

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3198 OF 2021

Kondiba s/o Dampuappa Shivpuje,
Age-42 years, Occu-Service,
R/o Bodhinagar, Latur,
Tq. and Dist. Latur

-- PETITIONER

VERSUS

1. Adhyaksha
Vivekanand Ruganalaya, Latur,

2. Prashaskiya Adhikari Tathe,
Karayavah, Vivekanand
Rugnalaya, Latur

-- RESPONDENTS

WRIT PETITION NO.4215 OF 2020

1. President,
Vivekanand Hospital, Latur,

2. Administrative Officer,
Vivekanand Hospital, Latur

-- PETITIONERS

VERSUS

Kondiba Damuappa Shivpuje,
Age-43 years, Occu-Service,
R/o Bodhenagar, Latur,
Tq. and Dist.Latur

-- RESPONDENT

Mr.M.D.Shinde, Advocate for the petitioner in WP No.3198/2021 and
for respondent in 4215/2020.

Mr.S.V.Natu, Advocate for the petitioner in WP No.4215/2020 and for
respondent in WP No.3198/2021.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 4, 2022

ORAL JUDGMENT :

1. The two writ petitions which assail the common order passed by the learned Industrial Court at Latur on 30/11/2019, are heard collectively and are disposed of by this common order.

2. Rule. rule made returnable forthwith. Heard by consent.

The petitioner in WP No.3198/2021 was appointed as an "Attendant" with the respondent and he came to be placed under suspension on 16/08/2014 contemplating a domestic enquiry. While the enquiry was not yet concluded, he apprehended his termination and alleging that the enquiry officer has denied him adequate opportunity, which may allow the Management to terminate his services, the petitioner filed Complaint (ULP) No.14/2015 before the Labour Court where he sought a declaration that the enquiry proceedings are illegal and the oral order communicated to him, terminating his services is unsustainable. Seeking a declaration that the employer has engaged in unfair labour practice, he prayed for his continuation in the service.

In this complaint, he moved an interim application (Exh.U-2)

where the interim order came to be passed in his favour, and the respondent was directed to maintain status-quo till the next date that is 02/03/2015 and the interim order came to be confirmed on 31/10/2018 and is in operation as on date in Complaint (ULP) No.14/2015, when the matter was expedited.

2. The petitioner, approached the Industrial Court, once again by filing Complaint (ULP) No.95/2018 u/s 28 r/w Item No.5, 9, 10 of Schedule IV of the MRTU and PULP Act. This time, he came up with a grievance that the respondents are not paying subsistence allowance to him as per rules, though he is entitled for full wages, the subsistence allowance paid to him is less than his entitlement. He alleged that he was getting wages of Rs.11,300/- per month on the date on which he was put under suspension but he was paid subsistence allowance @ 7,945/- per month. He, therefore, claimed the wages of Rs.17,700/- per month and the unpaid subsistence allowance alongwith 20 % interest.

3. The Industrial Court determined his grievance by conducting a full fledged adjudication and the claim of the complainant that he is

entitled to 100% subsistence allowance till adjudication of complaint ULP NO.14/2015 was declined. By specifically referring to the Industrial Employment (Standing Orders) Amendment Rules, 1977 and particularly clause 5-A, as well as Section 10-A, which came to be inserted in the Industrial Employment (Standing orders) Act, 1946, which determine the manner in which the subsistence allowance shall be paid and which contemplate that 50% of wages shall be paid during the period of suspension for first 90 days and thereafter 75% of wages for the remaining period of suspension, if the delay in completion of the disciplinary proceeding against such workman is not directly attributed to his conduct. Taking note of the fact that the Labour Court has passed an order of maintaining status-quo and as such the enquiry is stalled at the stage of report of the Enquiry Officer and these orders have not been challenged by the respondents, it is held that the subsistence allowance paid to the complainant @ 50% is not justiciable and he is held entitled for 75% of the subsistence allowance. Resultantly, the subsistence allowance payable to the complainant is revised and the respondents are directed to pay him the difference of subsistence allowance @ 1,918/- per month for the period from March 2015 to November 2019 and further from December 2019 till the

disposal of the complaint, his subsistence allowance has been revised to 75% and it directed to be paid @ Rs.7,945/- per month.

4. The above order passed by the Industrial Court is challenged by the petitioner Employee since he claim that he is entitled for 100% salary, since the enquiry is not completed in period of 6 (six) months.

This order is also challenged by the respondent Employer by filing WP No.4215/2020 and it is argued by the learned Advocate Mr.Natu.

The grievance raised by the employer in the writ petition is about revision of the subsistence allowance @ 75%, relying upon Section 10-A of the Industrial Employment (Standard Orders) Act, 1946. The learned Advocate Mr.Natu submits that the said Section 10-A contemplate the payment of subsistence allowance @ 75% of the wages for the remaining period of suspension coming to an end after the first 90 days of suspension, provided that the delay in completion of disciplinary proceeding against such workman is not directly attributable to his conduct.

5. It is necessary to make a reference to Section 10-A of the

Industrial Standing Orders, which reads thus :-

"10-A - Payment of subsistence allowance.

(1) Where any workman is suspended by the employer pending investigation or enquiry into complaints or charges of misconduct against him, the employer shall pay to such workmen subsistence allowance -

(a) at the rate of fifty percent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy five percent of such wages for remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situated and the labour court to which the dispute is so referred shall, after giving the parties an opportunity of being heard,

decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State."

It is pertinent to note that by fixing the amount to paid as subsistence allowance pending an enquiry against a workman, the subsistence allowance payable is 50% of the wages for the first 90 days and it is liable to be revised to 75% if the delay in completion of the disciplinary proceeding against such workman is not directly attributable to his conduct.

6. The impugned order grant the relief in favour of the complainant with the following reasoning :-

"18. The observations made by Hon'ble Bombay High Court in the abovesaid case law are squarely applicable to the case in hand. The respondents paid subsistence allowance to the complainant @ 75% i.e.

Rs.7,945/- per month after first 90 days of enquiry. Thereafter the respondents paid subsistence allowance @ 50% i.e. Rs.6,027/- per month from March 2015. During cross examination the complainant has admitted these facts. In pursuance of the observations made by Hon'ble Bombay High Court as above, the complainant is entitled for subsistence allowance @ 75% during the pendency of enquiry after first 90 days. The respondents failed to demonstrate that the complainant employed delay tactics to prolong enquiry or pendency of litigation. The learned Labour Court has passed the order of maintaining status-quo. Thus the enquiry is stalled at the stage of report of enquiry officer. The respondents have chosen not to challenge the said orders. The respondents have continued to pay subsistence allowance to the complainant @ 50%. Thus the respondents admitted that the complainant continues to be under suspension till today. Under such circumstances the respondents indulged in unfair labour practices by reducing the subsistence allowance from 75% to 50%. Hence the issue Nos. 1 and 2 are answered accordingly."

7. Perusal of the above reasoning, would reveal that on two counts, the subsistence allowance has been enhanced from 50% to 75% ; the

first being the respondents have filed to demonstrate that the complainant employee has adopted delaying tactics, to prolong the enquiry or pendency of litigation and secondly that the respondents have not challenged the orders passed by the Labour Court in Complaint (ULP) No.14/2015 directing maintenance of status quo, at the stage of submission of the enquiry report.

The aforesaid reasoning of the learned Judge is premised on two counts, firstly, it is the complainant, who has filed complaint (ULP) No.14/2015 on an apprehension that the respondents have orally informed him that they are going to terminate his services. It is pertinent to note that if enquiry proceedings are contemplated and are in progress against the workman, it cannot be predicted or contemplated that a particular punishment will be imposed unless and until, the enquiry report is accepted by the Disciplinary Authority and the Disciplinary Authority finally express its opinion upon the same by affording opportunity to the workman, as to why a particular penalty should not be imposed upon him. A complaint filed by the complainant is therefore premature, when he apprehended his termination pursuant to the enquiry and on his own he approached the Court and his request was acceded to by the Labour Court in Complaint

(ULP) No.14/2015, where the respondent employer is directed to maintain status-quo as regards the services of the employee.

8. It is pertinent to note that from 10/02/2015, the enquiry proceedings against the employee did not proceed further. Seven years have passed, but the enquiry is not completed and the employee continue in service in the wake of the status-quo order. The employer did not challenge the order passed below Exh.U-2 in Complaint (ULP) No.14/2015 and has not completed the enquiry also. Thus in literal sense, everything has been held in a position of status-quo. Nothing prevented the employer from concluding the enquiry proceedings, though the enquiry report was tendered before the Court and instead the employer reduced the salary of the employee from Rs.7,945/- to Rs.5,927/-, which constrained him to institute Criminal Complaint vide ULP No.13/2015.

9. The Labour Court has granted an order of status-quo in Complaint (ULP) No.14/2015 and though it is under the misconception of the petitioner/ complainant that he is likely to be terminated upon culmination of the proceedings, the Labour Court has granted status-

quo of his employment. On completion of the enquiry proceedings, the enquiry report is to be made available to the complainant and an opportunity is to be afforded to him to deal with the findings rendered in the enquiry report and upon the opportunity being afforded to him to refute the findings, the Disciplinary Authority is bound to take action. Hurriedly, carrying an impression that his services are likely to be terminated, it is the petitioner / complainant, who had approached the Labour Court which granted status-quo of his employment and the Management is awaiting the outcome of the Complaint (ULP) without any embargo being imposed on it to conclude the enquiry proceedings.

In the aforesaid circumstances, the clause contained in Rule 10-A which contemplate that the subsistence allowance shall be revised to 75%, if the employee is not found to be at fault and the delay can not be attributed to him, I do not think that the learned Industrial Court, while passing the impugned order, has erred in revising the subsistence allowance from 50% to 75%. However, the 75% subsistence allowance is directed to be paid from December 2019 till disposal of the Complaint (ULP) No.14/2015, which is liable to be paid to the employee only till the completion of the enquiry proceedings.

In these circumstances, with a liberty being granted to the

employer to conclude the enquiry initiated against the employee and by granting liberty to the employer to make a request to the Labour Court at Latur to permit them to implement the decision in the enquiry proceedings , which may include an action of termination, the enquiry is directed to be completed within a period of two months. Till the conclusion of the enquiry proceedings, the Management shall pay subsistence allowance to the employee as directed under the impugned order. Upon conclusion of the enquiry proceedings, the Management shall bring its decision to the notice of the Labour Court, and the said Court shall permit an action to be initiated in terms of the enquiry proceedings, as it has erred in granting status-quo, only on an apprehension of termination, prematurely, though the employer has followed the route of departmental enquiry. The findings of the enquiry officer and ultimately the decision can be assailed by the employee, subsequent to it being taken.

I need not say anything more, since the said order of the Labour Court is not under challenge before me.

Necessarily, upholding the impugned order, both the writ petitions are dismissed.

(BHARATI H. DANGRE, J.)