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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

CIVIL WRIT PETITION NO. 8378 OF 2014

Maharashtra State Electricity Distribution
Company Ltd. through Managing Director & Ors. ... Petitioners.

V/s.

Mr. Hanumant Dinkar Sankpal. ... Respondent.

Mr. Prashant Chavan a/w. Nirav Shah and Ravindra Chile i/b. Little & Co. for the Petitioner.
Mr. Narendra V. Bandiwadekar for Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 31 AUGUST, 2015.

<u>ORAL ORDER</u> :-

By this Petition the Petitioner – Maharashtra State Electricity Distribution Company Ltd., challenges the order passed by the Industrial Court, Thane in Complaint (ULP) No. 85 of 2010 dated 29 March 2014.

2. The Petition arises from a complaint filed by the Respondent under Section 28 r/w. Item Nos. 9 and 10 of Schedule IV of MRTU & PULP Act, 1971. The Respondent joined the

services of the Petitioner – Company on 7 January 1978 as a Lower Division Clerk at Ulhasnagar. At that time the Petitioner – Company was known as Maharashtra State Electricity Board. He was promoted as Upper Division Clerk in the year 1999. A charge-sheet was issued to Respondent No.1 on 29 January 2009. The Respondent filed his reply and denied the charges. Thereafter, another charge-sheet was issued on 23 April 2009. The Respondent was placed under suspension on 12 December 2008. An enquiry was instituted and commenced on 7 December 2008. The enquiry was not completed within period of 6 months. The Petitioner did not allow Respondent No.1 to resume his duties and 100 percent subsistence allowance payable under the Model Standing Orders was not paid to the Respondent, which according to Respondent was an unfair labour practice under Item 9 of Schedule IV of the Act, and the Respondent filed the complaint on this ground.

3. The Petitioner contested the claim of the Respondent. It was the contention of the Petitioner that the Respondent was found guilty of mis-appropriation and he was kept under suspension as per the Service Regulations, 2005 applicable to him and the Service Regulations permitted grant of subsistence allowance at the maximum of 50 percent and therefore, claim of the Respondent for 100 percent of subsistence allowance was not tenable.

4. The Industrial Court, Thane held that the Service Regulations stated that the continuation of the suspension beyond period of 6 months had to be with the permission of superior authority, which was not taken in the present case. The Industrial Court held that there was a conflict between the Service Regulations framed by the Petitioner and the Model Standing Orders as regards the quantum of the subsistence allowance and in the circumstances, Model Standing Orders will prevail and accordingly, the Respondent was entitled to 100 percent basic wages plus dearness allowance after 180 days of suspension till its revocation. The complaint was accordingly allowed by impugned order dated 29 March 2014.

5. Mr. Prashant Chavan, the learned Counsel for the Petitioner submitted that the Petitioner – Company was earlier known as "Maharashtra State Electricity Board" and the vesting in the Petitioner Company was under the provisions of the Electricity Act, 2003. He submitted that Section 131 of the Act of 2003 lays down that the property of the erstwhile Board will vest in the State Government and thereafter, to be transferred to the Company. He submitted that Section 133 of the Act of 2003 deals with the provisions relating to officers and employees, and the only condition laid down therein is that upon transfer, conditions applicable to the employees shall not be less favourable. Mr. Chavan submitted that Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 are not

applicable and in any case Sections 173 and 174 of the Electricity Act, 2003 make it clear that the provisions of this Act will over ride any other law, which is inconsistent. Mr. Chavan also submitted that Clause 88(a)(iii) of the Service Regulations of 2005 lay down that the subsistence allowance in no case shall exceed 50 percent and in view of this specific clause in the Regulations which are framed under the Act of 2003, this clause will over-ride what is provided in the Model Standing Orders, if they are applicable.

6. Section 15(b) of the Standing Orders Act provides for framing of Model Standing Orders. The Model Standing Orders which are applicable to the workmen employed in the clerical and supervisory work category which applicable to Respondent No.1 contains the Clause 23(5)(a)(iii). This clause mandates that if enquiry is not completed within a period of 180 days, the workmen shall be entitled for basic wages plus dearness allowance and as subsistence allowance. This is the clause which is given effect to in the impugned order by the Industrial Court.

7. Firstly, the argument of the Petitioner that the Industrial Employment (Standing Orders) Act, 1946 is not applicable to the Petitioner, was not made before the Industrial Court. It is taken up for the first time in this Court by way of an amendment to the Petition. Such ground which was not taken before the Industrial Court normally is not permitted to be taken for the first time in the writ jurisdiction. Even assuming it can be

taken, the contention cannot be accepted. Section 1(3) of the Industrial Employment (Standing Orders) Act, 1946 makes the Act applicable to every industrial establishment wherein more than 50 workmen are employed. It is not disputed and cannot be disputed that the Petitioner – Company, whose activity is generation of power, is an industrial establishment. It is also not disputed that it has more than 50 workmen in its employment. The only way the Petitioner can be step out of the purview of the Industrial (Standing Orders) Act is by obtaining a certificate under Section 13(B). Such certificate/notification admittedly has not been obtained.

8. The next contention raised by Mr. Chavan was that the Service Regulations, 2005 framed by the Petitioner would over-ride the provisions of the Model Standing Orders. Reliance is placed on Clause 88(iii) of the Service Regulations, 2005, which reads as under :-

> *88 (iii) An employee shall, during the period of suspension, be eligible to a subsistence allowance as the Competent Authority may decide which shall in no case exceed 50 percent of the basic pay that he was drawing prior to his suspension in addition to the full dearness allowance. Entitlement to subsistence allowance shall be dependent upon compliance by the employee under suspension or reporting his presence as directed in his suspension order subject to leave of absence that may be granted to him by the Competent Authority.*

9. Mr. Chavan contended that "no case exceed 50 percent" will cover all contingencies and therefore, will over-ride the provisions of the Model Standing Order which provide for grant of 100 percent subsistence allowance after 180 days. This submission cannot be accepted. Though the Clause 88(iii) uses the phrase "in no case exceed 50 percent", this clause will have to be read with Clause 88(ii) (b), which reads as under : -

> *88 (ii) (b) In case, where the preliminary enquiries are not completed and disciplinary action is yet to start and the suspension of an employee is continued beyond six months, then the case shall be referred to the next higher authority of the Suspending Authority with a detailed report giving the reasons for delay, if any, together with specific recommendations of the Suspending Authority or review of suspension. On receipt of such report, the next higher authority of the Suspending Authority shall consider the matter and take the appropriate decision as to whether the suspension is to be continued or revoked.*

Thus the Clause 88 (ii) (b) states that if an enquiry is not completed within six months and the employee is under suspension, the case shall be referred to the next higher authority who will review the order of suspension and pass appropriate order as regards its continuation or revocation. Such review is an integral part of the scheme and the Regulations. The restriction contained Clause 88(iii) of maximum 50 percent will come in play when the suspension is continued as per the provisions of the Clause 88(ii)(b). The Service Regulations, 2005 do not contemplate a situation where the suspension is continued without the review by the next higher authority. The combined reading of the two clauses of the Regulations of 2005 makes it clear that the maximum cap of 50 percent is not absolute in all circumstances.

10. Therefore, question that arises is which provision would govern the contingency when suspension of the employee of the Petitioner is continued beyond the period of 6 months, without the order of the reviewing authority. The answer is provided in the Regulation 8 read with Regulation 83 of the Regulations of 2005. Regulations 8 and 83 read as under :-

> *(8) If any provision in these Regulations conflicts with any Statutory Rules or Regulations for the time being in force generally or in any area or in respect of any category or class of employees, the Statutory Rules and Regulations shall prevail.*
>
> *x x x x x*
>
> *(83) Whenever any provision in these Regulations conflict with that in the Factories Act, the Industrial Disputes Act, the Bombay Industrial Relations Act, the Payment of Wages Act or in the rules there under or in any other law applicable to the Company, the provisions in these Acts and Rules shall prevail in the case of the employee governed by these Acts.*

11. These Regulations show that if any of the provisions of the Regulations of 2005 are in conflict with any statutory Rule, provisions of Industrial Disputes Act, Bombay Industrial Relations Act and Payment of Wages Act or any other law applicable to Company, then it will thus prevail under the Regulations. The phrase “any of the other law applicable to the Company” will take color from the other categories mentioned preceding it and would imply a welfare labour legislation. By virtue of Regulations 8 and 83 themselves, the provision contained in Model Standing Orders regarding grant of subsistence allowance would be applicable to the Respondent No.1.

12. Furthermore, the present case stands on a different footing. In the present case there is no conflict, but of a area not covered by the Regulations. The present case does not arise from continuation of suspension as per Regulations. The suspension has continued without review, which is not contemplated under the Regulations. In my opinion, this vacuum will be covered by the Model Standing Orders, in view of Regulations 8 and 83.

13. The broader contention advanced by Mr. Chavan based on Section 133 and Sections 173 and 174 of the Act 2003 is concerned, in view of what is observed above, does not arise for consideration. The Service Regulations, 2005 themselves provide a solution. Furthermore, Section 133 of the Act of 2003 lays down

that, after the transfer from the Electricity Board to the Petitioner Company, the service conditions of the employees shall not be to their disadvantage.

14. In conclusion, since the Service Regulations 2005, do not contemplate continuation of suspension beyond the period of 6 months without review/permission, the Regulation 88 Clause (iii) will not come into operation and in such eventuality the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 which are applicable will come into play and thus, grant of 100% of subsistence allowance by the Industrial Court was proper.

14. It is, made clear that the above enunciation of the legal position is in the context of the fact that the suspension continued beyond the period of 6 months without any order by the reviewing authority.

15. In the circumstances, there is no error in the impugned order. The Petition cannot be entertained and is rejected.

(N.M. JAMDAR, J.)