

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2951 OF 2016

The Poona Christian Medical Association,
Jalna Mission Hospital, Tq. and Dist.Jalna,
Through the Medical Superintendent

PETITIONER

VERSUS

Prabhakar S/o Namdeo Tambe,
Age-56 years, Occu-Service,
R/o Kranti Nagar, Tq. and Dist. Jalna

RESPONDENT

Mr.T.K.Prabhakaran h/f Mr.A.N.Mundada, Advocate for the
petitioner.

Mr.M.M.Kamble, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/04/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The issue raised in this petition is with regard to the interference of the Industrial Court in an order of suspension which has been issued by the employer under Standing Over 25(5) of the Model Standing Orders, pending disciplinary proceedings.
3. The petitioner/Management is aggrieved by the judgment and

order dated 15/02/2016 by which Complaint (ULP) No.33/2014 filed by the respondent/employee has been partly allowed and the suspension order dated 07/06/2014 has been quashed and set aside.

4. Mr.Prabhakaran, learned Advocate for the Management submits that a charge sheet-cum-show cause notice had been issued to the respondent on 27/09/2015. After considering his reply, disciplinary proceedings in the nature of a domestic enquiry under the Model Standing Orders has been initiated. Owing to the order of suspension dated 07/06/2014, the respondent is paid subsistence allowance in accordance with standing order 25(5).

5. He submits that the Industrial Court has delivered the impugned order without considering the effect of Standing Order 25(5) and Standing Order 25(5-A). By the impugned judgment, reliance is placed upon the judgment of the Hon'ble Apex Court in the matter of Ajay Kumar Choudhary Vs. Union of India, [(2015) 7 SCC 291], without considering the fact that the said judgment of the Hon'ble Apex Court is with regard to speedy trial in criminal cases and has nothing to do with the Model Standing Orders framed under the Industrial Employment (Bombay) Rules.

6. He further submits that the Industrial Court, by its conclusion in paragraph 23 of the impugned judgment has concluded that *“The enquiry is not concluded in three months. It amounts to unfair labour practice. Enquiry cannot be prolonged in the absence of written order of the Enquiry Officer. The respondent can be said to be indulged in unfair labour practice. The suspension order is passed upto pendency of enquiry. Such type of suspension order is nothing but mala fide act of the respondent. It is also illegal act. This Court, therefore, is of the view that the complainant succeeded in proving the unfair labour practice under Item 9 of Schedule IV of the Act. Still, to have some time in the form of opportunity to the respondent to conclude the enquiry within a month, it will be just and proper to direct the respondent to allow the complainant to resume on duty within one month from passing of this order.”*

7. Mr.Prabhakaran, therefore, submits that the Industrial Court has exercised jurisdiction not vested in it by law and has lost sight of the fact that an employer can suspend an employee pending disciplinary action subject to the obligation to pay suspension allowance till the suspension lasts.

8. Mr. Kamble, learned Advocate appearing on behalf of the sole respondent has strenuously attempted to defend the judgment. Contention is that the respondent is the President of a Union. The suspension order is malafide and defamatory. There is no reason to suspend the respondent but for the fact that the employer desires to keep the respondent out of the premises.

9. He further submits that the suspension is aimed at weakening the respondent and for disintegrating the Union. The enquiry is being unnecessarily prolonged. The Hon'ble Supreme Court in the matter of Ajay Kumar Choudhary (*supra*) has concluded that the suspension should not be continued beyond 3 months. The enquiry is conducted beyond 3 months and therefore the suspension as well as the enquiry deserve to be quashed and set aside.

10. He relies upon the affidavit in reply filed by the respondent in support of his contention.

11. I have considered the submissions of the learned Advocates and have gone through the affidavit in reply filed by the respondent.

12. It is not in dispute that the complaint filed by the respondent

under the MRTU and PULP Act, 1971 is for challenging the suspension order by invoking Item 9 of Schedule IV of the Act. Item 9 is with regard to the failure to implement a settlement, agreement or an award. As such, the Industrial Court could have allowed the complaint only if it was to come to a conclusion that an act committed by the petitioner/Management is covered by Item 9 of Schedule IV.

13. Standing Order 25(5) and 25(5-A) read as under :-

“25(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 allowances 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 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.”

14. It is, therefore, apparent that an employer can suspend an employee pending disciplinary proceedings subject to the strict compliance of Standing Order 25(5-A) in the nature of payment of subsistence allowance. For the first 90 days, the suspended employee is entitled for 50% of the wages which he would have normally earned while on duty. For the second phase of 90 days, he is entitled for 75% of the wages. If the suspension extends beyond 180 days, he is entitled to 100% wages unless the Enquiry Officer passes an order in the enquiry that the enquiry is getting delayed on account of the dealing tactics of the employee. If such an order is passed, the subsistence allowance can be reduced as per the prescription of the Model Standing Order.

15. In the instant case, the Industrial Court has not arrived at a conclusion that the employer has violated Standing Order 25(5) or 25(5-A). The reproduced portion of the impugned judgment as above indicates that the Industrial Court has misdirected itself. So also, the view taken by the Hon'ble Apex Court in the matter of Ajay Kumar Choudhary (supra) is with regard to the issuance of a charge

sheet in criminal proceedings and the expeditious and speedy trial in criminal cases. In the given facts of the case, the Government was directed not to continue the suspension beyond 3 months if within the said period the memorandum of charges/charge sheet is not served upon the delinquent Officer. The issue of Standing Order 25(5) and 25(5-A) was not before the Hon'ble Supreme Court.

16. It is evident from Standing Order 25(5-A) that the suspension order can continue beyond 3 months. So also it could extend beyond 180 days following which the employee would be entitled for 100% wages as suspension allowance.

17. Mr.Kamble has further argued that because the enquiry has extended beyond 3 months, the same being impermissible, the enquiry, therefore, deserves to be quashed and set aside. This issue is no longer *res-integra*.

18. This Court, by its judgment dated 29/11/2013, in the matter of Bapu Parwati Urmude Vs.Premier Industries, 2014(5) Mh.L.J. 130 = 2014(4) All M.R.11 has dealt with the effect of the Standing Orders and especially Standing Order 25(4), (5) and (5-A). It has been concluded that merely because the enquiry is extended beyond 3

months would not render the enquiry a nullity. In fact, the law intends that the enquiry should be completed by giving a reasonable and fair opportunity of hearing to the delinquent and should not be concluded within 3 months in undue haste. The submission of Mr.Kamble is, therefore, fallacious.

19. During the course of the hearing of this matter, Mr.Kamble has taken instructions from the respondent/employee and makes a statement that he would fully co-operate in participating in the enquiry in order to enable the enquiry to be concluded within 3 months from the next date of hearing. He submits that the respondent is assisted by an Advocate as his defence representative. Mr.Prabhakaran makes a statement that if the respondent co-operates, the enquiry could be concluded within 3 months. The Management witness is kept waiting for cross examination since the respondent has sought adjournment on two occasions on the ground that his Advocate is busy.

20. In the light of the above, this petition is allowed. The judgment and order dated 15/02/2016 delivered by the Industrial Court, Jalna is quashed and set aside. Complaint (ULP) No.33/2014 stands dismissed. Having noted the statements of the learned

Advocates as have been recorded on instructions, both the litigating sides shall endeavour to have the enquiry concluded within 3 (three) months from today. In the event, some more time is required, the Enquiry Officer shall accordingly record the reasons and shall extend the time to ensure that the enquiry is conducted in due adherence to the principles of natural justice.

21. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)