IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3139 OF 2000

Western Maharashtra Development
Corporation Ltd.,
Kubera Chambers,
Dr.Rajendra Prasad Road,
Shivajinagar, Pune – 411 005. … Petitioner

v/s

1. Western Maharashtra Development
   Corporation Employees Union,
   Nar Veer Tanaji Wadi, Pune – 411 005.

2. State of Maharashtra

3. Shri V.L. Kamble,
   Member, Industrial Court, Pune. … Respondents

Mr.K.S. Bapat for the petitioner.

Mr.Rahul Nerlekar for respondent No.1.

Ms.Vaishali Nimbalkar, A.G.P. for Resp. No.2

CORAM: N.M. JAMDAR, J.

DATED : 10 SEPTEMBER 2015

ORAL JUDGMENT:

The Petitioner Western Maharashtra Development Corporation challenges the order passed by the Industrial Court dated 11 April 2000, restraining the Petitioner Corporation from recovering and withdrawing the special increments granted to its employees by resolution dated 29 November 1994.

2. The Respondent Union filed the Complaint (ULP) No.366 of 1995 in the Industrial Court, Pune, under Section 28 of the M.R.T.U. & P.U.L.P. Act, 1971, contending: The Respondent Corporation, which was incorporated 25 years ago, is managed by a Managing Director appointed by the State Government. The Corporation engages around 137 employees in the different categories. The appointments are done by the Managing Director. The finances of the Corporation are independent and no resources of the State Government or Union Government, are involved. The provisions of Model Standing Orders as well as all the labour laws are applicable to the Corporation. The Corporation, on account of its Silver Jubilee, passed a resolution on 29 November 1994 and granted certain special increments to its employees. Those who had completed services up-to 8 years, were granted one increment; those employees who had completed 8 to 16 years were granted two increments; and those who had completed 16 years and above, were granted three increments. Bonus and dividend was also declared. However, without issuing any Notice of Change under the provisions of Section 9A of the Industrial Disputes Act, 1947, the Respondent Corporation was proposing to withdraw these benefits. Therefore, it was necessary to restrain the Respondent Corporation from doing so as their action amounted to an unfair labour practice.

3. The Petitioner Corporation filed its reply and contended: The Respondent Corporation is not independent of the control of the State Government and the State Government has control for regulating its finances. Though by way of Board resolution dated 21 November 1994 certain special increments were given, it was without the prior approval of the Government. Since it was without prior approval, the Petitioner Corporation again held a meeting on 30 September 1995 and resolved to approach the Government and kept the special increments in abeyance. In view of this position, no unfair labour practice was committed.

4. Both the Petitioner and the Respondent Union examined their witnesses, who were cross-examined. The Industrial Court held that the Petitioner Corporation had engaged in unfair labour practice as contemplated under Item 9-A of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971, as the Petitioner Corporation had not given a notice of change under Section 9 of the Industrial Disputes Act, 1947. Accordingly, by the impugned order dated 11 April 2000, the complaint was allowed and the Petitioner Corporation was restrained from withdrawing the special increments.

5. The petition was admitted on 13 September 2000 and it was clarified that the grant of increments will be subject to the result of the petition. The State Government has filed its reply. The affidavit in reply is also filed on behalf of the Respondent Union on

11 August 2015.

6. Mr.Bapat, learned counsel for the Petitioner Corporation primarily raised two contentions. According to him, there was no change in service conditions and, therefore, provisions of Section 9A of the Act were not applicable. Secondly, even before the action of recovery was taken, a complaint came to be filed and ad-interim order was granted and, therefore, there was no breach of Section 9A of the Act. Mr.Nerlekar, learned counsel for the Respondent Union contended that the Petitioner Corporation is independent of the control of the Government and the amount of special increments is not paid through the funds of the State Government but only through the funds raised by the Petitioner Corporation.

7. I have considered the rival contentions. As regard the control of the State Government is concerned, the State Government has placed on record by way of an affidavit dated 8 September 2015 that the Petitioner Corporation is under administrative control and approval of the State Government is required for revision of salary, allowances and other financial benefits. In the facts of the case, it cannot be contemplated that the State Government will have administrative control, which is not disputed, but it will not have any say in the way the Petitioner Corporation chooses to spend its finances. Unwise spending of finances will affect ultimately the administration. Therefore the stand of both the Petitioner Corporation as well as the State Government that the State

Government have control over the finances of the Petitioner Corporation has to be accepted. Furthermore, in the cross-examination, the witness of the Respondent Union, has admitted that the Petitioner is an agency of State Government and it is controlled by the State Government. He has also admitted that, to some extent that there is also financial control and that it is correct that the wage revision cannot be given without permission of the Government.

8 Therefore, from the facts on record a position emerges that prior to the grant of these special increments on account of Silver Jubilee year, the Petitioner Corporation was taking permission of the State Government. It is informed that, subsequent to this incident of grant of special increments without permission, the Petitioner Corporation is taking permission of the Government in respect of wage revision of its employees. Therefore, the grant of these special increments without the permission of the Government is admittedly the sole aberration in the affairs of the Petitioner Corporation.

9 As regard Section 9A is concerned, in view of the above, Mr.Bapat is right in contending that the grant of wages with prior permission of the Government was the service condition of the employees. Thus, by insisting upon permission of the Government, the Petitioner Corporation did not change any service condition. As it is admitted by the witness of the Respondent Union itself that the

wage revision could not be done without the permission of the Government, seeking to correct its action to bring in conformity with the past practice, cannot be termed a change in service condition. Therefore, issue of change of service condition under Section 9A does not arise. Even otherwise, the moment the Petitioner Corporation sought to take permission of the Government in respect of its action, the Complaint was filed by the Respondent Union and ad-interim relief was granted and, therefore also there was no question of issuance of notice under Section 9A at that stage. Considering these facts, there is an clear error on the part of the Industrial Court in holding that the Petitioner Corporation was guilty of committing unfair labour practices and their action of seeking to withdraw the special increments, was unlawful.

10. However, the next question arise of the relief to be granted in this petition. The amount of special increments is granted in the year 1994. Though it is true that the interim order suggests that the grant of these increments will be subject to the final disposal of this petition, the position which is placed on record by the Respondent Union by an affidavit dated 11 August 2015 cannot be ignored. The amounts have been disbursed 20 years ago. The amounts were in the form of increments. It is placed on record that in the year 1994 there were 139 employees who received such increments and their wages were increased. Out of 139 employees, 84 employees have retired/resigned and some have expired. It is also placed on

record that, thereafter with the sanction of the Government, the Petitioner Corporation has implemented 4th, 5th as well as 6th Pay Commissions and their wages including the fitment on the basis of existing wages. These fitments in salary have been approved by the State Government, which includes the increments in question.

11. The time when the increments were granted by the Petitioner Corporation, there was no misrepresentation or fraud on the part of the members of the employees. It is also not that a certain fixed amount was disbursed which can be simply recovered. What was granted were increments which now by passage of time of 20 years and subsequent wage revision have became interwoven with further benefits and also the retiral dues. Even the provident fund also been fixed taking into account the increment. There is substance in the contention of the learned counsel for the Respondent Union that recovering this amount will not only be extremely difficult but will be practically impossible. The entire grant of 4th, 5th and 6th Pay Commissions, Provident Fund dues, retiral benefits, will have to be re-worked out for all the employees of the Petitioner Corporation including those who were retired, expired or left the service.

12. The grant of these increments did not actually result in loss of finances for the State Government. The only error that was committed by the Petitioner Corporation was not taking the permission of the State Government. It is also not placed on record

that grant of the increments resulted in serious financial loss to the Petitioner Corporation, except to state that the permission of the State Government was not taken. More importantly, the order of the Industrial Court is in the favour of the employees and the Petitioner employer has approached under Articles 226 and 227 of the Constitution of India. While exercising the equitable jurisdiction the practical implications of the resultant situation of setting aside a direction, cannot be lost sight of.

13. As discussed above, not only it will be practically impossible to recover these increments but it will lead to highly inequitable position and will create further several administrative difficulties. The learned A.G.P. nor Mr.Bapat are in a position to assert that this will not be the resultant situation. In the circumstances, though I am inclined to set aside the finding that the Petitioner Corporation had engaged in unfair labour practice, I do not feel that it would be in the interest of justice to set aside the direction given in Clause (3) of the impugned operative order of the Industrial Court.

14. Accordingly, writ petition is disposed of as under :

(i) The finding that the Petitioner Corporation has engaged in unfair labour practices under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act and the direction to pay cost, are quashed and set aside.

(ii) The order restraining the Petitioner Corporation from withdrawing the special increments granted to the employees vide resolution dated 29 November 1994, is confirmed.

(iii) Rule is made absolute in above terms. No order as to costs.

(N. M. JAMDAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.