IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.24033 OF 2016

The Commissioner,
Kolhapur Municipal Corporation,
Kolhapur. ..Petitioner
Versus
Mahanagarpalika Karmachari Sangh
Having address at 2023 "C" Ward,
Kolhapur.
Through its Secretary. ..Respondent

Shri. Sagar A. Mane for the Petitioner.
Shri. M. S. Topkar for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 4th OCTOBER, 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 29.06.2016 passed by the Learned Member of the Industrial Court No.2, Kolhapur, by which order, the application for interim reliefs being Exh.U-2 came to be partly allowed and resultantly, the Petitioner was directed not to act upon the order dated 08.09.2015 till the decision of the Complaint.

2 The Respondent herein is the recognized Union functioning in the Petitioner Corporation. The said Complaint being Complaint (ULP) No.171 of 2015 was filed by the Respondent espousing the cause of about

69 employees who were visited with the punishment by the said order dated 08.09.2015. It is an undisputed fact that the said order dated 08.09.2015 has been passed in respect of the said 69 employees only after issuing a show-cause notice to them and without holding an enquiry against the said employees. This has to be considered in the context of the fact that the gravamen of the allegations against the said 69 employees is as regards the collection of property tax by them whilst they were functioning in the said department. It is alleged by the acts of the said 69 employees, the Corporation has lost a huge amount on the property tax on account of the said employees extending undue benefits to the property owners to which they were not entitled in law. The imposition of the punishment vide the said order dated 08.09.2015 has resulted in the Complaint being filed by the Respondent espousing the cause of the said 69 employees. Out of the said 69 employees, the punishment of stoppage of three increments cumulative came to be imposed on the employees at Sr. Nos.1 to 7, stoppage of two yearly increments came to be imposed on the employees at Sr. Nos.8 to 13, and the stoppage of one yearly increment came to be imposed on the employees at Sr. Nos.13 to 47 and the remaining employees i.e. Sr. Nos.48 to 57 were censured. This was in respect of the employees mentioned in Schedule-A. In so far as the employees mentioned in

Schedule-B, they were visited with the punishment of stoppage of one year's increment. In so far as the employees mentioned in Schedule-C are concerned, they were visited with the punishment of recovery of Rs.1000/- from their pension. The said imposition of punishment was sought to be justified on behalf of the Petitioner Corporation before the Industrial Court by contending that Rule 8 of the Maharashtra Civil Services Conduct and Appeal Rules permits the Municipal Corporation to impose punishment without holding an enquiry as the punishment is a minor penalty. The said submission urged on behalf of the Municipal Corporation did not find acceptance with the Learned Member of the Industrial Court who held that having regard to the nature of the punishment, it was incumbent upon the Municipal Corporation to hold an enquiry and especially having regard to Rule 10 thereof. In the absence of any enquiry being held, the Learned Member of the Industrial Court held that the Municipal Corporation could not impose the punishment that it has imposed vide the impugned order dated 08.09.2015. The Learned Member of the Industrial Court accordingly has allowed the application for interim reliefs and directed the Municipal Corporation not to give effect to the said order dated 08.09.2015.

3 The Learned Counsel appearing on behalf of the Petitioner Shri. Sagar A. Mane would contend that in so far as 7 employees who are

in Schedule-B are concerned, they are officers and therefore the Complaint filed on their behalf is not maintainable which stand is taken in the written statement. However the Industrial Court has failed to adjudicate upon the said issue at the time of consideration of the application for interim reliefs. In fact, it was the submission of Shri. Sagar A. Mane that a preliminary issue in that regard ought to have been framed by the Industrial Court. The Learned Counsel would further contend that after punishment was imposed vide order dated 08.09.2015, in most of the cases effect has been given to the said order in the service record.

4 Per contra, the Learned Counsel appearing for the Respondent Shri. M. S. Topkar would contend that the Complaint was maintainable, as except the 7 employees, whose names were appearing in Schedule-B, the rest of the employees are workmen within the meaning of Industrial Disputes Act, 1947. The Learned Counsel would contend that it is not necessary for the Industrial Court to delve into the said aspect at the stage of considering the application for interim reliefs as the said issue entails an enquiry into facts. The Learned Counsel would contend that having regard to the nature of the punishment imposed upon the employees, it was incumbent upon the Municipal Corporation to hold an enquiry, especially having regard to the nature of the

allegations which are sought to levied against the said 69 employees.

5 Having heard the Learned Counsel for the parties, in my view, there is no merit in the above Petition. The fact that no enquiry has been held by the Municipal Corporation cannot be disputed. Having regard to the nature of the punishment imposed on the employees, it cannot be said at the prima-facie stage that no enquiry was necessitated especially having regard to the charge that was levied against the said 69 employees. This has to be considered in the context of the fact that the charge against the employees is of giving undue benefits to the property owners to which they were not entitled thereby resulting in a loss to the Corporation. In so far as the 7 employees who names are appearing in Schedule-B is concerned, except stating that they were officers, no details have been given. The said contention raised on behalf of the Municipal Corporation would obviously give rise to an issue which would require evidence to be led and the issue to be answered on the said basis. However at the prima-facie stage, it would have to be said that the said contention urged on behalf of the Municipal Corporation cannot be accepted at its face value unless facts are gone into. Having regard to the prejudice that was caused to the employees on account of the punishment imposed vide the said order dated 08.09.2015, the Industrial Court was within its powers to proceed to consider the application for

interim reliefs on merits. As indicated above, non-holding of the enquiry can be said to loom-large over the punishment imposed on the said 69 employees. In my view, therefore, the impugned order passed by the Industrial Court granting interim reliefs cannot be taken exception to. No case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]