

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

WRIT PETITION No. 11970 OF 2019

The Best Employee's Co-operative Credit Society Ltd. and Ors.	Petitioners
Vs.	
Maharashtra Co-operative Credit Societies Kamgar Sabha	Respondent

Mr. K.S. Bapat i/b. Ms. Desai & Desai Associates for the Petitioners
Mr. Kishor S. Patil for Sole Respondent

CORAM : S.C. GUPTE, J.

DATE : 21 JANUARY 2020

PC. :

1. Heard Learned Counsel for the parties.
2. Rule. Rule taken up for hearing forthwith by consent of parties.
3. This writ petition challenges an order passed by the Industrial Court on a complaint of unfair labour practice. The complaint concerns suspension allowance paid by the Petitioners herein (who are employers and who were original Respondents to the complaint) to the employees represented by the Respondent herein (original complainant), pending a departmental enquiry. The Petitioners' case before the Industrial Court was that under the applicable law, i.e. Section 10A of the Industrial Employment (Standing Orders) Act, 1946 and Bombay Rules framed thereunder, if a departmental inquiry is not completed within ninety days of suspension, the employee facing such suspension is entitled to be paid

subsistence allowance at the rate of 75% of wages for the remaining period of suspension.

4. On the other hand, it was the case of the Respondent that under Order No. 25 (5A) of Model Standing Orders, the employees were entitled to be paid 100% wages by way of subsistence allowance, if the inquiry was not completed within a period of 180 days.

5. This issue stands concluded by several judgments of this Court, delivered on the basis of the Supreme Court judgment in **B.D. Shetty & Ors. vs. Ceat Ltd. & Anr.**¹ and the Division Bench of our Court in **May & Baker Ltd. vs. Kishore Jaikishandas Icchaporia**². The Courts have held that standing orders under Schedule-1 of the Bombay Industrial Employing (Standing Orders) Rules, 1959, particularly, Standing Order No. 25 (5A) thereof, on which reliance is placed even in this case by the Respondent Union, do not take precedence over Section 10-A of the Industrial Employment (Standing Orders) Act, 1946. Section 10-A, as noted above, provides for payment of subsistence allowance at the rate of 75% of wages in case of any delay in completing inquiry beyond the first ninety days of suspension.

6. Learned Counsel for the Respondent submits that in the present case, the documents on record indicate that the inquiry was initiated by the employer under the provisions of Maharashtra Industrial Employment (Standing Orders) Rules, 1959 and accordingly, its provisions would have precedence over Section 10-A of the Industrial Employment (Standing Orders) Act, 1946, including in the matter of payment of subsistence

¹ 2002 I CLR 69

² 1991 II CLR 176

allowance. Learned Counsel is not right there. The subject of payment of subsistence allowance is covered by the provisions of the Industrial Employment (Standing Orders) Act, 1946 and, particularly, by Section 10-A thereof. It contemplates a situation where a disciplinary proceeding is pending against an employee and such proceeding is not completed within the first 90 days of suspension. It provides in that case for payment of subsistence allowance at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension for the first ninety days of suspension, and at the rate of seventy-five per cent of such wages for the remaining period of suspension, if the delay in completion of disciplinary proceeding is not directly attributable to the conduct of the suspended workman.

7. The Industrial Court has not applied the law stated by the Supreme Court in **B.D. Shetty's case (supra.)** to the facts of the present case, on the ground that the delay in completion of disciplinary proceeding was directly attributable to the workman. The law stated in **B.D. Shetty's case (supra.)** is irrespective of who was responsible for the delay in completion of disciplinary proceeding. Section 10-A of the Industrial Employment (Standing Orders) Act, 1946 provides for payment of subsistence allowance to the suspended workman at the rate of seventy five per cent of the wages for the remaining period of suspension, i.e. beyond the first ninety days, if the delay in the completion of disciplinary proceeding against such workman is not directly attributable to the conduct of such workman. In other words, precisely on the footing that the delay is not attributable to the conduct of that employee that he is entitled for seventy-five per cent of wages as subsistence allowance. If the delay is attributable directly to the conduct of such workman, he is not entitled even to these wages. The

Industrial Court has completely misread the judgment and that has resulted in miscarriage of justice.

8. Accordingly, Rule is made absolute and the petition is allowed by quashing and setting aside the order of Industrial Court dated 19th October, 2019, and dismissing the original complaint of unfair labour practice.

9. In accordance with the interim order passed by this Court on 25th November, 2019, the Petitioners have deposited in this Court the amount ordered by the Industrial Court in its impugned order. The Petitioners are permitted to withdraw the amount deposited together with accrued interest, if any.

(S.C. GUPTE, J.)

VA. Tikam