IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7027 OF 2018
WITH WP/416/2017 WITH CA/852/2018 IN WP/416/2017
WITH WP/417/2017 WITH WP/418/2017 WITH WP/7021/2018
WITH WP/7022/2018 WITH WP/7024/2018 WITH WP/7025/2018
WITH WP/7026/2018 WITH WP/7028/2018 WITH WP/7036/2018
WITH WP/7037/2018 WITH WP/7038/2018 WITH WP/11926/2018
WITH WP/11927/2018 WITH WP/11928/2018
WITH WP/11929/2018 WITH WP/11930/2018 WITH
WP/11931/2018 WITH WP/11932/2018 WITH WP/11933/2018
WITH WP/11934/2018 WITH WP/11935/2018
WITH WP/11936/2018 WITH WP/11937/2018

PARBHANI DISTRICT CENTRAL COOPERATIVE BANK LIMITED
VERSUS
SHIVAJI PRABHUJI TAMBILE
...
Advocates for Petitioners : Shri Shoyab Shaikh h/f Shri Ghute A.T., Shri Deshmukh M.S. and Shri Yadav S.R.
Advocates for Respondents : Shri Tapse A.R. h/f Shri Suryawanshi P.D., Shri More A.A. h/f Shri Barhate Y.R. and Shri Bhalerao S.G.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 30, 2019
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PER COURT :-

1. In all these identical Writ Petitions, the petitioner is a Cooperative Bank and all the respondents are identically placed workmen, who had preferred ULP Complaints before the Industrial Court, either individually or in groups.

2. These ULP Complaints were filed in 2015 under Section 28(1) read with items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour

Practices Act, 1971 (“the said Act”). All these original complainants had raised demands as regards the unpaid dearness allowance, that was admittedly frozen by the petitioner / Bank vide resolution dated 28.2.2000. By the impugned identical judgments, all these complaints have been partly allowed. Considering that there was a recurring cause of action and as these complainants had sought the payment of the arrears after they retired on attaining the age of superannuation, that the Industrial Court has granted 6% p.a. interest for two years on the arrears of D.A. to be calculated only from the date of the filing of the complaints.

3. Shri Deshmukh, Shri Yadav and Shri Ghute, learned Advocates appearing on behalf of the petitioner / Bank in these cases, have strenuously criticized the impugned judgment. Their submissions can be summarized as under:-

(a) The Bank resolved to freeze the payment of dearness allowance in 2010 and the said resolution was never challenged by any of the complainants.

(b) All these complaints have been filed after reaching the age of superannuation and therefore, were rendered untenable.

(c) No application for seeking condonation of delay was filed and as such, the Industrial Court had no jurisdiction to entertain these complaints.

(d) The Bank was in a weak economical condition and could not pay the dearness allowance regularly.

(e) On 14.8.2010, the Bank resolved to pay the dearness allowance at a particular rate in view of the decision taken by the Executive Committee.

(f) Thereafter, the dearness allowance was paid to these workers.

(g) Even if the delay is to be considered, which is of about 14 to 15 years, the complaints could have been considered upto 3 years from the day on which they were lodged or upto the date of superannuation of these employees.

(h) Nabard had issued directions to the management to restrict their maintenance costs at 2% when it was already at 2.69%.

4. The learned Advocates appearing for the identically placed respondents submit as under:-

(a) These workers did not have any bargaining power and could not have demanded the payment of D.A. for the fear of retaliatory action.

(b) Intermittently the Bank paid them certain portions of the D.A.

(c) With the hope that one day they would get all the arrears of their D.A., that these employees waited and in fact, the Bank did start paying paltry amounts as D.A. pursuant to their resolution dated 14.8.2010.

(d) When they realized that the Bank was not inclined to clear off all the D.A. dues and as they had superannuated from employment, they gathered courage to approach the Industrial Court.

(e) Due to their superannuation, the fear of retaliatory action diminished and hence they approached the Industrial Court.

(f) A notice of change under Section 9A of the Industrial Disputes Act was not issued by the management, to freeze the payment of D.A.

(g) There was no power vested in the management under any law or under any settlement or agreement.

(h) Catena of judgments were cited with reference to a recurring cause of action, which convinced the Industrial Court that the complaints could be entertained.

5. In my view, it is well settled that non-payment of components like the D.A. or special allowance or incentives, are recurring causes of action, unlike an order of termination or dismissal or retrenchment or suspension etc. It appears from the record that the Bank resolved

not to pay the D.A. by resolution dated 28.2.2000. By resolution dated 14.8.2010, they lifted the bar and started paying the D.A., which naturally created hope in the minds of these workmen. It is quite obvious that being hopeful, they waited for such payments to be made and when they realized that these payments were effected only from 14.8.2010 and the earlier unpaid D.A. amounts were not being paid, that they had approached the Industrial Court.

6. The law on a continuous cause of action / recurring cause of action is well settled in the following judgments:-

(a) Maharashtra State Co-op. Cotton Growers Marketing Federation Ltd. and others Vs. Maharashtra State Co-op. Cotton Growers Marketing Federation Emp. Union and others (1992 I CLR 350),

(b) Akhil Maharashtra Kamgar Union Vs. Warden and Co. Ltd. (1996 I CLR 212),

(c) Warden and Co. (India) Ltd. Bombay Vs. Akhil Maharashtra Kamgar Union, Thane (2001 II CLR 350), and

(d) Kamani Tubes Ltd. Vs. Kamani Employees Union and another)1987 Mh.L.J.861).

7. It cannot be overlooked that the Industrial Court has considered the submissions of the Bank and has refused to grant interest on the unpaid difference amount from the date this could be said to have become payable till the date the complaints were registered. For a period of almost 15 years, the Industrial Court has deprived these employees of the interest component.

8. It is crystallized law that any salary / wage emolument cannot be abruptly withdrawn, from the wage package of a workman. The D.A. constitutes an integral part of the minimum rates of wages prescribed in a scheduled employment. In the absence of any service condition or an agreement, settlement or award permitting the employer to change the service conditions, no employer can do so without a notice of change under Section 9A of the ID Act. Moreover, payment of D.A. cannot be stopped, when it is an integral component of a wage structure.

9. I find that the Industrial Court has passed an equitable order, which cannot be termed as being grossly unjust to the petitioner / Bank. These employees were working in the Class IV category and even small amounts of dues mean a lot to such workers. So also, the

Bank did not adduce any evidence to indicate that the resolution dated 28.2.2000, freezing the D.A., was served upon each of these workers, so as to make them aware about the decision of the Bank. Notwithstanding this position, it is noteworthy that freezing of a D.A. as understood in service jurisprudence is an act of an employer, who freezes a particular amount as being a D.A. payable. It is unheard of in service jurisprudence that an employer can refuse to pay D.A. under the spacious plea of freezing the D.A.

10. Considering the above and since I find that the Industrial Court has taken a pragmatic view, I do not find any reason to cause an interference in the impugned judgment, merely because a different view could have been taken.

11. These petitions being devoid of merits are, therefore, dismissed.

12. Learned Advocates for the workmen pray for leave to withdraw the amounts deposited by the Bank in this Court. It is further submitted by the learned Advocates that this Court has directed the Bank to deposit a lump sum and neither the Bank, nor the workers have applied their mind to the exact arrears payable to them. In some matters, no amounts have been deposited. Learned

Advocates for the Bank contend that the said amounts may not be permitted to be withdrawn for a period of atleast four weeks.

13. In view of the above, the Bank is permitted to tender a proper calculation of the arrears payable to each of these workmen, on/or before 19.6.2019 and serve copies of the same on the learned Advocates for the workmen. Such calculations shall be placed before this Court in these disposed off writ petitions on 21.6.2019. Liberty to the workmen to calculate their dues is granted and orders on withdrawal of amounts shall, therefore, be passed after considering such calculations. Needless to state, in order to do justice and balance the equities, the petitioner / Bank shall deposit the admissible amounts on the above stated dates.

(RAVINDRA V. GHUGE, J.)

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