IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO. 267/2011 IN WRIT PETITION NO.3809/1999 (D)

1. Maharashtra State Electricity Holding Company, through its Chairman, Hongkong Bank Building, Mahatma Gandhi Marg, Fort, Mumbai.

2. Maharashtra State Power Generation Company Limited, through its Managing Director, Prakashgad, Plot No.G-9, Bandra (East), Mumbai-400 051.

3. Maharashtra State Electricity Transmission Company Limited, through its Managing Director, C-19, F-Block, Bandra Kurla Complex, Bandra (East), Mumbai.

4. Maharashtra State Electricity Distribution Company Limited, through its Managing Director, Prakashgad, Plot No.G-9, Bandra (East), Mumbai-400 051.

5. Maharashtra State Power Generation Company Limited, through its Chief General Manager, Koradi Thermal Power Station, Koradi.

6. Maharashtra State Electricity Distribution Company Ltd., through its Chief Engineer (Nagpur Zone), Vidyut Bhawan, Katol Road, Nagpur.

APPELLANTS

.....VERSUS.....

1. Tantrik Kamgar Union, through its Vice President, R/o E/81/482, Koradi Thermal Power Station Colony, Koradi, District Nagpur.

2. The Industrial Court, Maharashtra, Nagpur Bench, Nagpur.

RESPONDENTS

Shri N.G. Moharir with Shri R.E. Moharir, counsel for the appellants.
Shri F. Khan with Shri B.M. Khan, counsel for the respondent no.1.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 26TH NOVEMBER, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

The challenge raised in this letters patent appeal is to the judgment of the learned Single Judge in Writ Petition No.3809 of 1999 dated 09.12.2010. By the said judgment the learned Single Judge was pleased to affirm the judgment of the Industrial Court in Complaint U.L.P.A. No.530 of 1990 dated 20.01.1997 thereby dismissing the writ petition preferred by the appellant. In view of aforesaid adjudication the members of the respondent no.1-Union has been held entitled to the difference of overtime allowance in terms of the settlement dated 29.01.1990 for the period from 31.03.1988 to 22.03.1990.

2. The relevant facts are that the respondent no.1 is a registered Union espousing the cause of its members employed with the appellant no.1. On 29.01.1990 there was a memorandum of settlement between the appellant no.1 and five employees Unions. The respondent no.1 is one such Union which was party to the said settlement. As per Clause 13 of the said settlement the amount of arrears payable to the employees under the terms of the settlement after statutory deductions was to be paid in two equal instalments that were payable in May and June-1990. A general order dated 22.03.1990 was issued by the Board to facilitate payment of such arrears. However on 15.06.1990 an Office Circular was issued by the Board by which the terms of the settlement dated

29.01.1990 were stated to have been modified unilaterally. Since according to the Union this amounted to a failure to implement the settlement, complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 invoking Item 9 of Schedule IV to the Act came to be filed.

3. In the written statement, the Board opposed the prayers as made in the complaint. It was stated that the settlement was entered into with five registered Unions but the complaint had been filed only by one such Union. This indicated that the terms of the settlement had been complied with by the Board and there was no substance in the complaint. On these counts it was prayed that the complaint be dismissed.

4. The learned Judge of the Industrial Court after considering the evidence led by the parties found that in the settlement dated 29.01.1990 there was no specific term for denying the benefit of overtime allowance that was payable from 31.03.1988. A finding was recorded that Clause 15(A) of the settlement could not be read in a manner so as to deprive the members of Union from receiving the difference of overtime allowance. The Industrial Court concluded that the members of the Union were entitled for the difference in the arrears of overtime allowance pursuant to the settlement dated 29.01.1990. The Industrial Court therefore allowed the complaint.

5. The learned Single Judge while considering the challenge raised to the order of the Industrial Court found that overtime allowance was linked with the pay-scales of the employees and in view of revision of the pay-scales from 01.04.1988 the employees were entitled for revision in the overtime allowance from 01.04.1988. The settlement did not indicate that the employees were not entitled to receive such arrears and on that count after holding that the terms of the settlement had been appropriately interpreted by the learned Judge of the Industrial Court, the writ petition came to be dismissed.

6. Shri N.G. Moharir, learned counsel for the appellants reiterated the contentions that were urged before the Industrial Court as well as before the learned Single Judge. According to him in view of Clause R(ii) of the General Order dated 22.03.1990 in which it was stated that no arrears would be payable from 31.03.1988 to 22.03.1990, the Board was justified in taking the stand that the members of the Union were not entitled to claim the arrears of overtime allowance. He further submitted that though the complaint was stated to be filed by the registered Union, the list of members of said Union who were entitled to claim such benefit was never brought on record. He invited attention to the interim orders passed in Writ Petition No.3809 of 1999 dated 17.03.2003 and 19.11.2003. Despite the statement made that the Union

would submit an application to the Board in that regard the said statement had not been complied with. Since the names of the beneficiaries were not indicated by the Union, no purpose would be served by directing payment of arrears of overtime allowance to the employees. He therefore submitted that the letters patent appeal was liable to be allowed.

7. Shri F. Khan, learned counsel for the respondent no.1-Union supported the judgment of the learned Single Judge. He submitted that the learned Members of the Industrial Court as well as the learned Single Judge had considered the effect of the memorandum of settlement dated 29.01.1990 and had correctly arrived at the conclusion that the members of the Union were entitled to receive the benefits of overtime allowance as per the settlement. No other interpretation of the terms of the settlement was possible. He further submitted that merely because the list of members of the Union was not brought on record the same would not result in refusal of the prayers made in the complaint. That interim direction was for considering the prayer for grant of stay and the same did not affect the merits of the adjudication. Hence, no interference with the impugned judgment was called for.

8. We have heard the learned counsel for the parties and we have perused the material placed on record. On re-consideration of the

same we do not find any case made out to interfere with the judgment of learned Single Judge. The Industrial Court has found that as per the memorandum of settlement at Exhibit 36 there was no specific term therein by which overtime allowance was not liable to be paid to the employees of the Board from 01.04.1988. On the contrary, a finding was recorded that by issuing General Order dated 22.03.1990, the Board sought to take away the rights that had accrued pursuant to Clause 15(A) of the settlement dated 29.01.1990. The learned Single Judge has found that overtime allowance was linked to pay-scales and as there was a revision of pay-scales from 01.04.1988 the Union had demanded revision in overtime allowance also from that date. It was on that basis that the memorandum of settlement came to be executed. A finding was recorded that the language of the entire settlement at Exhibit 36 did not indicate that it exempted the Board from paying overtime allowance from 01.04.1988. On the contrary, the arrears were to be paid in two instalments as per Clause 13(A).

We find that the terms of the memorandum of settlement at Exhibit 36 have been rightly considered and appropriate relief has been granted to the members of the Union. No other interpretation of the memorandum of settlement is possible from the one arrived at by the Member of the Industrial Court as well as the learned Single Judge.

9. As regards the contention that the Union failed to comply with the statements made while passing the order dated 17.03.2003 resulting in grant of interim relief on 19.11.2003, the said aspect does not take the case of the appellants any further. It is true that the application which the Union was to submit to the Board was not so submitted. This however cannot result in dismissal of the complaint on that sole ground. The Industrial Court had directed payment of arrears of overtime allowance to the members of the Union and it is for the Union to take necessary steps in that regard while executing such order. The aforesaid aspect does not touch the merits of the dispute especially when the same was not pressed as a ground of defence before the Industrial Court. Said contention also cannot be accepted.

10. In the light of aforesaid discussion, we do not find that there is any ground raised to interfere with the judgment of the learned Single Judge. The letters patent appeal therefore stands dismissed with no order as to costs.

(G.A. SANAP, J.) (A.S. CHANDURKAR, J.)

APTE

Signed By: Digitally signed byROHIT DATTATRAYA APTE
Signing Date:30.11.2021 10:20