IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1118 OF 2001
IN
WRIT PETITION NO.806 OF 1997

N.T.C.(S.M.) Ltd. ...Appellant

Versus

1) Kamla Singh and Ors. ...Respondents

.....

Ms Meena H. Doshi for the Appellant.
Mr. Ashok Shetty a/w. Mr. Swapnil Kamble i/b. Mr. N.M. Ganguli for the Respondent Nos.1 & 3 to 7.

CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.

JUDGMENT RESERVED ON : 16th DECEMBER, 2016.
JUDGMENT PRONOUNCED ON : 23rd JUNE, 2017.

Judgment (Per Smt. Anuja Prabhudessai, J.):-

The Appellant /original Petitioner has challenged the order dated 26th June, 2011 whereby the learned Single Judge of this Court dismissed the Writ Petition No.973 of 2015. The challenge in the said writ petition was to the order dated 4.4.1997 whereby the Industrial Tribunal had directed the Appellant to refrain from engaging in unfair labour practices under Item Nos.5 and 9 of schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as 'MRTU and PULP Act') and further ordered to give benefits of 4th Pay Commission to the complainants /Respondent Nos.1 to 7 herein.

2. The Respondent Nos.1 to 7 were working with various textile mills and were governed by the Industrial settlements entered into between the recognized Union and the Mill owners' Association. The said textile mills were acquired and vested in the National Textile Corporation (NTC) the Appellant herein, under the provisions of the Sick Textile undertaking (Nationalisation Act) 1974. Accordingly, the services of the Respondent Nos.1 to 7 came to be transferred to the National Textile Corporation (NTC) and the Respondent Nos. 1 to 7 thus became the employees of NTC, the Appellant hereinabove.

3. Pursuant to the directions given by the Apex Court in ***Jute Corporation Of India vs Jute Corporation Of India Ltd. And reported in 1990 SCC (3) 436*** on the pattern of wage fixation of the employees of public sector corporation and the consequent Office Memorandum dated 12th June, 1990, issued by the Central Government, the Appellant placed the Respondent Nos.1-7 in NTC Scales, which were equivalent to what was admissible under the recommendation of 3rd Central Pay Commission (CDA Pattern). These

Scales were subject to revision based on the Industrial D. A. Pattern with effect from the date of placement under NTC Scale. By subsequent order issued upon finalization of the IDA Pattern, the Appellant notified the revised pay structure with effect from 1st January,1991 extending benefits of the Industrial Dearness Scheme. The Respondent Nos. 1 to 7 were not given benefits of a wage revision on the basis of the recommendation of the 4th Pay Commission as according to the Appellant such benefits were admissible only to those employees who were granted NTC pay scale prior to 1.1.1991.

4. The Respondent Nos.1 to 7 therefore filed a complaint before the Industrial Tribunal alleging unfair labour practice under Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 in short, the MRTU and PULP Act. The grievance of the Respondents was that the Appellant had done the wage fixation in such a manner as to reduce their provident fund contribution. These Respondents claimed that the reduction of Provident Fund contribution was in contravention of section 12 of the Employee Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'EPF and MP Act') and the same amounts to unfair labour practice under item 9 of Schedule IV

of the Act.

5. The Respondent Nos.1 to 7 further claimed that despite being in service much prior to 1989, they were not extended the benefits of pay revision under the recommendation of 4th Pay Commission, while such benefits were extended to some other workmen of the Appellant. The Respondent Nos.1 to 7 alleged that the Appellant had resorted to hostile discrimination by showing favouritism and partiality to one set of workmen and thus indulged in unfair labour practice within the meaning of item no.5 of the Schedule IV to the MRTU and PULP Act.

6. The Appellants contended that the respondents had accepted NTC Scales in place of Mill Grade, to which they were entitled to pre- nationalization without demur. The contention of the Appellant is that the workmen who were extended NTC scales prior to 31st December, 1988 were eligible for dearness allowance as applicable to the Central Government Employees whereas the employees placed under NTC scale on and after 1.1.1989 were entitled only to the industrial dearness allowance as applicable to the public sector enterprises. The Appellant stated that the Respondent Nos.1 to 7 were

not eligible to the benefit of DA as recommended by the 4th Pay Commission since they were placed on NTC scale on or after 1.1.1989. The appellants have also denied that there was any hostile discrimination between the employees or that they had shown favouritism to one set of the employees. In short, the Appellant denied having committed unfair labour practice within the meaning of Items 5 and 9 of Schedule IV of the MRTU & PULP Act, 1971.

7. The Appellant further claimed that while switching over from Mill Grade to NTC grade, totality of emoluments and benefits were taken into consideration. The workmen were placed on NTC Grade in such a manner that their emoluments and other benefits in totality were more than those obtained prior to the switch over. The Appellant stated that unlike Mill Grade employees, the employees who are extended NTC scale are eligible for periodical revision of terms and conditions of service. The Appellants have denied violating provisions of Provident Fund Act and having engaged in unfair labour practice under Items No.5 and 9 of Schedule IV of the Act.

8. The Appellant as well as the Respondents adduced evidence before the Industrial Court. The Industrial Court, by Order dated 4th

April, 1997 held that the Appellant had reduced the Provident Fund Contribution of the Respondent Nos.1 to 7 at the time of revision of grades and had thereby violated the provisions of Section 12 of the EPF and MP Act. The Industrial Court further held that though the Respondents were appointed prior to January 1989, they were denied the benefits of the revision under the 4th Pay Commission recommendation on the basis of the date of placement in NTC Scale while similar benefit was extended to the other set of employees who were placed on NTC pay scale prior to 1.1.1989. The learned Judge held that the Appellant has committed unfair labour practice by discriminating amongst the employees. The Industrial Court therefore held that the Appellant has committed unfair labour practice under items Nos. 5 and 9 of Schedule IV of the MRTU and PULP Act and directed the Appellant to give to the Respondent Nos.1 to 7 the benefits of wage revision under 4th Pay Commission.

9. The Appellant challenged this Order in Writ Petition No. 806 of 1997, which was dismissed by the learned Single Judge of this Court, by Order dated 26th February, 2011. The learned Single Judge observed that while issuing the directions **in Jute Corporation of India Officers' Association (supra)** the Apex Court has held that the

scales of pay and Dearness Allowance recommended by the report of the High Power Pay Committee will be extended to those employees who have been appointed with specific terms and conditions for the grant of Central Dearness Allowance. The Pay Scales and Dearness Allowance recommended by the High Power Pay Committee would similarly to be applied to those employees who were being paid the Central Dearness Allowance under the applicable rules laid down by the public sector enterprises. The learned single judge further observed that Supreme Court, however, directed that those employees who were appointed on or after 1-1-1989 would be governed by the Pay Scales and allowances as may be decided by the Government in its discretion. Employees appointed earlier on the Industrial Dearness Allowance or I.D.A. pattern were to continue to be governed by the terms of conditions of their appointment. The learned single judge held that the date of appointment would mean the date of initial appointment and the same cannot be equated with the date on which the employee was placed on NTC pay scale as sought to be contended by the Appellant and that in fact, it was not permissible to introduce such qualification.

10. The learned Single Judge held that the Respondent Nos. 1

to 7 having been appointed much prior to 1.1.1989 were entitled for benefits as recommended by the 4th Pay Commission. It was further held that pre-nationalisation workmen whose services were taken over by NTC constitute one homogeneous group and it was not open to the Appellant to segregate this homogeneous group into two separate categories based upon the date on which they were granted NTC Grade pay scale. It was held that to deny the benefit of 4th Pay Commission, which were granted to the other employees, was a discrimination otherwise than on merit and was based on extraneous consideration namely on whether the employee had been placed on NTC Grade pay scale after 1.1.1989.

11. The learned Single Judge also endorsed the finding of the Industrial Court that the Provident Fund contribution was reduced without bringing the said issue to the notice of the workmen. The learned single judge therefore held that the Industrial Court was entirely justified in holding that there was a breach of provisions of in terms of 5 and 9 of schedule IV of MRTU and PULP Act and accordingly dismissed the writ petition. This order has been assailed in the present Appeal.

12. After having heard the respective parties, another Division Bench of this Court by judgment and order dated 2.11.2007 had dismissed the present Appeal. The said order was challenged in SLP No. 1839 of 2008, which was disposed of by order dated 8.4,2008. A perusal of the said order reveals that the Respondent Nos.1 to 7 had stated before the Apex Court that they had no grievance with regard to their claim for being given CDA and IDA grades and that the only dispute was with regard to the wages to be fitted at the time of their induction in the NTC Grade taking into consideration the provisions of section 12 of the EPF & MP Act. The Apex Court observed that the division bench of this court had not dealt with the issue with regard to the fitment in a particular scale of pay more particularly in the background of the additional affidavit filed by Mr. Premanand Wamanrao Waghmre, Deputy General Manager (Personnel). The Apex Court therefore set aside the order dated 2.11.2007 and remitted the matter for reconsideration keeping in view the changed scenario and the additional affidavit referred to above and other material which the parties may wish to put on record.

13. Pursuant to the order dated 8.4.2009 in SLP 1839 of 2008 the matter came up for hearing before another Division Bench of this

Court. After having heard the parties, the Division Bench of this Court by judgment dated 25.3.2010 set aside the order of the Industrial Court as well as the order of the learned Single Judge and remitted the matter to the Industrial Court for de novo consideration and decision in accordance with law and in the light of the previous orders passed in this proceedings and also the orders passed by the Apex Court. The said order was challenged by the Respondent Nos. 1 to 7 in Civil Appeal No.2228 of 2012. The Apex Court by order dated 21.2.2012 set aside the said impugned order of remand and remitted the matter to this Court for being heard and decided taking into consideration the order dated 8.4.2009 in SLP No. 1839 of 2008 as well as order dated 10.2.2010 passed by the Division Bench of this Court and also the affidavit of Mr. Premanand Wamanrao Waghmare, Deputy General Manager (Personnel).

14. Heard the learned Counsels for the respective parties. Ms Doshi, the learned counsel for the Appellant has submitted that mere reduction in quantum of Provident Fund contribution does not amount to breach of section 12 of the EPF and MP Act. She has submitted that the reduction in the quantum of Provident Fund contribution was marginal. She contends that the said reduction was a consequence of

shifting the employees from Mill Grade to NTC grade based upon DPC recommendations. She contends that the Respondents 1-7 had not challenged the recommendations and on the contrary accepted the NTC pay scale without protest or demur.

15. Referring to the affidavit of Wamanrao Waghmare as well as the chart which is placed on record, the learned counsel for the Appellants submitted that the Appellant has made good the shortfall as per the order of this Court. Furthermore, there has been no shortfall in Provident Fund contribution after the revisions granted to the Respondent Nos.1 to 7 in 1992 and 1997 in IDA pay scale.

16. Mr. Shetty, the learned counsel for the Respondent Nos.1 to 7 has submitted that since Provident Fund contribution is based on Basic pay and DA, the same was required to be protected while fixing the pay in the NTC Scale. He has further submitted that the Appellant did not protect the Basic pay and the same resulted in reduction of Provident Fund contribution, which is in violation of section 12 of the EPF and MP Act. He has relied upon decisions of the Apex Court in ***Chief Conservator of Forests and Anr. Vs. Jagannath Maruti Kondhare & Ors. (1996) 2 SCC 293, State of M.P. & Ors. Vs. Dr.***

Yashwant Trimbak (1996) 2 SCC 305**, **Som Prakash Rekhi Vs. Union of India and Anr. (1981) 1 SCC 449, decision of this Court in Consolidated Crop Protection Pvt. Ltd. Vs. V. Hema Chandra Rao (Petition No.1654 of 1975 dated 6th February, 1976) and decisions of Kanataka High Court in ***Regional P.F. Commissioner, Bangalore Vs. Harihar Polyfibres (W.A. No.266/1990, dated July 30, 1991)*** and ***Jasmine Amarjothi Vs. Union of India and Ors.***

17. Mr. Shetty the learned counsel for the Respondent Nos.1 to 7 has further submitted that the statement that the Appellant has deposited the Provident Fund contribution as per the order of the Court and that thereby has made good the shortfall in the PF is misleading. He has submitted that the percentage of Provident Fund contribution deducted from the wages of the employees was more than 12% and that the said amount which was deducted has been paid as the Provident Fund. He has further submitted that the revision of pay and the consequent increase in the quantum of Provident Fund contribution is not relevant to decide the controversy of pay fixation.

18. We have heard the learned counsel for the Appellant as well as the Respondent Nos.1 to 7. We have also perused the records

including the affidavits/counter affidavits filed by the respective parties. In the light of the statement made by the Respondent Nos. 1 to 7 before the Apex Court and having given up the grievance in respect of wage revision as per the recommendation of 4th pay commission, and the resultant allegation of unfair labour practice under item 5, the findings recorded in the impugned judgment on the said issue cannot be sustained. The only issue, which remains for determination is with regard to the wage fixation of the Respondent Nos. 1 to 7 at the time of their induction in NTC Scale, taking into consideration the provisions of section 12 of EPF & MP Act.

19. The grievance of the Respondent Nos.1 to 7, as highlighted in the complaint and substantiated before the Tribunal, is that the Appellant had carried out the wage fixation in such a manner as to reduce the Provident Fund contribution in respect of each of the employees. The Respondents have contended that such reduction of the provident fund contribution was not permissible under section 12 of the EPF and MP Act.

20. It may be mentioned here that the EPF and MP Act is a welfare legislation, enacted with the main objective of protecting the interest of the employees after their retirement and the interest of the

dependents after the death of the employees. Section 6 of the EPF and MP Act sets out the contribution which the employer is obliged to make towards the provident fund whereas. Section 12 of EPF & MP Act acts as a protective safeguard. This section imposes a total embargo on the employer on reducing, either directly or indirectly, the wages of any employee, as well as the benefits in the nature of old age pension, gratuity, provident fund or life insurance to which the employee is entitled under the terms of his employment, for avoiding his liability to pay contributions under the E.P.F. Scheme.

21. Now coming to the facts of the present case, it is not in dispute that under the provision of Nationalisation Act the services of the Respondent Nos.1 to 7 were transferred to the Appellant Corporation. In lieu of Mill Grade, the Respondents were provisionally fitted in NTC (CDA) Grade w.e.f.1.7.1990 and thereafter on the basis of recommendation of DPC, they were granted NTC (IDA) Grade w.e.f. 1.7.1990. The Respondents have produced statements, which give details of the pay scale viz. Basic, DA, HRA, etc. as well as the quantum of the Provident Fund contribution under Mill Grade Scale, vis-à-vis Basic, DA, HRA, etc. as well as the quantum of the Provident Fund contribution under NTC (CDA) Grade and NTC (IDA) Grade. A plain

perusal of the statements, correctness of which is not disputed, clearly indicate that at the time of placing the Respondents in NTC (CDA) pay Scale, the Basic and DA as well as the PF contribution had been reduced. Subsequently, at the time of placing the Respondents in NTC(IDA) scale, the DA was merged in basic. As a result, the basic was increased, but DA was reduced. Furthermore, the sum total of basic plus DA paid under NTC(IDA) scale was less than the total amount paid under these two components in Mill Grade. As a consequence thereof, the Provident Fund contribution under NTC(IDA) Scale was less than the Provident Fund contribution under Mill Grade. This is evident from comparative analysis of the salary details as per Mill Grade Scale, NTC(CDA) and NTC (IDA) scale. For instance, the salary details of the Respondent No.1 are as under:

Kamla Singh

Particulars	Mill Grade Salary as on 1-7-1990	III Pay (NTC) Grade Salary as on 1-7-1990	Salary Jan.91 IDA Pay Scale as on 1-7-1990
Basic Pay	695	620	1835
DA	1788.35	1453.9	361.75
Bombay All.	32.5	62	–
Adhoc	143	122	121.6
HRA	65	450	550.5
CCA	0	52.8	100
Conveyance All.	25	--	–
Gross Total	2748.85	2760.7	2968.85
P.F. Cont.@ 8.33%	221	183	193

22. The aforesaid statement reveals that the sum total of Basic and DA payable to Respondent No.1 as well as his PF contribution in (NTC)IDA scale was less than that under Mill Grade. Similar was the case with the other Respondents. It is thus evident that at the time of switch over from Mill grade to NTC (IDA) Scale there was increase in Basic Salary as well as total wage packet. However, the total amount payable to the Respondents under the components of Basic and DA was reduced resulting in consequent reduction of Provident Fund contribution. The question would therefore be whether this reduction was for avoiding the liability.

23. It is to be noted that the appellant has alleged that the NTC Scales were offered to the employees who were considered meritorious by the DPC. Needless to state that generally, the wage revision or promotion leads to an increase in the basic salary. In the instant case, the basic salary was increased by merging DA. However, as stated earlier, the total amount received by the Respondents under these two components viz. and Basic and DA was less than the amount payable under the said components in Mill Grade. Since the basic pay and the DA are the components, which determine the quantum of PF contribution, reduction of sum total of Basic and DA has resulted in

reduction of provident fund contribution. The appellant has not offered any explanation for fixing the emoluments in such a manner as to reduce the sum total of Basic and DA payable to them after promotion and wage revision under NTC (IDA) Grade as compared to the sum total of Basic and DA which was paid to them under Mill Grade scale. This leads to an inference that the wage fixation was done in such a manner as to reduce the contribution of PF, which is in contravention of the provision u/sec. 12 of the EPF and MP Act, 1952.

24. The contention of the Appellant that in view of the increase in total emoluments it was not required to protect each and every component has no merit. As stated earlier, the increase in Basic was due to merger of Basic and DA. Further the increase in total emolument was also due to increase in HRA and CCA. It is not in dispute that Basic wages as defined under section 2(b) of EPF and MP Act does not include components such as HRA and CCA and these components are not relevant for computing provident fund or other pensionary /retirement benefits. Hence, the increase in HRA and CCA does not in any manner protect and enhance the Provident Fund contribution or other pensionary benefits. Whereas reducing the Basic Salary and DA adversely affects the provident fund contribution and

pensionary benefits, which is prohibited under section 12 of EPF and MP Act. Suffice it to state that it is not permissible to circumvent the provision of section 12 of the EPF and MP Act and defeat the object of the beneficial legislation by increasing those components, which are not included in computation of provident fund contribution or pensionary benefit.

25. Now coming to the affidavit of Shri Premanand Wamanrao Waghmare, he has stated that the Appellant has deposited the Provident Fund contribution of the Respondents before the PF authorities. Since the said Provident Fund contribution has already been paid, the shortfall if any, has been made good. He has further stated that in the year 1995 and 1997 IDA pattern were revised and the arrears in respect of these two revisions were calculated and paid to all the employees on IDA pattern of scales. It is submitted that by virtue of contribution deposited with the Provident Fund authorities under the order of the Court and subsequent revision made retrospectively, there is no shortfall in the PF amount and hence the Appellant cannot be said to have committed any unfair labour practice on the said count.

26. The Respondent No.6 has filed his counter affidavit wherein he has stated that the Appellant had deposited Provident Fund contribution only after filing of the contempt proceedings for nonpayment of Provident Fund amount as ordered by this Court. The Respondent No.6 has stated that for the purpose of Provident Fund what is relevant is the Basic pay and DA and not the gross emoluments. He has stated that the Appellant has deposited the difference in PF contribution without revising the proportionate Basic Pay and corresponding DA and that the same has resulted in perpetual loss of Basic Pay and DA with every revision of pay scale.

27. Shri Ashok Vyas, another Deputy General Manager of the Appellant has filed his affidavit in rejoinder wherein he has stated that initially, since the pay scales were not defined, the Respondent Nos. 1 to 7 were provisionally placed in the IDA pay scale. Subsequently, based on the recommendation of the DPC, the Respondent Nos.1 to 7 were granted IDA pay scale which were revised in the year 1992. He has stated that the Respondent Nos.1 to 7 had not challenged the recommendation of DPC and as such cannot level allegations of malafide. He has stated that the Respondent Nos.1 to 7 have received revision in the IDA scale retrospectively from the date of placement.

He has stated that the Respondent Nos.1 to 7 had accepted said office order without any protest or demure. A specific condition was stipulated that they would be bound by new service conditions associated with NTC pay scale in lieu of those covering Mill Grade in which they were working prior to such pay scale. He has further stated that the short fall in the provident fund for the period 1990/1991 upto 1997 has been deposited by the Appellant and there has been no shortfall at all from the year 1997. He has further denied that there has been any downward revision of pay scale as alleged.

28. It is in not in dispute at the time of admission of the petition, the learned single judge of this court by order dated 20.6.1997 had made the following order operative till disposal of the writ petition. "The Petitioner shall continue to deposit the provident fund contribution without any reduction and held to be so by the Industrial Court in the impugned order every month". The said order was confirmed by the Division Bench by order dated 21.10.1997. The affidavit filed by the Officers of the Appellant Corporation indicates that in compliance with the said directions, the Appellant has deposited before the Provident Fund authorities the shortfall in Provident Fund contribution amount for the period 1990/1991 upto

1997. In this regard it is pertinent to note that the averments in the complaint vis-à-vis the evidence adduced by the Respondents clearly indicates that the grievance of the Respondent Nos.1 to 7 was not about simplicitor reduction of Provident Fund contribution. The main grievance was about initial wage fixation in NTC (CDA) and (IDA) Grade. The reduction of PF contribution was the consequence of anomaly in wage fixation i.e. reduction in sum total of Basic and Dearness Allowance. The Appellant has admittedly not rectified this anomaly, which had resulted in reduction of Provident Fund contribution. Failure to protect the Provident Fund at the initial stage would perpetually impact all further pay revisions and the pensionery benefits. Hence, mere deposit of the difference in the Provident Fund contribution or payment of revised scales, without actually addressing the issue of initial wage fixation, would not absolve the Appellant of the charges of violation of provisions of sections 12 of the Act.

29. As regards challenge to the decision of DPC to place the Respondents in NTC (IDA) Scale, as held by the learned Single Judge the Respondent Nos. 1 to 7 were not fully appraised of the facts as to enable them to take a conscious decision to opt for a certain pattern of wage fixation. In fact, they were not given any other option at the

time of initial fitment in the NTC Grade other than reverting to Mill Grade, as it had been suggested in the cross examination. It is also to be noted that Shri N.T. Nair who has deposed on behalf of the Appellant has specifically admitted that he was aware of the fact that there would be reduction in EPF contribution but the same was not brought to the notice of the workmen. Furthermore, Shri P.W. Waghmare has also admitted in his evidence that he too did not know the implications of the pay fixed in respect of the Respondent Nos.1 to 7. He has stated that he came to know about the reduction in the contribution of the Provident Fund only when the employee approached the Court. In such circumstances, it is not open for the Appellant to contend that the Respondent Nos.1 to 7 had accepted the grant of NTC Pay scale without protest and demur.

30. To sum up, the Respondents have proved that the wage fixation under NTC (CDA) as well as NTC(IDA) Grade has resulted in reduction in P.F. Contribution and the same is in violation of Section 12 of the E.P.F. And M.P. Act. Mere contravention of provision under section 12 of the E.P.F. and M.P. Act will not per se amount to unfair labour practice under Item 5 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Though the Respondents have put forth a case of discrimination by

claiming that 115 other workmen have been fitted in revised pay scales, as to protect their provident fund, there are no averments nor evidence to prove discrimination on this aspect, as to constitute unfair labour practice under Item 5 of Schedule IV of the MRTU and PULP Act.

31. The question which now remains to be answered is whether reduction in Provident Fund contribution in violation of section 12 of the EPF and MP Act constitutes unfair labour practice under Item No.9 of Schedule IV of the MRTU and PULP Act. Under Item No.9 failure of the employer to implement award, settlement or agreement is an unfair labour practice. The Division Bench of this Court in ***Kamani Tubes Vs/ Kamini Employees Union and Ors. (1987) 89 BOMLR 417*** has held as under :

> *5. Item 9 makes the employers "failure to implement award, settlement or agreement' an unfair labour practice. When an employer does not implement an award, settlement or agreement he fails to implement the award, settlement or agreement. There is then a failure on the part of the employer to implement an award, settlement or agreement and he is guilty of the unfair labour practice set out in Item 9. The phraseology of Item 9 affords no scope for the taking into account of motive or reason or cause for the failure. To read Item 9 in any manner other than as set out above would be to do violence to its language. To read Item 9 as suggesting that there would be no failure if there was inability to implement would be to read into it the words "without good cause", and that would be impermissible.*

32. Similarly, a Single Judge of this Court in ***Thane Municipal Transport, ... vs The Employees Union, T.M.T.C.***

(2005) 107 BOMLR 623 after considering the decision in ***S.G. Chemicals and Dyes Trading Employees' Union Vs. S.G. Chemicals and Dyes Trading Limited and Anr, (1936) 2 SCC 624*** has held as under :

> *"15. It is trite law that an unfair labour practice is committed under Item 9 of Schedule IV of the MRTU & PULP Act when there is a breach of provisions of law which impliedly become part of the contract of service or when an Agreement) Settlement or Award was not implemented. In S.G. Chemicals (supra), the Apex Court was considering a case where the management had closed down the Marketing Division of the Company without complying with Section 25-0 of the Industrial Disputes Act, 1947. A Complaint was filed under Item 9 of Schedule IV complaining of a breach of Section 25-0. The Apex Court while over-ruling the judgment of this Court in the case of Maharashtra General Kamgar Union v. Glass Containers Pvt. Ltd., (1983) 1 Lab. LJ 326 has held that it was an implied condition of every agreement, including a settlement, that parties thereto would act in conformity with law. Such a provision, according to the Apex Court, was not required to be expressly stated in any contract in force. The Apex Court observed that if services of a workman are terminated in violation of any provisions of the Industrial Disputes Act, such a termination, was unlawful and ineffective and that Complaint under Item 9 of Schedule IV would be maintainable. That being the position in law, violation of the provisions of Standing Order 4-C would attract Item 9 of Schedule IV of the MRTU & PULP Act."*

33. We do not find any reasons to take a contrary view. In the instant case, the Appellant has violated the mandatory provisions of Section 12 of the EPF and MP Act. Hence, we do not find any reason to interfere with the findings of learned Presiding Officer of Industrial Court and the learned Single Judge of this Court that the Appellant herein had indulged in unfair labour practice under item Nos. 9 of the MRTU and PULP Act. Even otherwise we would also like to emphasize

here that the respondents/workmen who were driven to court to protect their rights under the beneficial legislation have been prosecuting the matter since the year 1994 and have since long retired in pursuit of their rights. Considering this fact we do not wish to nonsuit the respondents by driving them to another round of litigation.

34. Under the circumstances and in view of discussion supra, the Appeal is partly allowed. The impugned orders are set aside to the extent of direction given to the Appellant herein to desist from engaging in unfair labour practice of item no.5 of schedule IV of the MRTU & PULP Act and further direction to give benefits of 4th Pay Commission to the Respondent Nos.1 to 7. The Appellant is directed to rectify the initial wage fixation so as to protect the PF contribution under the Mill Grade and to give all the consequential benefits to the Respondent Nos.1 to 7.

(ANUJA PRABHUDESSAI, J.) **(A.S. OKA, J.)**