

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 1239 OF 2017

The President, Maharashtra Rajya Vidyut Company & Ors.	...Petitioners
V/s.	
Shri. Sanjay Shivingappa Todakar & Ors.	...Respondents

Mr. N.A. Kulkarni for the Petitioner.
Mr. Babasaheb Ligade for the Respondent No.1.

**CORAM : K. K. TATED, J.
DATED : 31/01/2017**

PC.:

1. Heard learned counsel for the parties.
2. By this Petition under Article 227 of Constitution of India, the petitioner is challenging the order dated 28.11.2016 passed by the Industrial Court, Satara below Exh. U-2 in Complaint (ULP) No. 42 of 2016 by which the Industrial Court directed the Petitioner to pay Dearness Allowances as per Government rate as per Resolution dated 02.01.2011 passed by the Petitioner Society.
3. In the present proceeding, the Petitioner passed Resolution dated 02.01.2011 stating that they will pay all the benefits including Dearness Allowances to the Respondents as per Government rates. That resolution was not implemented by the petitioner. Hence, the Respondents filed Complaint (ULP) No. 42 of 2016 in the Industrial Court, Satara under Section 28(i) read with Item 9 and 10 of Schedule

IV of the MRTU & PULP Act, 1971. In that complaint, the Respondents preferred application for interim relief below Exh. U-2. In that application, the Industrial Court directed the petitioner to comply the resolution passed by them dated 02.01.2011. Hence, the present Writ Petition.

4. The learned Counsel for the Petitioner submits that the Industrial Court erred in coming to the conclusion directing the petitioner to pay Dearness Allowances as per Resolution dated 02.01.2011 during the pendency of the Complaint (ULP) No. 42 of 2016. He submits that the order passed by the Industrial Court below Exh. U-2 is in the nature of final disposal of complaint itself. Hence, the said order is required to be set aside.

5. The learned Counsel for the Petitioner further submits that the Industrial Court erred in coming to the conclusion that the petitioner without following due process of law as per Section 9A of the Industrial Dispute Act modified the earlier Resolution dated 02.01.2011. He submits that the Resolution dated 02.01.2011 was not implemented by them. Hence, there is no question of following the procedure as required by Section 9A of Industrial Dispute Act. He further submits that if the impugned order is not set aside, irreparable loss and injury will be caused to the petitioner. He submits that at present it is not possible for the petitioner to pay the said amount to the Respondents.

6. On the other hand, the learned Counsel for the Respondents original complainants vehemently opposed the present Writ Petition. He submits that though the resolution was passed by the Society on

02.01.2011, they failed and neglected to comply the same till 2016. Hence, the Respondents filed complaint (ULP) No. 42 of 2016 before the Industrial Court under Section 28(i) read with Item 9 and 10 of Schedule IV of MRTU & PULP Act, 1971. He submits that there is no substance in the present Writ Petition and same is required to be dismissed with costs.

7. I heard both the sides at length. There is no dispute that the petitioner passed Resolution dated 02.01.2011 for payment of Dearness Allowances to the Respondents as per Government rates. That Resolution was not implemented by the Petitioner till 2016. Thereafter, the Petitioner passed another Resolution on 25.10.2016 stating that it is not possible for them to pay the Dearness Allowances as per Resolution dated 02.01.2011 on the ground that the earlier Management misappropriated the sum of Rs.4,38,00,000/-. It is to be noted that misappropriation of the amount by the Management cannot be ground for denying the benefit of Resolution dated 02.01.2011 to the Respondents.

8. It is to be noted that if the Terms and Conditions of services and/or payment required to be changed/modified, they have to follow the procedure under Section 9A of the Industrial Dispute Act. In the present proceeding, admittedly the petitioner has not followed the procedure, therefore, the view taken by the Industrial Court in the impugned order dated 28.11.2016 prima facie seems to be according to law. Considering this fact, I do not find any substance in the present petition.

9. Hence, following order is passed:

a) Writ Petition stands rejected.

b) Hearing of Complaint (ULP) No. 42 of 2016 is expedited.

c) This Court expects the Industrial Court to dispose of the same on or before 30.09.2017 without influencing the order passed by this Court.

(K.K.TATED, J.)