

Anand

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

WRIT PETITION NO. 10947 OF 2018

Maharashtra State Transport Kamgar Sanghatana .Petitioner

Vs.

The Maharashtra State Road Transport .Respondents
Corporation & ors.

Mr. Mihir Desai, Senior Counsel a/w Mr. Mani Prakash, for the
Petitioner

Mr. A. S. Peerzada, Advocate, for the Respondents

CORAM : REVATI MOHITE DERE, J.

DATE : 05.10.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 28.08.2018 passed by the Member, Industrial Court, Mumbai, below Exh.U-2 in Complaint (ULP) No. 233 of 2018, by which the Petitioner's prayer for stay, pending the Complaint was rejected.

3. Mr. Desai, learned Senior Counsel for the Petitioner

submitted that as the members of the Petitioner - Union had gone on strike on 8th & 9th June, 2017, the Respondents issued three Circulars dated 08.06.2018, 28.06.2018 & 03.07.2018, by which in addition to the two days wages, additional eight days wages were sought to be deducted i. e. one day's wage every month. Mr. Desai submitted that resultantly, one day's salary of the members of the Petitioner – Union would be deducted every month. Learned Senior Counsel for the Petitioner relied on the provisions of Section 9 of the Payment of Wages Act, 1936 as well as Rule 17(2)(c) of the Maharashtra Payment of Wages Rules, 1963. He submitted that no notice as contemplated under Rule 17(2)(c) was displayed nor any notice was given to the members of the Petitioner – Union, of the proposed deduction of wages. Learned Senior Counsel relied on the Judgment of the Madras High Court in the case of *General Manager, India Cements, Ltd., Shankar Nagar Vs. N. S. Subramanian*, reported in 1997(4) L. L. N. 234, in support of his submission.

4. Learned counsel for the Respondents opposes the Petition. He submitted that no interference is warranted in the

impugned order. Mr. Peerzada, learned counsel for the Respondents states that the said Judgment relied upon by the Learned Senior Counsel is clearly distinguishable. Learned counsel for the Respondents has tendered Affidavit-in-reply of Mr. Satish Laxman Ujjainkar. The same is taken on record. Learned counsel submitted that the provisions of sub section (2) of section 9 does not contemplate giving of notice. He submits that the conduct of the members of the Petitioner does not warrant any indulgence and that in the event, the complaint is decided in favour of the members of the Petitioner - Union, the salary can always be reversed.

5. Perused the papers. It appears that the members of the Petitioner were on strike on 8th & 9th June, 2018. Pursuant to the said strike, the Respondents issued three Circulars dated 08.06.2018, 28.06.2018 & 03.07.2018. By the first Circular dated 08.06.2018, the management decided to deduct wages of the members of the Petitioner for a period of eight days; by the second Circular dated 28.06.2018, it was clarified that the said eight days would be calculated in addition to two days, the

members of the Petitioner - Union were on strike. Vide the third Circular dated 03.07.2018, it was stated that one day's salary of the members of the Petitioner – Union would be deducted every month. Being aggrieved by the same, the Petitioner filed a Complaint, being Complaint (ULP) No. 233 of 2018 in the Industrial Court, Mumbai alongwith an Application, being Exh. U-2 seeking interim relief. The Industrial Court vide order dated 28.08.2018 rejected the Petitioner's Application (Exh.U-2) for interim relief. Vide the said order, the Industrial Court also expedited the hearing of the Complaint and directed both the parties to proceed with the matter on merits without seeking any adjournment. Since the matter i. e. the Complaint (ULP) No. 233 of 2018 is pending before the Industrial Court, it would not be appropriate to go into the merits of the case, as to whether the provisions of sub section (2) of section 9 of the Payment of Wages Act applies or whether there is compliance of Rule 17(2)(c) of the Maharashtra Payment of Wages Rules, 1963. Since the Complaint is pending, it would be appropriate to direct the Respondents not to deduct the salary of the members of the Petitioner – Union till the said complaint is decided. The Industrial Court to decide the

Complaint as expeditiously as possible and in any event within six months from the date of receipt of this order. All contentions of the parties are kept open.

6. The Petition is allowed on the aforesaid terms and is accordingly disposed off.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)