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

941 WRIT PETITION NO.3526 OF 2022

VIRBHADRA MADHAVRAO VASMATE
VERSUS
NRB BEARING PVT. LTD, THR ITS MANAGING DIRECTOR
...
Mr P. V. Barde, Advocate for petitioner;
Mr S. V. Dankh, Advocate for respondent

CORAM : RAVINDRA V. GHUGE, J

DATE : 16th March, 2022

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the interlocutory order passed by the Industrial Court, dated 04/03/2022, vide which, the application Exh. U-2, seeking interim relief under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices, Act, 1971, in Complaint (ULP) No.71/2021, has been rejected.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides and with their assistance, I have gone through the petition paper book.

4. It is undisputed that the Management has resorted to a recovery of an amount of about Rs.56,000/- from the petitioner/complainant on the ground that it was inadvertently paid in excess of the salary due to be paid to the petitioner. The recovery was commenced by granting installments to the petitioner and an amount of about Rs.55,938/- was recoverable, which was paid in between August 2019 to September 2021. In February 2020, an amount of Rs.11,692/- was recovered. Rs.15,000/- were recovered @ Rs.5,000/- per month from the salaries payable for October, November and December 2021. The learned Advocate for the petitioner submits on the basis of the record that, some amounts were deducted even in the months of January and February 2022. Today, an amount of Rs.19,246/- is to be recovered.

5. It is the contention of the petitioner that the law laid down by the Hon'ble Apex Court in **State of Punjab & ors. Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334** and **Syed Abdul Qadir Vs. State of Bihar, (2009) 3 SCC 475,** is applicable to this case. He further submits that deduction from Class-III or Class-IV categories is prohibited.

6. The learned Advocate for the Management submits that the said judgments would not be applicable. The petitioner is only 31 years of age. The mistake committed by the employer was noticed instantly and the deductions were therefore, initiated immediately. There is no delay caused in recovering excess salaries paid. The petitioner has 29 years of service left. He is not on the verge of retirement.

7. There can be no dispute that in private industries, there is no classification as Class-III or Class-IV category workman. It is purely ‘Workman’ and not a ‘Workman’. Section 2(s) of the Industrial Dispute Act, 1947 defines ‘Workman’. Moreover, Section 7(2)(f) of the Payment of Wages Act, 1936, provides for recovery of amounts for adjustment of over payment of wages. In fact, Section 7 provides for deductions that can be made. It would be apposite to reproduce Section 7 hereunder :-

> *“7. **Deductions which may be made from wages.-** (1) Notwithstanding the provisions of [the Railways Act, 1989 (24 of 1989)], the wages of an employed person shall be paid to him without deduction of any kind except those authorised by or under this Act.*
>
> *[Explanation I].- Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.*

[Explanation II.]- Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely—

(i)the withholding of increment or promotion (including the stoppage of increment at an efficiency bar);

(ii)the reduction to a lower post or time-scale or to a lower stage in a time-scale; or

(iii)suspension;

shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette.

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely-

(a)fines;

(b)deduction for absence from duty;

(c)deductions for damage to or loss of goods expressly entrusted to the employed person or custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

[(d) deductions for house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by 4 [the appropriate Government] by notification in the Official Gazette;]

(e) deductions for such amenities and services

supplied by the employer as the 5 [***] State Government 6 [or any officer specified specified by it in this behalf] may, by general or special order authorise.

Explanation.- The word "services" in 7 [this clause] does not include the supply of tools and raw materials required for the purposes of employment;

[(f) deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, <u>or for adjustment of over-payments of wages;</u>

(ff) deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof; (fff) deductions for recovery of loans granted for house-building or other purposes approved by the State Government and the interest due in respect thereof;] (g) deductions of income-tax payable by the employed person;

(h) deductions required to be made by order of a Court or other authority competent to make such order; (i) deductions for subscriptions to, and for payment of advances from any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies or any recognised provident fund as defined 1 [in clause (38) of section 2 of the Income-tax Act, 1961 (43 of 1961) or any provident fund approved in this behalf by [the appropriate Government], during the continuance of such approval;

(j) deductions for payments to co-operative societies approved by [the appropriate Government] [or any officer specified by it in this behalf] or to a scheme of insurance maintained by the Indian Post Office;

(k) deductions, made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government;]

(kk) deductions made, with the written authorisation of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 (16 of 1926) for the welfare of the employed persons or the members of their families, or both, and approved by [the appropriate Government], or any officer specified by it in this behalf, during the continuance of such approval;

(kkk) deductions made, with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926 (16 of 1926);

[(l) deductions for payment of insurance premia on Fidelity Guarantee Bonds;

(m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;

(n) deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration, whether in respect of fares, freight, demurrage, wharfage and cranage

or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;

(o)deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default.]

[(p) deductions, made with the written authorisation of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify.]

[(q) deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.]

[(3) Notwithstanding anything contained in this Act, the total amount of deductions which may be made under sub-section (2) in any wage-period from the wages of any employed person shall not exceed-

(i) in cases where such deductions are wholly or partly made for payments to co-operative societies under clause (j) of sub-section (2), seventy-five per cent of such wages, and

(ii) in any other case, fifty per cent of such wages:

Provided that where the total deductions authorised under sub-section (2) exceed seventy-five per cent or, as the case may be, fifty per cent of the wages, the excess may be recovered in such manner as may be prescribed.

[(4) Noting contained in this section shall be construed as precluding the employer from recovering

> *from the wages of the employed person or otherwise any amount payable by such person under any law for the time being in force other than (the Railways Act, 1989 (24 of 1989)].”*
>
> *(Underlined portion is for reference).*

8. Considering the above, I do not find that the Judgments delivered by the Hon’ble Apex Court in State of Punjab & ors. Vs. Rafiq Masih (supra) and Syed Abdul Qadir Vs. State of Bihar, (supra), would be applicable when the Statute provides for recovery of excess payments made in the form of over payment of wages.

9. The learned Advocate for the petitioner has then prayed for installments with regard to the remainder portion to be recovered. The learned Advocate for the Management opposes the request, but in the alternative, leaves it to the Court to pass an appropriate order.

10. Considering the meager amount i.e. Rs.19,246/- now to be recovered and since the petitioner is consenting for such recovery, the said amount be deducted from the monthly salary payable to the petitioner in 09 equated installments of Rs.2,000/- each and the tenth instalment of Rs.1,246/-.

11. In view of the above, this petition is disposed off.

12. Considering the above, in my view, Complaint (ULP) No.71/2022 may not be kept pending before the Industrial Court, Jalna. It is, therefore, left to the wisdom of the petitioner to decide whether he wishes to withdraw the Complaint.

13. Rule stands discharged.

(RAVINDRA V. GHUGE, J.)

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