

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.93 OF 2014

VIVEKANAND RUGNALAYA, LATUR
THROUGH ITS ADMINISTRATIVE OFFICER,
LATUR

PETITIONER

VERSUS

GANGA W/O GANESH ALANE,
AGE-36 YEARS, OCCU-SERVICE,
R/O MOTI NAGAR, TQ. AND DIST. LATUR

RESPONDENT

Mr.S.V.Natu, Advocate for the petitioner.

Mr.K.M.Nagarkar, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 25/06/2015

ORAL JUDGMENT :

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

2. The petitioner/Management is aggrieved by the judgment and order dated 13/11/2013 delivered by the Industrial Court, Latur by which Complaint (ULP) No.130/2011, filed by the respondent, has been allowed.

3. The petitioner has set out his prayers in this petition in clauses A to D below paragraph No.17. The relevant prayer clause 'B' reads

as under :-

“B. Rule may kindly made absolute and judgment and order dtd.13/11/2013 passed by the learned Member, Industrial court, Latur in Complaint (ULP) No.130/2011 may kindly be quashed and set aside.”

4. While allowing the complaint, the Industrial Court has issued the following directions in Clause Nos.1 to 6 as under :-

“1. Com/ULP/No.130/2011 is partly allowed.

2. It is hereby declared that the respondent has engaged in unfair labour practice within the scope of Item Nos.9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 and respondent is directed to cease and desist from unfair labour practice.

3. The order of respondent dated 25/08/2011 suspending the complainant for three days is hereby set aside and respondent to extend three days salary to the complainant in accordance with Law immediately.

4. The action of respondent deducting Rs.50/- from the salary of the complainant towards Gangajali is hereby set aside and respondent to refund the amount of Rs.50/- which was deducted from her salary to the complainant in accordance with Law immediately.

5. This order will take effect after 31/12/2013.

6. No order as to cost.”

5. The petitioner submits that the respondent, who was working as a 'Sweeper' was inflicted with a punishment of suspension for 3 days without salary under the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946. This order of punishment, which was passed after hearing the respondent, has been set aside by the Industrial Court.

6. The petitioner further submits that it had created a sort of money bank called as 'Gangajali' for which each worker was to contribute an amount of Rs.50/- per month. From the said fund, certain benefits were extended to each of the contributing workers. This practice was prevalent for about 4 years in the light of clause 8(5) of the settlement dated 02/08/2011 signed by the petitioner Management with the Union representing the workers under Section 2(p) r/w 18(1) of The Industrial Disputes Act, 1947. Necessary compliance of Rule 62(4) of The Industrial Disputes (Bombay) Rules, 1957 was also made. It is not in dispute that the respondent is a member of the said Union.

7. The petitioner, therefore, submits that the respondent has put forth a two fold cause of action in her complaint. Firstly, the order of punishment of suspension for 3 days was challenged. Secondly, the

deduction of Rs.50/- from the monthly wages of the respondent complainant was termed to be an illegal act committed by the petitioner in the light of the provisions of the Payment of Wages Act.

8. By allowing the complaint, the Industrial Court has set aside the order of punishment and has directed the Management to return the entire amount so deducted from the salary of the respondent towards 'Gangajali' and pay 3 days wages to her on account of the suspension punishment being set aside.

9. Mr.Natu, learned Advocate vehemently submits that the order of punishment has been inflicted upon the respondent strictly as per the Model Standing Orders Act. Minor mis-conducts and major mis-conducts are defined under the Model Standing Orders. Punishments for minor mis-conducts as well as major mis-conducts is also provided. A domestic enquiry is mandatory if an order of dismissal from service by way of punishment is to be imposed upon the employee. He, therefore, submits that a show cause notice, calling for an explanation from an employee prior to imposing the punishment of suspension, is sufficient compliance of the Model Standing Orders.

10. Mr.Natu further submits that an individual authorization to deduct Rs.50/- from the monthly wages of the workers was not sought since a settlement was signed with the Union representing the workers which had agreed for such deduction. It is, therefore, an issue between the Union and its members in the event any worker alleges wrongful deduction.

11. He further adds that clause 8(5) of the settlement was drafted in order to ensure a simple procedure to be followed for collecting the contribution for the 'Gangajali'. The Union had expressed difficulties in collecting Rs.50/- in each month from each worker by going to their door steps/person to person. As benefits were being extended to the workers through the "Gangajali", the Union found it easy to authorize the Management to deduct the said amount from the wages of each worker.

12. Mr.Natu further submits that the respondent has availed of all the short term and long term benefits under the settlement ever since its signing. He further points out that under the old settlement dated 18/07/2009, signed between the petitioner and the same Union, arrears were also paid to the workers including the respondent as is evident from the 3rd paragraph on page No.3 of the

said settlement. He also submits that the *ex-gratia* payment prescribed in paragraph No.4 of the new settlement, medical benefits under clause 5 of the new settlement and the benefits under clause 8(5) with regard to the 'Gangajali' have also been enjoyed by the respondent.

13. Mr.Natu, therefore, submits that it is purely out of a pedantic approach adopted by the Industrial Court that it has concluded that since individual authorization was not taken from the respondent, the deduction made under the settlement towards the 'Gangajali' is violative of the provisions of the Payment of Wages Act. He further submits that no provision of the Payment of Wages Act or the Minimum Wages Act were either pointed out by the respondent or referred to by the Industrial Court while declaring the action of the petitioner illegal.

14. He, therefore, submits that the respondent should return all the benefits availed of under the new settlement as well as the benefits under the 'Gangajali', if she is aggrieved. The respondent cannot seek implementation of the terms of the settlement selectively. He, therefore, prays that the petition be allowed.

15. Mr.Nagarkar, learned Advocate on behalf of the respondent has strenuously supported the impugned judgment. Contention is that the Model Standing Orders do not prescribe the word 'without salary' while awarding punishment of suspension for a maximum period of 4 days. The Management has used the word 'suspension without wages' and, therefore, the Industrial Court has rightly interfered with the punishment awarded to the respondent. He does not dispute that he was issued with a show cause notice and was heard before imposing the punishment.

16. In so far as the 'Gangajali' is concerned, Mr.Nagarkar has vehemently submitted that the Management could not have deducted Rs.50/- in each month from the wages of the respondent without the individual authorization signed by her. The settlement is signed with a registered Union and therefore it will have to be construed to be applicable to the signatories of the settlement. He, therefore, supports the findings of the Industrial Court as being fair, proper, justifiable, requiring no interference.

17. He, however, had no explanation to offer as to why had the respondent sustained the deduction of Rs.50/- per month for 4 years. He also had no explanation as regards the short term and the

long term benefits, which the respondent has enjoyed under the settlement inclusive of the benefits made available on account of her contribution to the 'Gangajali'.

18. Having considering the fact situation and the reasons assigned by the Industrial Court, I am of the view that the Industrial Court has adopted an unrealistic and pedantic approach. It is not in dispute that a deduction to be caused from the wages of a workman is to be done by obtaining an individual authorization u/s 7 of the Payment of Wages Act, 1936.

19. Mr.Natu has clarified that despite the settlement, the Management has now taken individual authorizations from each of the workers pursuant to the impugned judgment. The respondent has also issued an authorization for such deduction so as to contribute to the 'Gangajali' and take benefits on account of such contribution. He has tendered a copy of such authorization of the respondent which is taken on record and marked as Exhibit "X" for identification.

20. Notwithstanding the legal position as above, the Industrial Court was expected to consider the peculiar facts of this case in as

much as scrutinize the act of the respondent in contributing to the 'Gangajali' under the settlement for 4 years and drawing all benefits. It was established by conduct of the respondent that she had accepted the entire terms and conditions of the settlement and had derived all benefits flowing therefrom. She could not be permitted to turn a volte-face and suddenly raise an issue of unauthorized deduction, which by her own conduct was permitted for 4 years specifically under clause 8(5) of the settlement.

21. It is, in these circumstances, that the Industrial Court should have either directed the respondent to deposit in the Court all such amounts and benefits that she had taken under the settlement which could be computed in terms of money pending decision in the complaint. In a somewhat similar situation, the Apex Court has taken such a view in the case of Man Singh Vs. Maruti Suzuki Limited, reported at (2011) 14 SCC 662, whereby the workman was directed to deposit the entire amount of VRS in the Court pending his challenge to the VRS as being forceful retirement.

22. I am of the view that it cannot be countenanced that an employee takes all the benefits under the settlement and after a passage of few years, during the subsistence of the settlement or

thereafter, raises a challenge of this nature.

23. In the above fact situation, I could have ordered the respondent to refund the entire amounts and all such benefits which could be computed in terms of money, to the Management after having availed of such benefits under the settlement. However, it would sound a bit harsh to do so at this stage, moreso when the respondent has executed an authorization for deduction towards the 'Gangajali'. With due circumspection, I have therefore reached a conclusion that the complaint of unfair labour practices on the ground of unlawful deduction under the settlement deserves to be dismissed. For these reasons, the conclusions of the Industrial Court are rendered erroneous.

24. The conclusion drawn by the Industrial Court with regard to the suspension, challenged by the respondent, is equally erroneous. Standing order 25 which prescribes “punishments”, reads as under :-

“23. (1) workman guilty of misconduct may be,-

(a) warned or censured, or

(b) fined subject to and in accordance with the provisions of the Payment of Wages Act, 1936, or

(c) suspended by an order in writing signed by the Manager

for a period not exceeding four days, or

(d) dismissed without notice.

2. No order under sub-clause (b) of clause (1) shall be made unless the workman concerned has been informed in writing of the alleged misconduct or given an opportunity to explain the circumstances alleged against him.

3. No order of dismissal under sub-clause (d) of clause (1) shall be made except after holding an enquiry] against the workman concerned in respect of the alleged misconduct in the manner set forth in clause(4).

4. A workman against whom an inquiry is proposed to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any office-bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charge rest. A concise summary of the evidence led on either side and the workman's plea shall be recorded.

All proceedings of the inquiry shall be conducted in English, Hindi, Marathi according to the choice of the workman concerned and the person defending him, The inquiry shall be completed within a period of three months:

Provided that the period of three months may, for reasons to be recorded in writing, be extended to such further period as may be deemed necessary by the enquiry officer.

5. *A workman against whom any action is proposed to be taken under sub- clauses (b), (c) or (d) of clause (1) may be suspended pending the inquiry or for the period, if any, allowed to him for giving his explanation. The order of suspension may take effect immediately on its communication to the workman.]*

[(5-A) Subject to the provisions of the Payment of Wages Act, 1936 a workman who is placed under suspension under sub-clause (5) shall, during the period of such suspension, be paid a subsistence allowance at the following rates namely:-

i. For the first ninety days of the suspension period subsistence allowance to be paid per month shall be equal to one-half of basic wages, dearness allowance and other compensatory allowances to which the workman would have been entitled if he were on leave with wages.

ii. If the enquiry gets prolonged and the workman continues to be under suspension for a period exceeding ninety days, the subsistence allowance to be paid per month for a further period of ninety days shall be equal to three-fourths of such basic wages, dearness allowance and other compensatory allowances.

iii. If the enquiry is not completed within a period for 180 days, the workman shall be paid basic wages, dearness allowance and other compensatory allowance in full as subsistence allowance to be paid per month until such time as the inquiry is finally concluded:

Provided that, where the findings of the Inquiry Officer show that such inquiry is prolonged beyond a period of 90 days, or as the case may be 180 days, for reasons directly attributable to the workman, the subsistence allowance to be paid per month shall for the period exceeding 90 days or, as the case may be 180 days, shall be reduced to one-half of such basic wages, dearness allowance and other compensatory allowances.

iv. If as a result of the inquiry held or explanation tendered, it is decided not to take any action against the workman under clause (1) the workman shall be deemed to have been on duty and shall be entitled to full wages minus such subsistence allowance as he may have already drawn and to all other privileges for the full period of suspension.

(5-B) The payment of subsistence allowance under sub-clause (5-A) shall be subject to the workman concerned not taking up any employment during the period of suspension.]

6. In awarding punishment under this Standing Order the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist.

7. If a workman refuses to accept a charge-sheet, order or other communication served in accordance with these Standing Orders, and provided that he has been asked to accept the charge-sheet in the presence of at least two witnesses he shall be told verbally the time and place at which the enquiry into his alleged misconduct is to be held and if he refuses or fails to attend at that time, the inquiry shall be conducted ex parte and the punishment awarded shall take account of misconduct under Standing Order 24 thus committed.”

25. It is thus clear that the punishment of suspension for a period not exceeding 4 days can be imposed by the Manager upon a workman who is held guilty of a misconduct under Standing Order 25(1)(c). No enquiry under the MSO is required while awarding the said punishment.

26. The controversy raised by the respondent need not be carried any further. Standing Order 25(3) clearly indicates that no order of dismissal under Standing Order 25(1)(d) shall be made except after holding an enquiry against the workman. Standing Order 25(5) provides for suspending a workman, pending enquiry, in the event the employer desires to do so. It is thus evident that a domestic enquiry contemplated u/s 25(3) is not mandatory for awarding punishment of suspension for a period not exceeding 4 days.

27. So also, Standing Order 25(5) enables the employer to suspend an employee in the event an enquiry is contemplated or for such period as is allowed to him for giving his explanation before initiating action of awarding punishment under sub clauses (b), (c) or (d) under Standing Order 25(1).

28. In the instant case, the respondent was issued with a notice calling for her explanation. She was not placed under suspension under Standing Order 25(5). The said show cause notice dated 28/07/2011 is self-explanatory. The respondent replied to the said notice on 30/07/2011. An order of punishment was passed on 25/08/2011 thereby awarding punishment of suspension for 3 days without wages to the respondent.

29. It appears that the Industrial Court has interfered with the order of punishment on the ground that the petitioner Management had introduced a word “without wages”. I have considered the conclusions arrived at by the Industrial Court in paragraph No.11 with regard to this issue. The Industrial Court has concluded that because “*there is no mention about with wages or without wages, the employer cannot substitute its own words in the punishment which is prescribed by Legislature and inflict the same to the employee.*”

30. I have every reason to be astonished with the said conclusions arrived at by the Industrial Court. Suspension by way of punishment of a worker under Standing Order 25, after following the procedure of hearing the worker and which is not more than 4 days, is always without wages. It would be absurd to permit any argument on this issue. Explanation II below Section 7 of the Payment of Wages Act, 1936 clearly indicates that punishment of suspension, which results in loss of pay, shall not be deemed to be a deduction from wages.

31. In the light of the above, the impugned judgment and order dated 13/11/2013 delivered by the Industrial Court in Complaint (ULP) NO.130/2011 is perverse, erroneous and is therefore quashed

and set aside. Complaint (ULP) No.130/2011, consequentially, stands dismissed.

32. This writ petition is allowed in the above terms.

33. Rule is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)