

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3980 OF 2020

M/S GREAVES COTTON LIMITED THROUGH ITS AUTHORIZED
SIGNATORY
VERSUS
DHAMMAPAL DADARAO PRADHAN AND OTHERS

...

Advocate for the Petitioner : Shri B.R.Kawre

Advocate for the Respondents 1 to 9 and 21 : Shri T.K.Prabhakaran

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th March, 2020

Per Court:

1 The petitioner/ Management is aggrieved by the interlocutory order dated 06.03.2020 passed by the learned Industrial Court, Aurangabad vide which, the application exhibit U/2 filed by the respondents/ complainants seeking protection against their suspension in Complaint (ULP) No.65/2019, has been allowed.

2 I have considered the strenuous submissions of the learned advocates for the petitioner/Management and the respondents/ workmen.

3 I find from the impugned order that the Industrial Court has stayed the suspension orders on the ground that though an order of suspension can be issued pending the disciplinary proceedings, suspension cannot be effected first, prior to investigation.

4 I have perused the Certified Standing Order 25 and sub-clauses (5) and (5-A), which are almost identical to the Model Standing Orders. These two provisions permit suspension of an employee pending enquiry, which appears to have been done by the Management, ex-facie. The Industrial Court has apparently concluded that there could not have been issuance of suspension orders prior to commencement of investigation. In industrial jurisprudence, the concept of investigation would be included in a disciplinary action and there would not be a separate investigation or a preliminary enquiry when the Standing Orders enable the employer to resort to a disciplinary proceeding, which means and includes investigation into charges levelled upon the employee.

5 Shri Prabhakaran, the learned advocate appearing on behalf of the respondents/ workmen, submits that as the impugned order of the Industrial Court is solely based on the conclusion that there could not have been an order of suspension prior to the commencement of “investigation”, he is instructed to consent for the setting aside of the impugned order, however, subject to the following issues, which the Industrial Court may consider while reconsidering exhibit U/2 :-

- (a) The impugned suspension order is issued under the guise of legally permissible action when it was preceded by lodging of the ULP complaints by the workers.
- (b) The ULP complaints lodged by the workers before the

Industrial Court prior to the issuance of suspension orders on 14.05.2019, pertain to the unfair labour practices purportedly indulged into by the employer falling under Schedule II of the MRTU & PULP Act, 1971.

- (c) Because the workers started organizing themselves and as the local union led such organizing activity, the Management resorted to Standing Order 25, to be used as a retaliatory weapon for scuttling formation of the union and union activities.
- (d) If the suspension orders have a colour of retaliation owing to the ULP complaint alleging unfair labour practices under Schedule II, the Industrial Court will have to assess as to whether, the suspension orders were issued malafide.

6 The learned advocate for the Management counters by submitting that all allegations of the workers can be considered by the Industrial Court subject to the contentions and averments set out by the Management in their Written Statement. He reiterates that the suspension orders are issued as the disciplinary proceedings have been contemplated.

7 In view of the above, this Writ Petition is partly allowed considering the statements made by the learned advocates. The impugned order dated 06.03.2020 below exhibit U/2 is quashed and set aside and

the application exhibit U/2 stands restored in Complaint (ULP) No.65/2019.

8 By consent, the litigating parties shall appear before the Industrial Court in Complaint (ULP) No.65/2019 on 26.03.2020 and shall address the Industrial Court on the application exhibit U/2 afresh. Written notes of submissions are also permitted besides oral arguments.

9 The Industrial Court would consider the contentions of all the parties and especially, those put forth before this Court by the learned advocate for the workers, which are encapsuled in paragraph 5 herein above and shall consider whether, the suspension orders have been issued in view of those allegations.

10 Since the said nine workers are under suspension, the employer is obliged in law to pay the suspension allowance at the rate of 50% for the first 90 days, 75% for the next face of 90 days and 100% beyond 180 days. Such suspension allowance would be inclusive of all allowances, except conveyance allowance since these workers are not directed to mark their presence at the factory gate on each day.

11 If there is any deficit in suspension allowance, the Management would calculate the said deficit and deposit the same before the Industrial Court on or before 26.03.2020 with a proper statement and the concerned workers would then withdraw the said amount as payable to them in view of the statement, without conditions.

12 The Industrial Court shall endeavour to decide the application exhibit U/2 as expeditiously as possible and preferably on or before 30.04.2020.

13 Needless to state, in the event the Industrial Court sets aside the suspension orders while deciding the complaint finally, the deficit payment for the first 180 days in proportions, would be payable, as is prescribed under the Certified Standing Orders.

kps

(RAVINDRA V. GHUGE, J.)