

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition NO. 681 OF 2002**

Municipal Corporation of Greater Mumbai  
& Ors.

...Petitioners

*Versus*

Mumbai Mahanagarpalika Karyalayeen  
Karmachari Sanghatana and others.

...Respondents

WITH  
WRIT PETITION NO. 8973 OF 2005  
WITH  
WRIT PETITION NO. 5942 OF 2006  
WITH  
WRIT PETITION NO.406 OF 2015  
WITH  
WRIT PETITION NO.11863 OF 2015  
WITH  
WRIT PETITION NO.8434 OF 2014  
WITH  
WRIT PETITION NO.8063 OF 2005  
WITH  
WRIT PETITION NO.11441 OF 2014  
WITH  
WRIT PETITION NO.7370 OF 2008

....

Mr.S.S. Pakale, Advocate for Municipal Corporation of Greater  
Mumbai.

Ms. Vidula S. Patil, learned Counsel for the Union / workman.

....

CORAM : R. G. KETKAR, J.

RESERVED ON : 20<sup>th</sup> JULY, 2017

PRONOUNCED ON : 21<sup>st</sup> SEPTEMBER, 2017

## J U D G M E N T:

1. Heard Mr.S.S. Pakale, learned Counsel for Municipal Corporation of Greater Mumbai (for short, 'Corporation') and Ms.Vidula S. Patil, learned Counsel for the Union / workman, at length.

2. W.P. No.681/2002 is instituted by (1) the Corporation, (2) V. Ranganathan or his successor, Municipal Commissioner, (3) Ajit Kumar Jain or his successor, the Additional Municipal Commissioner (City), (4) Dinesh D. Jadhav or his successor, Deputy Municipal Commissioner (Zone-I), (5) Rajendra Wale, the then Ward Officer and presently Ward Officer (M.C.) and (6) Superintendent of Licence against (1) Mumbai Mahanagarpalika Karyalayeen Karmachari Sanghatana (for short, 'Sanghatana'), (2) Laxman G. Madane, (3) Prem J. Vyas, (4) Sharad D. Bande, (5) Arun J. Wavadankar, (6) Satish L. Mhatre, (7) Vinayak T. Jadhav, (8) Jalinder S. Kadam, and (9) Navnit K.More under Article 227 of the Constitution of India challenging the judgment and order dated 7.4.2001 passed by the learned Member, Industrial Court, Mumbai (for short, 'Tribunal') in Complaint (U.L.P.) No.580/2000. By that order, the Tribunal allowed the

complaint instituted by the Sanghatana and eight others filed under Section 28 read with Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'Act') and declared that the petitioners have engaged in unfair labour practices under Item 9 of Schedule IV of the Act and directed them to cease and desist from engaging in such unfair labour practice. The petitioners were directed to withdraw the order of punishment of withholding two increments permanently inflicted on the respondents/complainants. The petitioners were further directed to release further amount of increments with arrears from the date from which increments were due to complainants No.2 to 9.

3. W.P. No.8973/2005 is instituted by (1) the Corporation, (2) K.C. Shrivastav or his successor, Municipal Commissioner, and (3) Ajitkumar Jain or his successor, the Additional Municipal Commissioner (City) against (1) Sanghatana and (2) Vasanti Parab under Articles 226 and 227 of the Constitution of India challenging the judgment and order dated 4.7.2005 passed by the Tribunal. By that order, the Tribunal allowed the complaint filed by the complainants under Section 28 read with Item 9 of Schedule IV of

the Act and declared that the petitioners have engaged in unfair labour practice under Item 9 of Schedule IV of the Act and directed them to cease and desist from continuing such unfair labour practice. The petitioners were directed to withdraw the punishment dated 12.6.2001 inflicting fine of Rs.1,000/- on respondent No.2/complainant No.2 Vasanti Parab and refund the same to her.

4. W.P. No.5942/2006 is instituted by the Corporation against Shri Prakash Alinje under Articles 226 and 227 of the Constitution of India challenging the judgment and order dated 2.5.2006 passed by the Tribunal in Review Application (U.L.P.) No.31/2004. By that order, the Tribunal allowed Review Petition filed by the respondent Prakash Alinje and set aside the order dated 16.8.2003 passed in complaint (U.L.P.) No.1187/2000. That complaint was instituted by the respondent under Section 28 read with Item 9 of Schedule IV of the Act challenging the punishment order dated 2.5.2000 withholding of next increment of two years on permanent basis. By order dated 16.8.2003, the Tribunal dismissed the complaint. The respondent filed Review Petition which was allowed on 2.5.2006.

5. W.P. No.406/2015 is instituted by (1) the Corporation, (2) Johny Joseph or his successor, Municipal Commissioner, and (3) Rajendra Kumar Vale, Assistant Commissioner 'A' Ward against respondent Govind Kanoba Gosavi under Articles 226 and 227 of the Constitution of India challenging the judgment and order dated 4.10.2014 passed by the Tribunal in Complaint (U.L.P.) No.245/2006. By that order, the Tribunal allowed the complaint filed by the respondent under Section 28 read with Item 9 of Schedule IV of the Act challenging the suspension order dated 31.3.2006 suspending him w.e.f. 4.4.2006 as also the order dated 11.10.2006 treating the period of suspension from 4.4.2006 to 11.10.2006 as uncondoned and imposition of fine of Rs.1000/-. By the impugned order, the Tribunal allowed the complaint and declared that the petitioners have engaged and are engaging in unfair labour practice under Item 9 of Schedule IV of the Act. The Tribunal set aside the order of punishment dated 11.10.2006 treating the period of suspension from 4.4.2006 to 11.10.2006 as uncondoned period and fine of Rs.1000/- was imposed. The Tribunal directed that the period of suspension be treated as a period spent on duty for all purposes and all consequential benefits.

6. W.P. No.11863/2015 is instituted by (1) the Corporation, (2) Madhav sangle or his successor, the Additional Municipal Commissioner (E.S.) and (3) Florens Vaz, Chief Engineer (S.O.) against the respondent Appa Dagdu Shirgire under Articles 226 and 227 of the Constitution of India challenging the judgment and order dated 11.12.2014 passed by the Tribunal in complaint (U.L.P.) No.295/2009. By that order, the Tribunal allowed the complaint filed by the respondent under Section 28 read with Items 5 and 9 of Schedule IV of the Act challenging the suspension order dated 24.6.2008 suspending the complainant w.e.f. 25.6.2008 to 24.5.2010. The Tribunal declared that the petitioners have engaged and are engaging in unfair labour practices under Items 5 and 9 of Schedule IV of the Act and directed them to cease and desist from engaging into unfair labour practices under Items 5 and 9 of Schedule IV of the Act. The Tribunal revoked the suspension order dated 24.4.2008 and declared that the period of suspension during 25.6.2008 to 24.5.2008 be treated as period spent on duty by the complainant for all purposes and consequential benefits. The Tribunal set aside the finding of the Enquiry Officer as also punishment order dated 4.11.2010 withholding the complainant's next increment of one year with

permanent effect.

7. W.P. No.8434/2014 is instituted by (1) the Corporation, (2) Jony Joseph or his successor, Municipal Commissioner, and (3) R.M. Kathuria, Executive Health Officer against the respondent Laxmi Shivajirao Kawle under Articles 226 and 227 of the Constitution of India challenging the judgment and order dated 28.7.2010 passed by learned Presiding Officer, 7<sup>th</sup> Labour Court, Mumbai (for short, 'Labour Court') in Complaint (U.L.P.) No.378/2006. By that order, the Labour Court allowed the complaint filed by the respondent under Section 28 read with Items 1 (b), (d), (e) (f) and (g) of Schedule IV of the Act challenging the termination order dated 15.1.2003. The Labour Court allowed the complaint and declared that the petitioners have engaged and are engaging in unfair labour practices under Items 1(b), (d), (g) of Schedule IV of the Act and directed them to cease and desist from engaging into unfair labour practices. The petitioners are directed to reinstate the complainant with continuity of service and 25% backwages w.e.f. 15.6.2003. The Corporation has also challenged the judgment and order dated 19.10.2012 passed by the Tribunal in Revision [U.L.P.] No.189/2010. By that order, the Tribunal allowed

Revision Application and modified the Labour Court's order. The Tribunal confirmed that order to the extent of “it is declared that the respondents are engaged and engaging in unfair labour practice under Item 1(b), (d) and (g) of Schedule IV of the Act, 1971” and “the respondents are directed to reinstate the complainant with continuity of service”. The Tribunal however quashed and set aside the direction to the respondents to pay 25% of the back-wages w.e.f. 15.1.2003. The Tribunal further directed the respondents to pay to the original complainant 50% of back-wages w.e.f. 15.1.2003 till the date of order dated 28.7.2010 or till the date of her reinstatement whichever is earlier respectively.

8. W.P. No.8063/2005 is instituted by Jaysing D. Tamboli against the Corporation under Articles 226 and 227 of the Constitution of India challenging the judgment and award dated 17.8.2014 made by the Labour Court. By that order, the Labour Court partly allowed the Reference and directed the Corporation to appoint the second party as fresh candidate/ recruitee. The workman is aggrieved as he not given full backwages and continuity of service from 16.7.1998 and he is ordered to be appointed as a fresh candidate/recruitee.

9. W.P. No.11441/2014 is instituted by (1) Ashok Prabhakar Nachankar and (2) Ramesh Jethalal Chauhan against the Corporation under Articles 226 and 227 of the Constitution of India challenging the orders dated 3.5.2012 and 31.7.2012 passed by the Tribunal in Complaint (U.L.P.) No.53/2009. By order dated 3.5.2012, the Tribunal held that the enquiry conducted against the petitioners was fair and proper and that the findings are not perverse. By order dated 31.7.2012, the Tribunal modified the punishment imposed by the Corporation of stoppage of two increments with permanent effect to stoppage of one increment with permanent effect.

10. W.P. No.7370/2008 is instituted by Sunil Kashinath Yadav against (1) the Corporation, (2) K.C. Shrivastav or his successor, Municipal Commissioner, (3) Vidyadhar Kanade or his successor, Additional Municipal Commissioner (City), (4) S.R. Dange or his successor, the Joint Municipal Commissioner (G.A.) and (5) A.D. Jhandwal, Chief Fire Officer under Articles 226 and 227 of the Constitution of India challenging the judgment and order dated 4.2.2008 passed by the Tribunal in Revision Application (U.L.P.) No.260/2006. By that order, the Tribunal allowed the Revision

Application filed by the Corporation and set aside the order dated 31.10.2006 passed by the Labour Court in Complaint (U.L.P.) No.343/2002 and dismissed the complaint. The Labour Court had allowed the complaint filed by the petitioner under Section 28 read with Items 1(b), (c), (d), (f) and (g) of Schedule IV of the Act and declared that the respondents have engaged in unfair labour practices under Items 1(b), (c), (d), (f) and (g) of Schedule IV of the Act. The respondents were directed to withdraw the order of termination dated 3.5.2002 and order of reinstatement with continuity of service and full back-wages as also directed to pay wages for the period of suspension as per Rules.

11. W.P. No.681/2002 was heard on 15.6.2017. At the request of learned Counsel for the Corporation, the petition was fixed for final hearing in the week commencing from 27.6.2017. On 27.6.2017, at the request of learned Counsel for the Corporation, the matter was fixed for final hearing in the week commencing from 10.7.2017 along with W.P. Nos.8973/2005, 5942/2006, 406/2015, 11863/2015, 8434/2014, 8063/2005, 11441/2014, 7370/2008 as these Petitions raise following common questions of law.

1. Whether the provisions of Industrial Employment (Standing Orders) Act, 1946 (for short, 'S.O. Act') prevail over the Mumbai Municipal Corporation Act, 1888 (for short, 'Corporation Act') ?
  2. Whether Mutual Standing Orders (for short, 'M.S.O.') prevail over the Municipal Service Rules and Regulations and the Manual of Departmental Enquiries ?
12. The matter was heard from time to time and was ultimately heard on 20.7.2017. In support of the petitions instituted by the Corporation, Mr.Pakale submitted that the impugned orders passed by the trial Court exhibit non-application of mind. The impugned orders are totally illegal and unconstitutional as the trial Court has totally over-looked the important fact that the workman was appointed under the Service Rules framed by the Corporation. The services of the workman are governed by said Rules. Said Rules were never challenged by the workman before any competent Court. Said Rules are still in force. Without prejudice to these submissions, he submitted that the workman neither pleaded nor proved that the provisions of the Service Rules were prejudicial to his interest and that those provisions cannot be made applicable to him. In

fact he participated in the enquiry without any reservation or any objection to the decision of the Corporation initiating departmental enquiry against him. It is, therefore, not open to him to contend that the charge-sheet and the enquiry was not conducted in accordance with the Standing Orders.

13. Mr. Pakale submitted that the provisions of M.S.Os. are not applicable to the Corporation. He submitted that without prejudice to this submission even if it is assumed that the provisions of S.O. Act are applicable, the workman has not stated as to how and which provisions of S.O. are violated. Similarly the punishment provided for major misconduct in the M.S.Os. are more severe than the punishment awarded by the Corporation. In view thereof it cannot be said that the Corporation has committed any wrong. Thus, the case made out by the workman is baseless and without any foundation whatsoever. He submitted that the trial Court ought to have framed another issue as to whether the punishment awarded to the workman was inconsistent with the provisions of the M.S.Os. particularly in the light of the allegations and reply by the Corporation. The trial Court did not apply its mind to the pleadings and also did not properly raise the issues while deciding the case in haphazard manner which had resulted

into miscarriage of justice.

14. Mr. Pakale further submitted that the departments of the Corporation do not fall within the definition of Section 2(e) of the S.O. Act read with Section 2 of the Payment of Wages Act, 1936. He submitted that the Corporation is incorporated under Section 5 of the Corporation Act. It is not an Industrial Establishment as defined under the S.O. Act. It is possible that some of the work undertaken in some of the departments and sections of the Corporation may fall within the definition of an “Industrial Establishment” as defined under the S.O. Act. However, this is a mixed question of law and fact which can be decided on the basis of evidence on record. The Corporation Act is a Special Act whereas the S.O. Act is a General Act. The provisions of a Special Act, namely, the Corporation Act, will, therefore, supersede and/or override the provisions of a General Act, namely, S.O. Act. The onus of proving inconsistency between the Central Act and the State Act (albeit, one General and the other Special) lies on the party placing reliance upon the Central Act, namely, S.O. Act. No such stand was taken by the workman before the trial Court. The inconsistency must exist on facts and not on mere possibilities. He submitted that the trial Court ought

to have dismissed the case on this short count alone.

15. He further submitted that the Rules and Regulations framed under the Corporation Act, though are in the form of subordinate legislation, have statutory force and effect. Under the provisions of the Corporation Act and the Rules framed thereunder, employees acquire a status and get the right to hold the office. He submitted that the decision of the learned Single Judge of this Court (Coram: Dr.D.Y. Chandrachud, J. as his Lordship then was) in **Sitaram Walunj Walunj vs. Municipal Corporation of Greater Mumbai** passed on 15.4.2008 in W.P. No.8711/2007, is per incuriam as clause 32 of M.S.Os. in Schedule-I was not brought to the notice of the learned Single Judge. Section 13-B of the S.O. Act lays down that the S.O. Act shall not apply to certain industrial establishments set out therein. The list of Service Rules set out under Section 13-B is merely illustrative and not exhaustive. In other words, the Municipal Rules framed under the Corporation Act which are on the same line with the Rules set out in Section 13-B and, therefore, the S.O. Act will not apply to the corporation.

16. Mr. Pakale submitted that generally the employments

can broadly be described in the following three categories/laws:

- (I) Relationship of master-servant, purely governed by contractual employments under the Industrial law;
- (II) Employments with either the Central or State Government or with the local self government;
- (III) Employments governed under the Rules framed by the statutory bodies as per the relevant statute.

17. He submitted that in the present case, the second category of employment has to be considered. He submitted that once such an appointment is made, the rights and obligations of the parties are governed by the statute under which their appointments were made and not by contractual law. The principles applicable to a master-servant relationship (but unregulated by any statute) will not apply to those employees employed by local self-government. In the present case, the workman nowhere pleaded that the department in which he is employed is an 'industrial establishment'. Till date, no Court has held and/or recorded any such finding that the said department is an 'industrial establishment'. In the absence of any such finding, it would not be proper to hold that the provisions of the S.O. Act are applicable to the Corporation.

18. He submitted that in the present case, once an

employee is appointed, his rights and obligations are not governed by contractual principles but by the Corporation Act. The relationship is governed by the special statute, namely, the Corporation Act and not S.O. Act. Employees of the Corporation are also entitled to protection under Articles 14, 15 and 16 of the Constitution of India. The municipal employees have certain rights and privileges and suffer from certain disabilities which may be disregarded at common law which ordinarily governs the ordinary master-servant relationship. The legal position of a municipal employee is more of a 'status' rather than a 'contractual' appointment. The hallmark of a status is its attachment to a legal relationship of rights and duties imposed upon by the public law rather than a mutual agreement between the parties.

19. He submitted that in the case of **Sitaram Walunj** (supra), the learned Single Judge did not decide whether the Corporation or any of its departments or sections is an 'Industrial Establishment'. After recording concession, the learned Single Judge proceeded to observe that the S.O. Act is a Special Act and the Corporation Act is a General Act. The learned Single Judge did not comparatively examine the provisions of these two Acts. The learned Single Judge relied upon the decision of Apex Court

in the case of *U.P.S.E. Board vs. Hari Shankar Jain, 1978 Lab.I.C. 1657* and held that the S.O. Act is a Special Act and consequently held that the Corporation Act is a General Act. Before holding so, the learned Single Judge ought to have considered the provisions of both the Statutes and after examining the same ought to have recorded a finding in that regard. No such exercise has been undertaken. He, therefore, submitted that said decision cannot be considered as an authority on the 'industrial establishment'.

20. In addition, Mr. Pakale reiterated the submissions that were made in W.P. 5077/2012 with companion writ petitions decided on 4.3.2015 by this Court. He submitted that aggrieved by this decision, the Corporation preferred Special Leave Petitions before the Apex Court. The Apex Court granted leave. Civil Appeals were ultimately disposed of on 22.3.2017 keeping the question of law open. In support of his submission, he relied upon following decisions:

- i. *More Jeevan Yashwant and others vs. MCGM*, W.P. No.957/2013 along with companion writ petitions decided on 6.1.2017 by this Court (Coram:S.C. Dharmadhikari & B.P. Colabawalla, JJ.) and in particular paragraphs-36, 51 and 52.

- ii. **Secretary, ONGC Ltd vs. V.U. Warriar**, (2005) 5 SCC 245 and in particular paragraph-8 thereof;
- iii. **Sukhdeo Singh and others vs. Bhagatram Sardar Singh Raghuvanshi and another**, AIR 1975 SC 1331.

21. Mr. Pakale submitted that the petitions instituted by the Corporation deserve to be allowed and the petitions instituted by the workmen/Sanghatana deserve to be dismissed.

22. On the other hand, Ms. Patil appearing for the Sanghatana/workman supported the orders passed in their favour. She submitted that the petitions instituted by Sanghatana/workman deserve to be allowed and the petitions instituted by the Corporation deserve to be dismissed as the questions of law raised in these petitions are time and again decided by this Court. In short, she submitted that the issues raised in these petitions are no longer res integra. She relied upon following decisions:

- I. **Sitaram Walunj** (supra);
- II. Decision in **Municipal Corporation of Greater Mumbai and another vs. Dr. Shivajirao T. Kawale** in W.P. No.7708/2010 decided on 17.1.2011 by this Court (Coram: Smt. Nishita Mhatre, J.).
- III. Decision in **M.C.G.M. vs. Mr. Madhusudan S. Kanth** in W.P.

No.9385/2010 decided on 13.12.2010 by this Court (Coram: Smt. Nishita Mhatre, J.).

- IV. Decision in the **Municipal Corporation of Greater Mumbai and others vs. Smt. Nilima Sunil Nadkarni** in W.P. No.5077/2012 with companion writ petitions decided on 4.3.2015 by me.
- V. **The Municipal Corporation of Greater Bombay and another vs. Laxman Saidoo Timmanapyati and others**, 1991 I CLR 653 (Bombay High Court)
- VI. **Pyarelal vs. The Municipal Council, Ramtek and another**, 1992 I CLR 327 (Bombay High Court).

23. She further submitted that as far as W.P. Nos.8973/2005 and 5942/2006 are concerned, the workmen therein have retired, the penalty of payment of fine of Rs.1000/- was inflicted on respondent No.2 Vasanti Parab. As far as W.P. No.5942/2006 is concerned, the Corporation had inflicted penalty of stoppage of one increment. The respondent Prakash Alinje retired from the service of the Corporation. Even on this count, no case is made out for interfering with the orders impugned in these petitions.

24. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused

the material on record. I have already extracted the common questions of law which arise in all these petitions, namely, whether the provisions of S.O. Act prevail over the Corporation and whether M.S.Os. prevail over the Municipal Service Rules and Regulations and the Manual of Departmental Enquiries. These issues were dealt by me in *M.C.G.M. vs. Nilima Nadkarni* (supra). This view is supported by the decisions referred in paragraph-22. The view taken by me is consistently taken by this Court. For the reasons recorded therein, I do not find any good reason for taking the different view than the one taken by me in *M.C.G.M. vs. Nilima Nadkarni* (supra). As noted earlier, in W.P. No.8973/2005 punishment of fine Rs.1,000/- was inflicted on respondent No.2 Vasanti Parab on 12.6.2001. She had retired from the services. In view thereof, no case is made out for granting any relief in W.P. No.8973/2005. Rule is discharged with no order as to costs. As far as W.P. No.5942/2006 is concerned, the Corporation had inflicted the penalty on 2.5.2000 of withholding of next increment of two years on permanent basis. Initially by order dated 16.8.2003, the Tribunal had dismissed the complaint. Review Petition filed by the respondent was allowed on 2.5.2006. Respondent Prakash Alinje has already retired from

the services of the Corporation. In view thereof also no case is made out for granting any relief in W.P. No.5942/2006 instituted by the Corporation. Rule is discharged with no order as to costs.

25. Mr. Pakale relied upon paragraphs-36, 51 and 52 of W.P. No.957/2013 and other companion writ petitions decided on 6.1.2017. A perusal of that decision shows that the ex-municipal employees had instituted the Petitions *inter alia* contending that in or about 1989 the Corporation decided to allot residential accommodation in its possession to its employees. The petitioners claimed that they were allotted respective premises on permanent tenancy / ownership basis. The petitioners, therefore, claimed writ of mandamus directing the Corporation not to apply the circular dated 7.10.2010 and release their retirement benefits / dues with effect from the date of their retirement with interest @ 18% from that date till payment. The petitioners also prayed for direction against the Corporation not to evict them from their respective tenements. I fail to understand how this decision is applicable for deciding the questions raised in these petitions. The judgment relied upon by Mr. Pakale, therefore, does not advance the case of the Corporation.

26. Mr. Pakale relied upon the decision in *ONGC v. V.U. Warriar* (supra) and in particular paragraph-8 thereof. That decision laid down that the Regulations framed under Section 32 of the Oil and Natural Gas Commission Act, 1959 are statutory in nature and they are enforceable in a Court of law. Relying upon this paragraph-8, Mr. Pakale submitted that even the Municipal Service Rules and Regulations are statutory in nature. In the case of *M.C.G.M. vs. Nilima Nadkarni* (supra), it is held that in case of inconsistency between M.S.Os and Municipal Service Rules and Regulations, M.S.Os. will prevail over the Municipal Service Rules and Regulations. In view thereof, said decision also does not advance the case of the Corporation.

27. Lastly, Mr. Pakale relied upon the decision of *Sukhdev Singh* (supra). In that case also the Apex Court held that Rules and Regulations framed by ONGC, LIC and Industrial Finance Corporation have force of law. In my opinion, this decision does not advance the case of the Corporation for the reasons already recorded.

28. In the light of the above discussion, the question of law are answered as under :

1. The provisions of S.O. Act prevail over Corporation Act.
2. M.S.Os. prevail over Municipal Service Rules and Regulations and the Manual of Departmental Enquiries.

29. As noted earlier Civil Appeals preferred against the decision dated 4.3.2015 passed by this Court in W.P. No.5077/2012 and other companion petitions, were disposed of by Apex Court on 22.3.2017 by keeping the question of law open.

30. Civil Appeals No.8426/2015, 14144/2015, 3390/2016, SLP (C) No.27134/2016 and Civil Appeal No.3278/2016 were disposed of by passing following order:

“ Heard learned Counsel for the parties.  
Delay condoned.

Since the respondent(s) employees have been retired, therefore, we do not find any good reason to interfere in the impugned order. The matters are, therefore, dismissed. However, question of law is kept open.

Obviously, appellants herein are at liberty to raise the question of law in any other case.”

. Civil Appeal No.8358/2016 was disposed of as under:

“ Heard learned counsel for the appellant.

Considering the nature of punishment, we do not find any reason to interfere with the impugned order passed by the High Court. The Civil Appeal stands dismissed accordingly. However, question of

law is kept open.”

31. Having answered the common questions of law, now I will take up each petition filed by the Corporation and by the Sanghatana/workman. W.P. No.681/2002 challenges the judgment and order dated 7.4.2001 passed by the Tribunal in Complaint (U.L.P.) No.580/2000. By that order, the Tribunal allowed the complaint instituted by the Sanghatana and eight others filed under Section 28 read with Item 9 of Schedule IV of the Act and declared that the petitioners have engaged in unfair labour practices under Item 9 of Schedule IV of the Act and directed them to cease and desist from engaging in such unfair labour practice. The petitioners were directed to withdraw the order of punishment of withholding two increments permanently inflicted on the complainants. The petitioners were further directed to release further amount of increments with arrears from the date from which increments were due to complainants No.2 to 9.

32. A perusal of the impugned order shows that in paragraph-17, the Tribunal observed that on 3.7.1999 and 5.7.1999, the complainant remained absent and punishment of

withholding increment was awarded. The Tribunal held that the service conditions of the employees of the Corporation are governed by the M.S.Os and not by any certified standing orders. The provisions of the M.S.Os will prevail over the Rules framed by the Corporation in case of service conditions of the employees. The Tribunal further held that withholding of two increments permanently is a major penalty and such punishment cannot be imposed without issuing charge-sheet and holding enquiry and also without giving any opportunity to the concerned employee. The Tribunal further held that the punishment of withholding two increments permanently does not come under minor punishment or major punishment in the M.O.S. and thus the punishment awarded by the Corporation is bad in law and void ab-initio. I do not find that the Tribunal committed any error. In view thereof, Rule is discharged with no order as to costs.

33. W.P. No.406/2015 challenges the judgment and order dated 4.10.2014 passed by the Tribunal in Complaint (U.L.P.) No.245/2006. By that order, the Tribunal allowed the complaint filed by the respondent under Section 28 read with Item 9 of Schedule IV of the Act challenging the suspension order dated

31.3.2006 suspending him w.e.f. 4.4.2006 as also the order dated 11.10.2006 treating the period of suspension from 4.4.2006 to 11.10.2006 as uncondoned and imposition of fine of Rs.1000/-. By the impugned order, the Tribunal allowed the complaint and declared that the petitioners have engaged and are engaging in unfair labour practice under Item 9 of Schedule IV of the Act. The Tribunal set aside the order of punishment dated 11.10.2006 treating the period of suspension from 4.4.2006 to 11.10.2006 as uncondoned period and fine of Rs.1000/- was imposed. The Tribunal directed that the period of suspension be treated as a period spent on duty for all purposes and all consequential benefits.

34. A perusal of the impugned order and in particular paragraph-13 shows that the Tribunal referred to the decision of this Court in *Sitaram Walunj* (supra) and held that the provisions of M.S.Os. apply to the departmental enquiry against the employee of the Corporation i.e. the complainant. The departmental enquiry was not conducted against the complainant under the provisions of the M.S.Os. The Tribunal held that the enquiry conducted by the Corporation against the complainant is

vitiated. The penalty, therefore, was illegal and bad in law and as such is liable to be set aside. The Tribunal further held that the Corporation violated the principles of natural justice by not sending notice of appeal on the complainant. I do not find fault with the order passed by the Tribunal. Hence the petition fails and the same is dismissed. Rule is discharged with no order as to costs.

35. W.P. No.8434/2014 challenges the judgment and order dated 28.7.2010 passed by learned Presiding Officer, 7<sup>th</sup> Labour Court, Mumbai (for short, 'Labour Court') in Complaint (U.L.P.) No.378/2006. By that order, the Labour Court allowed the complaint filed by the respondent under Section 28 read with Items 1 (b), (d), (e) (f) and (g) of Schedule IV of the Act challenging the termination order dated 15.1.2003. The Labour Court allowed the complaint and declared that the petitioners have engaged and are engaging in unfair labour practices under Items 1(b), (d),(g) of Schedule IV of the Act and directed them to cease and desist from engaging into unfair labour practices. The petitioners are directed to reinstate the complainant with continuity of service and 25% backwages w.e.f. 15.6.2003. The Corporation has also

challenged the judgment and order dated 19.10.2012 passed by the Tribunal in Revision [U.L.P.] No.189/2010. By that order, the Tribunal allowed Revision Application and modified the Labour Court's order. The Tribunal confirmed that order to the extent of “it is declared that the respondents are engaged and engaging in unfair labour practice under Item 1(b), (d) and (g) of Schedule IV of the Act, 1971” and “the respondents are directed to reinstate the complainant with continuity of service”. The Tribunal however quashed and set aside the direction to the respondents to pay 25% of the back-wages w.e.f. 15.1.2003. The Tribunal further directed the respondents to pay to the original complainant 50% of back-wages w.e.f. 15.1.2003 till the date of order dated 28.7.2010 or till the date of her reinstatement whichever is earlier respectively.

36. A perusal of order dated 28.7.2010 and in particular paragraph-25 shows that the misconduct alleged was not established by the Corporation. In paragraph-26, the Labour Court held that M.S.Os will prevail over the Municipal Service Rules. The alleged misconduct of the complainant is not established under M.S.Os. A perusal of the order passed by the

Tribunal and in particular paragraphs-25, 27 and 31 shows that the Tribunal referred to the findings recorded by the Labour Court as regards overriding effect of M.S.Os over Municipal Service Rules and Regulations. Hence, no case is made out for interfering with the impugned order. Petition fails and the same is dismissed. Rule is discharged with no order as to costs.

37. W.P. No.8063/2005 filed by Jaysing D. Tamboli challenges the judgment and order dated 17.8.2014 made by the Labour Court. By that order, the Labour Court partly allowed the Reference and directed the Corporation to appoint the second party as fresh candidate/ recruitee. The workman is aggrieved as he not given full backwages and continuity of service from 16.7.1998 and he is ordered to be appointed as a fresh candidate/recruitee.

38. A perusal of the impugned order and in particular paragraph-8 shows that the Labour Court held that the workman proved that his services were terminated in violation of principles of natural justice as he was not issued charge-sheet and that enquiry was not conducted as per M.S.Os. The Corporation failed to prove the misconduct before the Court. There is no iota of

evidence to show that the workman has committed misconduct. The Labour Court, however, declined to grant back-wages for a period from 15.7.1991 to 25.2.1995. In my opinion once the findings were recorded by the Labour Court about termination of services without issuing any charge-sheet as also conducting enquiry as per M.S.Os, the Labour Court ought to have awarded back-wages for the period from 15.7.1991 to 25.2.1995. The wages for this period were denied to the workman only on the ground that the demand letter was sent by the workman to the Corporation on 25.2.1995. In view thereof, said direction deserves to be set aside thereby directing the Corporation to pay the back-wages to the petitioner from 15.7.1991 to 25.2.1995. The petition accordingly succeeds. Rule is made absolute in aforesaid terms with no order as to costs.

39. W.P. No.11441/2014 filed by Ashok Prabhakar Nachankar and Ramesh Jethalal Chauhan against the Corporation challenges the orders dated 3.5.2012 and 31.7.2012 passed by the Tribunal in Complaint (U.L.P.) No.53/2009. By order dated 3.5.2012, the Tribunal held that the enquiry conducted against the petitioners was fair and proper and that

the findings are not perverse. By order dated 31.7.2012, the Tribunal modified the punishment imposed by the Corporation of stoppage of two increments with permanent effect to stoppage of one increment with permanent effect. A perusal of the impugned orders shows that the Labour Court did not consider that the petitioners are governed by M.S.Os and enquiry is required to be conducted as per M.S.Os. The enquiry is not conducted as per the M.S.Os. M.S.Os also does not prescribe punishment of stoppage of increment. In view thereof, the impugned orders dated 3.5.2012 and 31.7.2012 passed by the Tribunal are set aside. Rule is made absolute with no order as to costs.

40. W.P. No.7370/2008 instituted by Sunil Kashinath Yadav against the Corporation and others challenges the judgment and order dated 4.2.2008 passed by the Tribunal in Revision Application (U.L.P.) No.260/2006. By that order, the Tribunal allowed the Revision Application filed by the Corporation and set aside the order dated 31.10.2006 passed by the Labour Court in Complaint (U.L.P.) No.343/2002 and dismissed the complaint. The Labour Court had allowed the complaint filed by the petitioner under Section 28 read with Items 1(b), (c),(d), (f)

and (g) of Schedule IV of the Act and declared that the respondents have engaged in unfair labour practices under Items 1(b), (c),(d), (f) and (g) of Schedule IV of the Act. The respondents were directed to withdraw the order of termination dated 3.5.2002 and order of reinstatement with continuity of service and full back-wages as also directed to pay wages for the period of suspension as per Rules.

41. A perusal of the impugned order shows that the Tribunal failed to consider that the petitioner is governed by M.S.Os. and the Rules and Regulations of the Corporation are not served under the S.O. Act. As per M.S.Os the period of probation is of three months and thus at the time of terminating his services, he was not a probationer. The Labour Court rightly allowed the complaint. However, the Tribunal committed serious error in interfering with the order of the Labour Court. Hence, the impugned order passed by the Tribunal is set aside and the order passed by the Labour Court dated 30.10.2006 is restored. Rule is made absolute with no order as to costs.

42. At this stage, Mr. Pakale orally applies for continuation of the ad-interim order granted by this Court. Mr.Devdas opposes

this on the ground that the request made by Mr. Pakale is unreasonable.

43. In Writ Petition No.681 of 2002, while issuing Rule on 04.02.2002, ad-interim order in terms of prayer clause (c) was granted and the same is continued till date. In view thereof, notwithstanding dismissal of the Petition, ad-interim order dated 04.02.2002 shall remain in force for the period of three months from today.

44. In Writ Petition No.8973/2005 the petitioners (Corporation and others) were directed to withdraw the punishment dated 12.6.2001 inflicting fine of Rs.1,000/- on respondent No.2 and refund the same to her. Notwithstanding dismissal of the Petition, on the oral application made by Mr. Pakale, the order passed in this Petition shall remain stayed for a period of three months from today.

45. In Writ Petition No.8434 of 2014, while issuing Rule on 19.09.2014, interim order in terms of prayer clause (b) was granted. In view thereof, notwithstanding dismissal of the Petition, the interim order dated 19.09.2014 shall remain in force for the period of three months from today.

46. In Writ Petition No.5942 of 2006, while issuing Rule on 15.11.2006 execution of the impugned order was stayed. In view thereof, notwithstanding dismissal of the Petition, the interim order dated 15.11.2006 shall remain in force for the period of three months from today.

47. In Writ Petition No.406/2015 the petitioners (Corporation and others) directed them to treat the period of suspension as a period spent on duty for all purposes and all consequential benefits. Imposition of fine of Rs.1000/- was also set aside. In view thereof, notwithstanding dismissal of the petition, on the oral application made by Mr. Pakale, the order passed in this Petition shall remain stayed for a period of three months from today.

48. In the order dated 07.03.2016 passed in Writ Petition No.11863 of 2015, this Court directed the respondent not take any coercive steps to implement the impugned order till 06.04.2016 and the said ad-interim order was continued. In view thereof, notwithstanding dismissal of the Petition, the ad-interim order dated 07.03.2016 shall remain in force for the period of three months from today.

49. The order dated 31.07.2012 passed by the Tribunal was challenged in Writ Petition No.11441 of 2014 by Ashok Prabhakar Nachankar and Ramesh Jethalal Chauhan. The Tribunal modified the punishment imposed by the Corporation of stoppage of two increments with permanent effect to stoppage of one increment with permanent effect. In view thereof, this order shall remain stayed for a period of three months from today.

50. The judgment and order dated 17.08.2014 made by the Labour Court was challenged in Writ Petition No.8063 of 2005 by Jaysing D. Tamboli. By that order, the Labour Court allowed the reference and directed the Corporation to appoint the second party as fresh candidate / recruitee. The workman was aggrieved as he was not given full backwages and continuity of service from 16.07.1998. At the request of Mr. Pakale, this order shall remain stayed for a period of three months from today.

51. In Writ Petition No.7370 of 2008, order dated 04.02.2008 passed by the Tribunal in Revision Application (U.L.P.) No.260 of 2006 was challenged. By that order, the Tribunal allowed the Revision Application filed by the Corporation and set aside the order dated 31.10.2006 passed by the Labour

Court in Complaint (U.L.P.) No.343 of 2002 and dismissed the complaint. On the motion made by Mr. Pakale, this order shall remain stayed for a period of three months from today.

52. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)