

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

WRIT PETITION NO. 13136 OF 2019

The Municipal Commissioner,
Municipal Corporation of Greater Mumbai & Anr. ...Petitioners
vs.
Mr.Gunaji Suryaji Kamble ...Respondent

WITH
WRIT PETITION NO. 284 OF 2020

Kachra Vahatuk Shramik Sangh ...Petitioner
vs.
The Municipal Corporation of Greater
Mumbai & Ors. ...Respondents

Mr.S.S. Pakale with Vinod Mahadik and Dnyaneshwar Kale for Petitioner –
MCGM.
Ms.Neeta Karnik for Petitioner in WP 284/2020.
Mr.Ramesh D. Bhat for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 24 JANUARY 2020

ORAL JUDGMENT :

This writ petition (Writ Petition No.13136 of 2019) challenges an order passed by the Industrial Court at Mumbai on a complaint of unfair labour practice filed by the Respondent herein (“complainant”). The complaint was under Items 5, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971.

2 As per the complainant, he was a permanent employee of the Respondent Municipal Corporation (“corporation”). On 9 February 2008, he was arrested by Crime Branch of Mumbai Police and produced before

the Metropolitan Magistrate and ultimately released on bail on 4 April 2008, that is to say, after 55 days of arrest. The arrest was in connection with an FIR dated 9 February 2008. The FIR alleged that he had made a demand of Rs.2 lakhs from the victim and threatened with a revolver that the latter's family would be killed if the demand was not met. According to the complainant, the FIR had falsely implicated him and that he was not present in the crowd when the victim was approached with a demand of Rs.2 lakhs. Be that as it may, considering that the complainant was placed under arrest for more than 48 hours, he was placed under suspension by the corporation vide suspension order dated 28 March 2008. It was his case that there was no nexus between the alleged criminal offence, for which the subject FIR was registered against him, and the nature of duties to be performed by him during the service of the corporation. In the meantime, a departmental enquiry was conducted against the complainant on the basis of a charge sheet of 27 September 2011. (The record does not bear out the circumstances in which this departmental enquiry was conducted against the complainant.) A punishment of fine of Rs.3000/- was imposed on the complainant as a result of this inquiry. This fine was recovered by the corporation. The grievance of the complainant was that even thereafter, the complainant was kept under suspension till the filing of the complaint. (The complaint was filed on 23 September 2015.) The complainant's grievance before the Industrial Court was that the provisions of Industrial Employment (Standing Orders) Act, 1946, which were applicable to the corporation, did not warrant, and accordingly, the latter did not have authority to order, suspension of an employee merely because a criminal offence was registered against him and he was arrested by police for more than 48 hours and that continued suspension of the complainant without any such power or authority amounted to an unfair labour practice under

Items 5, 9 and 10 of Schedule IV of MRTU and PULP Act, 1971.

3 Before the Industrial Court, several objections were raised by the corporation on maintainability as well as on merits of the complaint. It was, firstly, submitted that the complaint was barred by the law of limitation. The corporation, secondly, relied on its service conditions which *inter alia* provided for suspension of an employee, if he was under arrest for more than 48 hours, pending decision of a criminal case.

4 On the issue of limitation, the Industrial Court held that the alleged unfair labour practice of suspension of an employee was a recurring cause of action and that the complaint could not be said to be barred by limitation. On the issue of merits of the suspension under the Corporation Service Rules, the court held that the provisions of Industrial Employment (Standing Orders) Act, 1946 and the Rules framed thereunder, namely, Maharashtra Industrial Employment (Standing Orders) Rules, would prevail over the Rules and Regulations prepared by the corporation. The court was of the view that under the Standing Orders Act, there was no question of suspending an employee merely because a criminal offence was registered against him or he was in police custody for any particular period. The court noted that the original suspension was ordered on 28 March 2008; 11 years had since passed during which the corporation was paying the complainant suspension allowance; in the meantime, the complainant was issued a charge sheet on 20 July 2011 for misconduct under Rule 5(2) (3) and an inquiry was conducted against him; charges levied against him were proved and by a punishment order dated 18 December 2012, fine of Rs.3000/- and suspension of the complainant in the interregnum was imposed upon the complainant; and thereafter, Rs.3000/- was recovered

from the complainant. The court was of the view that any suspension beyond 18 December 2012 did not have any sanction under the applicable Standing Orders. The court, accordingly, declared the suspension of the complainant as illegal and bad in law and directed the corporation to revoke the same and allow the complainant to join the original post with continuity of service. The corporation was directed to pay suspension allowance/wages as per the provisions of Standing Orders to the complainant till he was allowed to join his post.

5 Mr.Pakale, learned Counsel appearing for the corporation, submits that under the Service Rules made by the corporation for its employees, there was a specific restriction on possession of lethal weapons or arms except with a valid licence from competent authority under the Arms Act or any other Act for the time being in force and that no corporation employee was to possess any explosive, ammunition or any other dangerous article or material within the premises of the Corporation and/or indulge into any subversive activity. It is also submitted that under the Corporation Service Conditions for its employees, if a municipal employee was arrested by police for more than 48 hours, the appointing authority was entitled to suspend the employee from the date of arrest pending decision of the criminal court in the matter of prosecution. Mr.Pakale submits that service conditions of the Municipal Corporation would have precedence over Standing Orders; the Municipal Service Conditions or Rules, being special enactments, would prevail over the general enactment of Standing Orders .

6 In **Municipal Corporation of Greater Mumbai vs. Mumbai**

Mahanagarpalika Karyalayeen Karmachari Sanghatana¹, a learned Single Judge of our court, by an order dated 21 September 2017, held that the provisions of the Standing Orders Act would prevail over the Corporation Act as also over Municipal Service Rules and Regulations and Manual of Departmental Enquiries. Another learned Single Judge of this court, by his order dated 15 April 2008 in the case of **Sitaram Tukaram Walunj vs. Municipal Corporation of Greater Mumbai**², held, after considering several judgments bearing on the issue, that there was no manner of doubt that as between the Municipal Act and Industrial Employment (Standing Orders) Act, 1946, it was the latter which would prevail in relation to conditions of service of workmen governed under the latter Act. These judgments were once again considered by another learned Single Judge of our court in the case of **M.C.G.M. vs. Madhusudan S. Kanth**³. The learned Judge, by her order dated 13 December 1990, reiterated the proposition of law that Model Standard Orders were applicable to MCGM and prevailed over the Corporation's Service Regulations, whilst conducting a domestic enquiry. The same learned Single Judge in another case in **Municipal Corporation of Greater Mumbai vs. Dr.Shivajirao T. Kawale**⁴, by her order dated 17 January 2011, repelled the corporation's contention that Municipal Rules permitting the corporation to impose a particular punishment would prevail over Model Standing Orders, which did not warrant or authorise the corporation to order such punishment. All these judgments have been relied upon by the Industrial Court in its impugned order.

7 Mr.Pakale, learned Counsel for the corporation, submits that the judgments of various single judges of our court are essentially premised

1 (2017 (5) F.L.R-436

2 WRIT PETITION NO. 8711-2007

3 WRIT PETITION NO.9385-2010

4 WRIT PETITION NO.7708-2010

on the law stated by this court in the case of **Sitaram Tukaram Walunj** (Per Dr. D.Y. Chandrachud, J.) (supra). Learned Counsel submits that this judgment proceeds on the basis of a concession made by the corporation counsel. Learned Counsel draws my attention to the observation made in the order (para 4) that during the course of the hearing, “*it has not been disputed that in view of the provisions of Section 1(3), Industrial Employment (Standing Orders) Act, 1946 was applicable to the Municipal Corporation*”. Whether the original judgment was as a matter of concession or otherwise, it cannot be disputed that in several judgments delivered by this court, which followed that judgment, it has been held not only that the Standing Orders Act applies to MCGM, but that it prevails over the provisions of Municipal Corporation Act and Rules or Service Conditions framed by the corporation thereunder and the Industrial Court cannot be said to have committed any error of law in relying on these judgments and coming to the conclusion that it has.

8 Mr.Pakale relies on two other judgments delivered by two other learned Single Judges of our court in the case of **Sangli Miraj Kupwad Cities Municipal Corporation vs. Mahapalika Kamgar Sabha**⁵ and **Sandip Baliram Sandbhor vs. Pimpri Chinchwad Municipal Corporation**⁶. The case of **Sangli Miraj Kupwad Cities Municipal Corporation**, in the first place, is no authority for the proposition that the Industrial Employment (Standing Orders) Act, 1946 is not applicable to the Municipal Corporation. It essentially holds that the tribunal, in that particular case, had not decided that the particular local body was an industrial establishment. The court held that a local body or any particular department of it could not be treated as an industrial establishment merely because more than 50/100

5 2012(6) All.M.R.-90

6 2016(3) MhLJ-562

workers were employed or were working in it. It did make a passing observation that the local authority was not a profit making establishment; and it could not be equated with an 'Establishment' or 'industrial undertaking' contemplated under the Bombay Shops & Establishments Act or the Industrial Undertakings Act. These observations could not be taken as a statement of law on the applicability of the Standing Orders Act to local bodies generally or a municipal council or corporation in particular. Besides, if it is so treated, the judgment would clearly be *per incuriam*, since it wholly disregards the law already stated by our court, as noted above. In the other judgment cited by Mr.Pakale, i.e. the case of **Sandip Sandbhor** (supra), the argument before the court was that a distinct department of the corporation (in that case, Pimpri Chinchwad Municipal Corporation), which did not conform to the definition of an 'Establishment', would still be covered under the Industrial Employment (Standing Orders) Act, because the other departments conformed to the definition of 'Establishment' thereunder. This argument was not countenanced by the learned Single Judge. Even this judgment does not lend any support to Mr.Pakale's submission. It is a settled position in law that in the case of a local authority, such as the corporation herein, a particular activity of it may come within the sovereign functions of the State or may be excluded from the purview of the Industrial Employment (Standing Orders) Act, 1946 by some other appropriate reason, but there is no such pleading in the present case. The question whether the Standing Orders Act itself does not apply to the particular undertaking of the Municipal Corporation in the present case was not even addressed by the corporation before the Industrial Court in the present case.

9 Confronted with this position, Mr.Pakale implores the court to

set aside the impugned order and remand the matter to the Industrial Court for a fresh decision on this question. I am afraid, I cannot do so. Applicability of a particular law to an establishment having regard to the nature of activities performed by it, is a mixed issue of law and facts. It can only arise on the facts pleaded before the court. Since there is no pleading before the court in the present case that the Industrial Employment (Standing Orders) Act, 1946 does not apply to the particular department of the municipal corporation, because the department or undertaking is not covered by the definition of 'Industrial Establishment' within that Act, there is no purpose in remitting the matter to the Industrial Court for a fresh decision. The issue never arose before the court and there was no occasion for the court to deliver any ruling on it. No useful purpose would, in the premises, be served in remitting the matter to the court.

10 Coming now to the issue of limitation, the suspension ordered by the corporation in the present case can certainly be termed as a continuing wrong. Mr.Pakale is not right in submitting that what is challenged is not 'continued suspension' but 'order of suspension dated 28 March 2008'. It would be too hyper-technical to hold so. Suspension affects an employee each day it continues; the injury itself continues from day to day; the cause of action which it gives rise to is a continuous cause of action. There is, accordingly, no infirmity in the assessment of the Industrial Court on the issue of limitation.

11 The Industrial Court, in its operative order, has required the corporation to pay allowances/wages as per the provisions of Standing Orders to the complainant till he is allowed to join the post. Though it has not disturbed the suspension allowance paid by the Respondent

corporation to the complainant employee till 18 December 2012, as far as further suspension is concerned, the Industrial Court has come to a conclusion that it was not justified. It has ordered the corporation to revoke the suspension and allow the complainant to join his original post with continuity of service. It, then, has ordered the corporation to pay suspension allowance/wages as per the provisions of Standing Orders. In the first place, the court does not appear to have decided the question of what was payable after 18 December 2012 – whether it should have been the suspension allowance (which was actually paid) or wages (which would have been payable, if the suspension was to be treated as illegal). Secondly, it would have been necessary for the court, in the facts of the case, to decide upto what period suspension allowance ought to be countenanced and the period for which regular wages would have to be paid to the complainant employee. Even if one concedes, as I have held above, that suspension is a continuous wrong, when it comes to non-payment of wages as a result of that suspension, the cause of action to claim such wages is not continuous. Wages are payable to an employee for every wage period; and for every wage period for which they are not paid, a separate and distinct cause of action accrues unto the employee. That is typically a case of recurring causes of action and not a continuing cause of action. Since what was before the Industrial Court was a complaint of unfair labour practice under MRTU and PULP Act, 1971, which provides for a limitation of three months for making of a complaint, the Industrial Court could have ordinarily awarded compensation of regular wages for a period of three months immediately prior to the complaint. It then could have applied its mind as to whether, for good and sufficient reasons, relief ought to be granted for any further period. As I have noted above, the Industrial Court has not applied its mind to this aspect of the case. Since the

Industrial Court could anyway have awarded regular wages for a period of three months prior to the complaint, this court would be justified in awarding regular wages to the complainant employee for a period of three months prior to the date of the complaint and during the pendency of the complaint and till date.

12 The Petitioner corporation is, accordingly, directed to pay regular wages to the Respondent employee from 23 June 2015 till date and also hereafter till the Respondent is allowed to join the services.

13 The writ petition is, accordingly, dismissed with clarification as above.

14 Learned Counsel for the Petitioner corporation prays for stay. The application is rejected.

15 Insofar as the connected petition, namely, Writ Petition No.284 of 2020, is concerned, the petition is stood over to 7 February 2020.

(S.C. GUPTE, J.)