

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

WRIT PETITION NO.8466 OF 2020

M/s. Greaves Cotton Limited
(Through its Authorised Signatory)
Light Engines Unit-V, A-1/3,
Shendra Five Star, MIDC,
Aurangabad

..Petitioner

Vs.

Dhammapal Dadarao Pradhan,
Age : 31 years, Occ. Service,
r/o. F-28/8, Ayodhya Nagar,
N-7, CIDCO, Aurangabad
and ors.

..Respondents

Mr.B.R.Kawre, Advocate for petitioner
Mr.T.K.Prabhakaran along with Mr.Ashutosh S. Kulkarni, Advocate
for respondent nos.1 to 21

**CORAM : R.G. AVACHAT, J.
RESERVED ON : FEBRUARY 12, 2021
PRONOUNCED ON : FEBRUARY 17, 2021**

ORDER :-

Heard learned counsel appearing for the parties.

2. The challenge in this Writ Petition is to the order dated
30.11.2020 passed by learned Member, Industrial Court,

Aurangabad, below application (Exhibit U-2) in Complaint (ULP) No.65 of 2019. By the impugned order, the suspension of complainant nos.1 to 9 (respondent nos.1 to 9 herein) has been stayed, until further orders.

3. The petitioner herein is a limited company. Respondents nos.1 to 20 are its employees. Respondent no.21 claims to be a trade union. The petitioner – employer, vide orders dated 9th May, 2019 and 14th May, 2019, placed respondent nos.1 to 9 under suspension on the ground of canvassing for union membership, collection of union dues within the factory premises, stoppage of work, instigating other employees to go slow, disorderly behavior within the factory premises and coercive activities to compel other employees to join the union, etc. The petitioner – employer proposed to initiate disciplinary proceedings/domestic enquiry against respondent nos.1 to 9. Charge sheet along with the notice to show cause has been issued to the delinquent - employees, respondent nos.1 to 9.

4. The respondents filed Complaint (ULP) No.65 of 2019, alleging the petitioner – employer to have indulged in unfair labour practice with a view to dismiss respondent nos.1 to 9 from service for no reason. On hearing the parties to the complaint, learned Member, Industrial Court, vide order dated 06.03.2020, allowed the application (Exh.U-2), staying suspension of respondent nos.1 to 9 till further orders. The petitioner – company took exception to the said order by filing a Writ Petition (3980 of 2020). This Court, vide order dated 12.03.2020, set aside the order impugned therein and directed the Industrial Court to consider the application in the light of the following points :-

(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.

5. Learned Member, Industrial Court, on hearing the parties to the complaint, vide order dated 30.11.2020, observed as under :-

"11.

First of all I would like to make it clear that there would not be a separate investigation or preliminary enquiry when the Standing Orders enable the employer to resort to a disciplinary proceeding. On going through the Standing Orders I found suspension pending enquiry cannot mean only at the stage of issuance of chargesheet but suspension as envisaged in Standing Order can be effected when the employer proposes or contemplates to take action for misconduct. Now so far four points formulated by Hon'ble High Court are concerned, I am to state that the

suspension orders issued against the complainants are under the guise of legally permissible action having colour of retaliation owing to filing complaints by them. I have gone through the suspension orders and chargesheets against the complainants. The suspension orders dated 9.5.2019 and 14.5.2019 show that certain complaints of serious nature against the complainants were before the respondent for their union activities, collection of union dues, stoppage of work, instigation of go slow, disorderly behaviour etc. If we go through the chargesheets it will find that the charges for riotous activities and disorderly behaviour are framed against the complainants but the suspension orders dated 14.5.2019 do not show a single word about the incident dated 11.5.2019 as mentioned. It is specifically alleged by the respondent that on 11.5.2019 all the complainants and outsiders made demonstrations, dharnas, gave slogans and prevented ingress and egress of the staff members at the factory gate. Further it alleged, the complainants with their outsider supporters have created unrest in and around the factory premises, disturbed manufacturing activities and abused the management with filthy and vulgar language thereby industrial peace was disturbed. Had there been such incident occurred on 11.5.2019 then certainly immediate after this incident the respondent would have filed complaint against the complainants and others before the Police or Court. It is to be noted complaint was filed on 14.5.2019 before

the Police. There is 3 days delay in filing of complaint. Apart from this the chargesheets, show cause notices and suspension orders issued against complainants show that all charges against the complainants are one and same in word to word and line to line. Further these charges are appearing to be vague. No specific dates, specific overt act or specific incidents are quoted.

12. The complainants in this case had filed Complaint ULP Nos.51/2019 and 53/2019 on 29-4-2019 and 7-5-2019. In that complaints also they expressed apprehension of changing their service condition by way of discharge, dismissal or termination owing to organisation of trade union. From filing of these complaints as well as present complaint it appears organisation of union and their union activities became eye sore to the respondent therefore, prima facie it can be held the suspension orders of the complainants are under the guise of legally permissible action to scuttle their voice. Prima facie the incident dated 11-5-2019 is appearing to be suspicious and cannot be believed."

6. In view of learned Member, had there been such incident occurred on 11.05.2019, the petitioner – employer would have filed a police complaint immediately. There is three days' delay in filing the complaint. The charges against

the complainants (respondent nos.1 to 9) are one and the same in word to word and line to line. No specific dates and overt act have been attributed. Respondent nos.1 to 9 have already filed complaints before they were placed under suspension, expressing apprehension of changing their service conditions by way of discharge, dismissal or termination owing to organised trade union.

The aforesaid order is under challenge.

7. Mr.Kawre, learned counsel for the petitioner, would submit that as per the certified standing orders, it is a right of the petitioner – employer to place under suspension its employees who indulge in grave misconduct. The petitioner – employer has exercised its right. The charge-sheet has been issued. An independent enquiry Officer has been nominated. The respondents are not co-operating with the enquiry. According to him, learned Member, Industrial Court, gave reasons almost foreclosing outcome of the domestic enquiry. Learned counsel has placed reliance on some of the authorities.

8. Mr.Prabhakaran, learned counsel for respondent nos.1 to 21, would, on the other hand submit that the evidence as to unfair labour practice or victimisation is in most of the cases inferential or circumstantial (relied on the judgment in the case of Delux Theatres Pvt. Ltd. Vs. Bombay Labour Union, 1991(10)CPMH6). He would further submit that general unfair labour practices on the part of the employer to discharge or dismiss the employee on any of the grounds listed in clauses (a) to (g) of Item-I of Schedule-IV would include any step towards or in the direction of ultimate discharge or dismissal of the employee on that ground and even before such discharge or dismissal was finally arrived at (Hindustan Lever Vs. Ashok Vishnu Kate, AIR 1996 SC 285). According to learned counsel, the impugned order does not suffer from jurisdictional error. This Court, in exercise of the jurisdiction under Article 227 of the Constitution of India, should be slow to make interference with such an order.

9. In **R.P. Kapur Vs. Union of India, 1964(5) SCR 431**, the Supreme Court observed thus:-

*" The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith.
On general principles therefor the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him."*

10. True, the action of suspension should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. Each case has to be considered on its own facts. Suspension is not a punishment but is only one of forbidding or disabling an employing to discharge the duties of his office. It is to refrain

him to avail further opportunity to perpetrate the alleged misconduct (**State of Orissa Vs. Bimal Kumar Mohanty, AIR 1994 SC 2296**).

11. A copy of the certified standing orders of the petitioner - employer is on record. Clause-(24) thereof enlists acts and omissions on the part of workman/employee, which shall amount to misconduct. Sub-clauses (9), (11), (16) and (18) thereof have been invoked herein. Moreover, Clause-(25) (5) of the standing order empowers the petitioner-company to suspend its employee, pending enquiry.

12. In my view, the order of suspension need not contain details of the alleged misconduct. The charge sheet is there to take care thereof. Clause-(25)(5) of the standing order empowers suspension even when an action is proposed to be taken. Reading of suspension orders would indicate them to have contained the allegations regarding canvassing for union membership, unauthorised gate meetings and riotous behavior within the premises of the factory, etc. F.I.R. has also been lodged for the alleged incidents. There is delay of three

days. It is for the appropriate Court and the authorities to consider the nature of the allegations and evidence in proof thereof, etc. The reasons given in support of the impugned order almost foreclose the outcome of the domestic enquiry. Even, Complaint (ULP) No.65 of 2019 is to be decided on its merit, after giving the parties an opportunity of producing the evidence. Mere fact that the respondents have filed the complaint even before the orders of their suspension were issued, expressing apprehension of changing their service conditions, would not *ipso facto* be a sufficient ground to hold the alleged misconduct to be untrue. By placing respondent nos.1 to 9 under suspension, they are not deprived of their remuneration. They are entitled to receive subsistence allowance.

13. In my view, since the impugned order, *prima facie*, forecloses the outcome of the pending disciplinary enquiry and as the petitioner-employer is entitled to place its employees under suspension, pending the enquiry, the impugned order deserves to be set aside.

14. The Writ Petition is, therefore, allowed in terms of prayer clause (b).

[R.G. AVACHAT, J.]

KBP