appended to the complaint to indicate the wages being paid to the Petitioners and submits

that the Respondent is covered under the Minimum Wages Act, 1948. He submits that the Industrial Court should have considered the complaint within the ambit of the pleadings and the oral and documentary evidence brought on record. Without doing so, the Industrial Court has only referred to exhibit numbers of the documents and the oral evidence of the Petitioners and has dismissed the complaint purely on the ground that it did not find anything specific material in the complaint.

6 He submits that the issues like non payment of bonus and minimum wages, do not require pleadings in extenso. The Management only has to establish as to whether, the bonus was paid or not and whether, the minimum wages were paid or not. He, therefore, submits that the Industrial Court has casually dealt with the complaint and dismissed the same without application of mind.

7 Shri Hon, learned Advocate for the Respondent/ Management, has strenuously supported the impugned judgment. He refers to the pleadings of the Petitioners in the complaint and contends that besides the contention that the bonus was not paid for 2006-2007, there are no pleadings as to whether, the Respondent/ Management is liable to pay the bonus and as to whether, the Respondent is covered by the Bonus Act, 1965.

8 Shri Hon further submits that though the Petitioners have pleaded that the minimum wages are not paid, there is no pleading in the complaint as regards which notification under the Minimum Wages Act, 1948 covers the Respondent Industry. In fact, the Respondent Industry does not fall under any of the categories prescribed under the Minimum Wages Act. In short, the activity undertaken by the Respondent does not fall under any scheduled employment as is required under the Minimum Wages Act.

9 Insofar as the overtime is concerned, he submits that the complaint can be termed to be as vague and ambiguous as it could be. Besides a mere statement that overtime is not paid, there are no pleadings as regards the number of hours worked beyond regular shift, the days on which such overtime was performed and the rate of wages payable on the basis of which the overtime could be calculated. Hence, the Industrial Court has rightly dismissed the complaint.

10 He further submits that the Petitioners were engaged as drivers on “as and when required” basis. They used to work intermittently. They never worked regularly, much less overtime. He, therefore, submits that the Industrial Court has rightly dismissed the complaint.

11 I have considered the submissions of the learned Advocates as have been recorded herein above.

12 Insofar as the pleadings of the Petitioners to the extent of bonus and minimum wages are concerned, the Industrial Court should have decided, whether, the Bonus Act, 1965 and the Minimum Wages Act, 1948 was applicable to the case of the Petitioners. They have pleaded that they were not paid bonus for 2006 and 2007. They have also pleaded that the minimum wages are not paid. These aspects could have surely been gone into by the Industrial Court as further pleadings on these counts are not really required as the failure to pay the same and the applicability of the Acts will have to be adjudicated upon. The difference in wages paid and those prescribed by the Minimum Wages Act, if applicable, could also be calculated on the basis of the material on record. I, therefore, find that the Industrial Court could have gone into these aspects.

13 Insofar as the overtime is concerned, I am in complete agreement with Shri Hon that besides a mere statement, there is nothing more pleaded in the complaint. The Respondent would find itself in a peculiar situation to respond to such vague and ambiguous pleadings on overtime. The Respondent has, therefore, denied that the Petitioners had

worked overtime. Certain details on this count were expected from the Petitioners and which are completely missing in the complaint. As such, on this issue, the Industrial Court has rightly refused to entertain the grievance of the Petitioners.

14 The Petitioners have also put forth the grievance that they have been orally removed from employment/ refused employment and no charge sheet was served on them. No enquiry has been conducted prior to removing their names from the muster roll. This issue cannot be gone into by the Industrial Court. The issue of refusal to give work, resulting in otherwise removal from service / termination, could be gone into by the Labour Court under Item 1 of Schedule IV of the MRTU & PULP Act, 1971.

15 In the light of the above, this Writ Petition is partly allowed. The impugned judgment and order is set aside only to the extent of the claim of the Petitioners as regards bonus and minimum wages. The conclusion of the Industrial Court to the extent of the claim of the Petitioners about overtime and removal from service, is sustained.

16 Needless to state, if the Petitioners decide to assail the removal from service/ oral termination, they are at liberty to resort to a legal remedy as may be permissible in law.

17 Complaint (ULP) No.6/2008 is remitted to the Industrial Court only to enable it to decide the claim of the Petitioners to the extent of non payment of bonus and minimum wages, subject to the contentions of the Respondent that the Bonus Act, 1965 and the Minimum Wages Act, 1948 are not applicable to the Respondent and there is no violation of Items 5 and 9 of Schedule IV of the MRTU & PULP Act, 1971.

18 The litigating sides shall appear before the Industrial Court on 02.11.2015. Formal notices need not be issued by the Industrial Court.

19 Both the litigating sides are at liberty to adduce additional oral and documentary evidence only with regard to the contentions of non payment of bonus and minimum wages. All contentions of both sides on this count are kept open.

20 The Industrial Court shall decide the complaint as expeditiously as possible.

21 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)