

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 6235 OF 2022

**BRIHAN MUMBAI ELECTRIC SUPPLY
AND TRANSPORT UNDERTAKING**

....PETITIONER

V/s.

**MR. NARESH BHIMRAO WAIFALKAR
AND ORS**

.....RESPONDENTS

Mr. Arsh Misra i/b M. V. Kini & Co. for the Petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: JUNE 6, 2022.

P.C.:

- 1) Heard.
- 2) Counsel for the Petitioner while questioning the order of the Industrial Court passed on 23/03/2021 thereby directing the Petitioner to pay terminal benefits to the Respondents with interest at the rate of 9% per annum has raised following contentions.
- 3) That the issue as regards entitlement of the Respondents to terminal benefits is subjudice before the Industrial Court in Reference (IT) No. 31/2019 which is till date pending adjudication.

4) In this background, Drawing support from Section 59 of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (Hereinafter referred to as 'the Act' for the sake of brevity) the contentions are, order impugned in this Petition thereby directing grant of terminal benefits is required to be interfered with as same is not sustainable.

5) Alternate contentions of the counsel for the Petitioner are, amount of terminal benefits is directed to be paid with interest at the rate of 9% per annum which in other similar circumstances is reduced to 6% and as such, this Court needs to cause interference in the Judgment impugned to that extent.

6) I have considered said submissions.

7) Petitioner-employer by virtue of office orders dated 6th May, 1991, 20th January, 1992 and 18th November, 1993 issued administrative direction/instruction to clear terminal benefits within 15 days from the date of retirement of the employee of the Petitioner-Undertaking. Apart from above, Memorandum of Understanding was entered into on 11th June, 2019 between the Petitioner and representative Union wherein it was agreed to pay retirement benefits before September, 2019 to the

employees who stood retired before the said date. Admittedly Respondents-employees stood retired from the year 2016. Statement by virtue of aforesaid MOU is binding on the Petitioner-Employer.

8) Reliance placed by the counsel for the Petitioner on Section 59 of the Act, in my opinion is wholly misplaced in the facts and circumstances in the case in hand. Respondents-employee approached Industrial Court after their retirement seeking declaration that Petitioner is engaged in unfair labour practice under Item 5 & 9 of the Schedule IV of the Act.

9) Dues to which Respondent-employees were entitled were not paid without any legal basis or convincing reasons. The Industrial Court accordingly appreciated the stand of the Petitioner and proceeded to record finding that Petitioners are engaged in unfair labour practice in the matter of not disbursing the terminal dues of the Respondents-employees. As such, it is ordered by the Tribunal that terminal benefits shall carry 9% interest.

10) In this backdrop, claim that Reference is pending at the behest of recognized Union will be hardly of any significance qua the issue raised in the present Petition as the Petitioner themselves have failed

to honour the settlement/MOU referred above.

11) Fact remains that amount of interest as has been ordered to be paid cannot be said to be penal, exorbitant or on higher side so as to cause financial loss to the statutory corporation.

12) Fact remains that even before filing of this Petition, amount of terminal benefits to which Respondent-employees were entitled was not deposited. What is claimed to be deposited is an amount of Rs. 17,48,269/- which is not in complete satisfaction of the claim of Respondents that too after the impugned order was passed.

13) The record and proceedings depict that Industrial Court has passed an order below Exhibit-U-2 directing the Petitioner to deposit legal dues of the Respondents-employees before the Industrial court which the Petitioner have failed to honour. Apart from above, Application-Exhibit-U-8 was moved by the Respondents for allowing complaint of unfair labour practice with costs which was not objected to by the Petitioner by filing their reply. The only defence that the Petitioner have come out with before the Industrial Court was that of denial of employer-employee relationship without any lawful justification so as to avoid their financial liability. Under these

circumstances, Industrial Court was justified in awarding interest at the rate of 9%.

14) Merely because Petitioner-Corporation is in bad financial position that by itself will not absolve the liability to pay terminal benefits to its employees to which they are entitled based on statutory provisions.

15) In the aforesaid background, reliance placed on Section 59 of the Act will be of hardly of any significance or assistance in the matter.

16) As regards award of interest at the rate of 9% per annum is concerned, same is based on statutory provisions. If the Petitioner had any intentions to settle the issue with Respondents by offering interest at the rate of 6% per annum, it was open for them to do so during the pendency of the proceedings before the Industrial Court. The award of interest @ 6% in other matters is by consent of the parties.

17) In this background, I hardly see any ground which warrants interference in extraordinary jurisdiction of this Court.

18) Petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]