



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13072 OF 2019**

Shramjivi Nagari Sahakari Patsanstha Maryadit ... Petitioner
versus
Santosh Arjun Kamble ... Respondent

Mr. Pavan Patil with Mr. Sanchit Chavan, for Petitioner.
Mr. Avinash Belge, for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 1 AUGUST 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, heard finally.

2. The challenge in this Petition is to a judgment and order dated 20 July 2019 passed by the learned Member, Industrial Court at Pune in Complaint (ULP) No.192 of 2014 whereby and whereunder it was declared that the Petitioner - Respondent therein had engaged in unfair labour practice and has been directed to pay full wages from 4 January 2012 to 29 May 2014 during which period the Respondent-complainant was placed under suspension without payment of any subsistence allowance.

3. The background facts can be stated in brief as under :

3.1 On 20 May 1999, the Respondent came to be appointed with the Petitioner Society, initially as a Peon. Subsequently, the Respondent was promoted as

a Clerk. On 11 October 2011, the Respondent was served with a Show Cause Notice alleging misconduct by engaging in exchange of abusive words with the co-employees. The Respondent gave reply to the said Notice on 13 October 2011. However, the Reply having been found to be unsatisfactory, the Respondent was placed under suspension by an order dated 3 January 2012 with effect from 4 January 2012.

3.2 The Respondent approached the Industrial Court with a complaint of unfair labour practice under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the Act, 1971) as the Petitioner neither paid the subsistence allowance nor served the Respondent with the charge-sheet with a view to hold domestic enquiry. On the contrary, the Respondent was served with a notice that he had been absent unauthorizedly from 27 November 2013. Eventually, the Respondent was allowed to join the service on 29 May 2014. Yet, the subsistence allowance was not paid for the suspension period. Thus, the complaint.

4. The Petitioner resisted the complaint by filing written statement. It was the stand of the Petitioner that in reply to the show cause notice, the Respondent had admitted the charge of misconduct levelled against him and requested Shri Popat Mane, the then Director of the Petitioner (who came to be examined as employer's witness) not to institute the departmental enquiry as it would mar his career, and, instead the Respondent would resign on his own, and, therefore, no further

proceedings in the departmental enquiry were initiated.

5. It was further contended on behalf of the Petitioner that at the instance of the Respondent, the suspension was revoked vide communication dated 1st August 2012 and the Respondent was called upon to resume the duty. The Respondent avoided to accept the service of such communications. Eventually, after repeated communications to resume duty, the Respondent joined the duty on 29 May 2014 and resigned from service with effect from 15 January 2016. An endeavour was also made to contend that the subsistence allowance was offered to the Respondent from time to time, but the latter refused to accept the same, and, thus, there was no unfair labour practice on the part of the Petitioner.

6. The learned Member, Industrial Court at Pune, after appraisal of the pleadings and the evidence of the Complainant and Mr. Popat Mane, for the employer, and the documents tendered for his perusal, was persuaded to allow the complaint holding, inter alia, that the Petitioner having suspended the Respondent and not instituted the disciplinary enquiry by serving charge-sheet and paid subsistence allowance for the period for which the Petitioner was placed under suspension, indulged in unfair labour practice under Item 9 of the Act, 1971. The Petitioner was, thus, directed to pay full wages for the said period.

7. Being aggrieved, the Petitioner – employer has preferred this petition.

8. I have heard Mr. Pavan Patil, learned Counsel for the Petitioner and Mr.

Avinash Belge, learned Counsel for the Respondent at some length. The learned Counsel took the Court through the pleadings and the original record and proceeding which had been called.

9. Mr. Patil, learned Counsel for the Petitioner, submitted that the learned Member, Industrial Court misdirected himself in not at all advertng to the specific defence of the employer that on account of the understanding arrived at between the Petitioner and the Respondent, and that too at the instance of the Respondent, that a formal enquiry be not instituted against the Respondent and the latter would resign on his own, no further action was taken. The Petitioner, according to Mr. Patil, can be said to have satisfactory explained the circumstances in which the charge-sheet was not served on the Respondent. Therefore, the Industrial Court could not have directed payment of full wages for the period of suspension, especially when there was material to show that the Petitioner had revoked the suspension and called upon the Respondent to resume the duty, time and again. The order of payment of full wages on the premise that the Petitioner indulged in unfair labour practice in not paying subsistence allowance is, in the circumstances of the case, legally unsustainable, urged Mr. Patil.

10. In opposition to this, Mr. Belge, learned Counsel for the Respondent, would urge that the learned Member, Industrial Court was fully justified in passing the impugned order as the explanation sought to be offered can only be said to be a

subterfuge. In fact, the evidence of the Petitioner's witness – Mr. Popat Mane, erodes the veracity of the Petitioner's claim. Having neither instituted the appropriate disciplinary proceedings, nor paid the subsistence allowance despite placing the Respondent under suspension, the Petitioner cannot be absolved of the liability to pay the full wages for the entire period of suspension, as the said action of the employer was nothing but an unfair labour practice of highest order, submitted Mr. Belge.

11. To start with, it is imperative to note there is not much controversy on facts. First, the then jural relationship is not in dispute. Second, issue of show cause notice dated 11 October 2011 and the reply thereto by the Respondent on 13 October 2011, are not put in contest. Third, the fact that the Respondent was placed under suspension vide order dated 3 January 2012 and remained under suspension till 29 May 2014, are also incontestable. Fourth, indisputably, during the said suspension period, no steps were taken to conduct the domestic enquiry, in as much as no charge-sheet was served on the Respondent. Fifth, though an endeavour had been made to show before the Industrial Court that the Respondent refused to accept the subsistence allowance, albeit post resumption of duty, yet the fact that the subsistence allowance was not paid to the Respondent during the period of suspension, appears to be, by and large, incontrovertible.

12. In the backdrop of the aforesaid facts, the challenge to the impugned order mounted on behalf of the Petitioner deserves to be appreciated. Mr. Patil made

an earnest endeavour to draw home the point that there was a verbal understanding between the Petitioner and the Respondent not to precipitate the things on account of the proximity of the Respondent to Mr. Mane, and, therefore, no charge-sheet was served on the Respondent. In contrast, the order of suspension came to be revoked and the Respondent was called upon to resume the duty, which latter failed to do.

13. The learned Member, Industrial Court, was not prepared to readily accede to the aforesaid contention, and, in my view, rightly. It defies comprehension that having suspended an employee for almost two and half years, the employer would refrain from instituting disciplinary action purportedly at the instance of the employee. The defence is too good to be believed, and, was rightly discarded by the learned Member, Industrial Court. Any other view, would give a long leash to an employer to place the employee under suspension, for any length of time, and then turn around and take a spacious plea that at the instance of the employee himself, the enquiry was not taken to its logical end. The proposition is fraught with infirmities and has the propensity to cause grave prejudice to the employee.

14. On facts, as the learned Member, Industrial Court noted, even the said stand could not be substantiated. Mr. Popat Mane, the employer's witness to whom the Respondent had allegedly requested not to initiate departmental enquiry, disowned the Petitioner's case. He conceded that in respect of the incident dated 5 October 2011, neither charge-sheet was served on the Respondent, nor subsistence

allowance was paid to the Respondent from the date of suspension till the Respondent was allowed to resume the duty.

15. It would be contextually relevant to note that in the cross-examination of the Respondent, an endeavour was made to draw home the point that after the Respondent resumed the duty, the subsistence allowance was offered in cash. The suggestion was stoutly denied. The Respondent asserted that a cheque drawn for Rs.18,000/- was offered, but he declined to accept the same as the subsistence allowance for 29 months was not paid to him.

16. In the backdrop of the aforesaid facts and evidence, the learned Member, Industrial Court was fully justified in returning a finding that by not paying subsistence allowance for the period for which the Respondent was placed under suspension, and, that too without instituting any disciplinary proceeding, the employer engaged in unfair labour practice. In a case of this nature, where there is flagrant violation of the elementary principle of domestic enquiry, there is no reason to deny full wages to the employee. The Court also finds that neither it was a pleaded case of the Petitioner nor any endeavour was made to establish that the Respondent was gainfully employed during the said period. In such circumstances, the non-payment of the subsistence allowance and the non-initiation of the domestic enquiry was at the own peril of the Petitioner. A conclusion can be legitimately drawn that the Respondent was deprived of the wages for the said period wholly unjustifiably.

17. The conspectus of aforesaid consideration is that no interference is warranted in the impugned order in exercise of extra-ordinary writ jurisdiction.

18. Hence, the following order :

ORDER

- (i) The Writ Petition stands dismissed.
- (ii) Rule discharged.
- (iii) No order as to costs.
- (iv) R and P be sent back.

(N.J.JAMADAR, J.)