

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE**

WRIT PETITION NO.1363 OF 2016

Chandraprakash Jha	...	Petitioner
Versus		
United News India And Another	...	Respondents

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Ms. Jane Cox i/b Mr. M.A. Amonkar for the Petitioner.
Mr. T.R. Yadav for Respondent No.1.

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CORAM : S.C.GUPTE, J.

DATE : 27 JULY 2016.

P.C. :

. Heard learned Counsel for the parties.

2 **Rule.** Taken up forthwith for hearing by consent.

3 This Petition challenges an order dated 2 February 2016 passed by the Industrial Court, Mumbai, in Compliant (ULP) No.176 of 2011 filed under the M.R.T.U. & P.U.L.P. Act, challenging the suspension of the Petitioner during the pendency of a domestic inquiry. The Respondent-employers have since concluded the domestic enquiry and issued a show cause notice for termination upon acceptance of the findings in the enquiry. The show cause notice and the domestic enquiry that preceded it have been separately challenged by the Petitioner in another complaint under the M.R.T.U. & P.U.L.P. Act, namely, Complaint (ULP) No.216 of 2013. In view of this, at the hearing of the Petition learned Counsel for the Petitioner simply presses prayer clause-(c) of the Petition, which is in the following

terms :-

“c) That, this Hon'ble Court may be pleased to direct that none of the findings or observations in the impugned order dated 02.02.2016 in Complaint ULP No.176 of 2011 annexed at Exhibit “W” shall in any way preclude the Petitioner from challenging in Complaint ULP No.216 of 2013 the enquiry and proposed action on the ground of non/irregular payment of subsistence allowance and on the ground of victimization, and the impugned order shall not preclude the 9th Labour Court, Mumbai from examining and considering the same in the said Complaint ULP No.216 of 2013.”

4 This prayer, according to the Petitioner, is necessitated due to the peculiar observations of the Industrial Court, Mumbai, in the impugned order. It is submitted that one of the grounds urged by the Petitioner whilst challenging his suspension in Complaint (ULP) No.176 of 2011 was that he was not paid full subsistence allowance. This question, namely, whether or not the Petitioner received full amount of subsistence allowance, has expressly been kept open in the impugned order, for being agitated in Complaint (ULP) No.216 of 2013. At the same time, the Industrial Court has held that the complainant (i.e. the Petitioner herein) has fatally failed to prove the ground of unfair labour practice either under Item 4(f) of Schedule II or under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. Though the Petitioner does not press his challenge to the dismissal of his complaint concerning his suspension, which was *inter alia* on the ground that full subsistence allowance was not paid to him, non-payment of full subsistence allowance also forms an important part of the Petitioner's challenge to the domestic enquiry by the Respondents. In the premises, particularly considering the fact that the Industrial Court,

Mumbai, has kept open that point, the Petitioner would like a clarification to be issued in the present Petition that the observations of the Industrial Court in the impugned order in Complaint (ULP) No.176 of 2011, should not come in the way of the Labour Court, Mumbai, adjudicating the question of validity of the domestic enquiry on the ground of non-payment of full subsistence allowance. The clarification is absolutely necessary in the facts of the case.

5 Needless to add that when the Labour Court, Mumbai, considers this point, namely, whether or not full subsistence allowance was paid to the Petitioner, it will be open to the Respondents to assert and attempt to establish before the Court that such allowance was in fact paid to the Petitioner and that there was an admission of the Petitioner in this behalf recorded in the impugned order, and also purportedly borne out by the evidence on record in Complaint (ULP) No.176 of 2011. All contentions of both the parties on merits in this behalf are kept expressly open.

6 Accordingly, Rule is partly made absolute and the Petition is allowed in terms of prayer clause-(c). No order as to costs.

(S.C.GUPTE, J.)