Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.-2522 OF 2021

Lintas India Pvt Ltd ...Petitioner

Vs.

Bharatiya Kamgar Sena Praphulban Soc. and Ors ...Respondents

Mr. Anand Pai a/w Adv. Sakshi Sharma a/w Adv. Sheroy M.Bhodhanwalla a/w Adv. Burjis Doctor i/b M.s. Bhodhanwalla and Co., Advocates and Solicitors, for Petitioner.

Mr. Kiran Bapat, Senior Counsel i/b Mr. Avinash Hari Fatangare, for Respondents.

CORAM:- N. J. JAMADAR, J.
RESERVED ON:- 13th MARCH, 2023
PRONOUNCED ON:- 23rd MARCH, 2023

JUDGMENT:-

1) By this Petition under Article 226 of the Constitution of India, the petitioner assails the legality, propriety and correctness of an order passed by the learned Member Industrial Court, Mumbai in Recovery Application (ULP)

No.04 of 2018 in complaint (ULP) No.1161 of 1989, whereby and whereunder the Recovery Application came to be partly allowed and the petitioner was directed to pay diverse amount to respondent Nos. 2, 4, 6 and deceased respondent Nos. 3 and 5 – the applicants therein, along with interest at the rate of 10% from 24th December, 1999, the date of judgment in complaint (ULP) No. 1161 of 1989.

2) For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they were arrayed before the learned Member Industrial Court in Recovery Application (ULP) No. 04 of 2018.

3) Bharatiya Kamgar Sena – the applicant No. 1 claimed to have right to represent the employees of the respondent No. 1- company. The applicant Nos. 2 to 6 were working with the respondent No.1-company for several years without the benefit of permanency. The applicant No. 1 filed a complaint being complaint (ULP) No.1161 of 1989, on behalf of the applicant Nos. 2 to 6 and two other workmen alleging Unfair Labour Practices within the meaning of items 1(a),1(b) of Schedule-II and 3, 5, 6 and 9 of

Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act ("the Act, 1971").

4) By judgment and order dated 24th December, 1999, the learned Member Industrial Court, Mumbai was persuaded to allow the said complaint. It was declared that the respondent Nos. 1 to 5 therein, committed the unfair labour practices under Items 3, 5, 6 and 9 of the Schedule-IV of the Act, 1971 and were thus directed to desist from continuing the same. Respondent Nos. 1 to 4 were also directed to provide the service conditions and benefits of permanent employees to the workmen, in respect of whom complaint was filed, taking into consideration their initial appointment. The respondent Nos. 1 to 4 were also directed to pay the arrears of those benefits/wages within two months from the date of the said order.

5) The respondents challenged aforesaid judgment and order in this Court in Writ Petition No. 262 of 2000. A learned Single Judge of this Court was persuaded to dismiss the Petition by a judgment and order dated 22nd

March, 2000. The respondent No. 1 carried the matter in Appeal before the Division Bench in Appeal No. 408 of 2000. By a judgment and order dated 9th December, 2016, the Division Bench was persuaded to dismiss the Appeal. The Special Leave Petition, being SLP (c) No (s). 12568 of 2017, met the same fate.

6) Upon alleged failure to implement the judgment and order of learned Member Industrial Court in complaint (ULP) No. 1161 of 1989, initially the applicants filed a complaint, being Miscellaneous Criminal Complaint (ULP) No. 42 of 2017 under the provisions of Section 48 (1) of the Act, 1971. The learned Judge Labour Court dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973, holding that no sufficient ground was made out to proceed against the accused – respondent Nos. 1 to 5.

7) Thereupon the applicants preferred an application under Section 50 of the Act, 1971, for recovery of the amount ordered to be paid by the Industrial Court in complaint (ULP) No.1161 of 1989. The respondent No. 1-

company resisted the application by filing written statement.

8) The learned Member, Industrial Court after appraisal of the pleadings and the evidence adduced by the applicants and respondent No. 1 and the documents tendered for his perusal, was persuaded to partly allow the application holding, *inter alia*, that the applicants were entitled to the arrears of the wages and benefits from the date of their employment till the date of their termination, and that since the respondent No. 1-company unjustifiably withheld those wages and benefits, it was liable to pay the arrears with interest at the rate of 10% p.a.

9) Being aggrieved, the respondent No. 1-company has invoked the writ jurisdiction of this Court.

10) I have heard Mr. Anand Pai, the learned Counsel for the petitioner, and Mr. Kiran Bapat, the learned Senior Counsel for the respondents.

11) The learned Counsel took the Court through the judgments and orders passed by the Industrial Court and this Court leading to the application under Section 50 of

the Act, 1971, for the recovery of the amount, the evidence led by the parties therein and the impugned judgment.

12) Mr. Pai, mounted a multi-pronged challenge to the impugned judgment. Firstly, Mr. Pai would urge, with a decree vehemence that, the learned Member Industrial court fell in error in determining the entitlement of the applicant Nos. 2 to 6 in contradistinction to the exercise of recovery of due amount under Section 50 of the Act, 1971. Inviting the attention of the Court to paragraph No. 30 of the impugned judgment where the learned Member Industrial Court professed to determine the entitlement, Mr. Pai would urge that on this singular ground the impugned judgment warrants interference.

13) Secondly, the Industrial Court again committed an error in not properly appreciating the evidence adduced by the parties. Since no credible material was placed on record to show the amount, which was due to the applicant Nos. 2 to 6, their entitlement could have been decided only on the basis of minimum wages. A categorical statement was made by the witness examined on behalf of the

respondent No. 1 that the wages which were offered by the respondent No. 1 were computed on the basis of minimum wages. The learned Member Industrial Court unjustifiably discarded the evidence and determined the due amount on the basis of the calculation sheets furnished by the applicants for which there was no support, submitted Mr. Pai.

14) Thirdly, the learned Member Industrial Court to lend support to its findings relied upon a judgment of a learned Single Judge of this Court in case of **V. Ramanathan, General Secretary, Hindustan Lever Mazdoor Sabha V/s. Hindustan Lever Ltd. & Anr**[1]**,** which was overruled by a Division Bench of this Court in the case of **Ultra Drytech Engineering Ltd and Anr. V/s. Vaibhav Laxman Suravkar and anr**[2] .

15) Lastly, according to Mr. Pai, the learned Member Industrial Court did not properly appreciate the entitlement of the applicant Nos. 2 to 6 for interest on due amount and went on to award interest at an exorbitant rate

1 2002 (92) FLR 265-Bom. H.C.

2 2005 (2)L.L.N. 171

of 10% p.a. On this count, the impugned order surely requires to be interfered with, in exercise of writ jurisdiction, urged Mr. Pai.

16) In opposition to this, Mr. Bapat stoutly submitted that none of the grounds sought to be pressed into service on behalf of the petitioner merits countenance. Amplifying the submission, Mr. Bapat would urge that the learned Member Industrial Court was within his rights in calculating the quantum of due amount. By a *catena* of decisions, according to Mr. Bapat, it is well neigh recognized that arithmetical calculation of the due amount is within the province of the Court exercising jurisdiction under Section 50 of the Act, 1971.

17) Mr. Bapat submitted the very judgment in the case of **Ultra Drytech Engineering** (supra) relied upon by the petitioner, in terms, rules that the Court is empowered to direct recovery of the due amount post arithmetical calculation. Mr. Bapat submitted that the learned Member Industrial Court has arrived at a justifiable conclusion on the basis of the appraisal of the material and evidence

adduced before the Court. The respondent No. 1 made no efforts to place on record documents to show the wages paid to similarly circumstanced workmen. In the circumstances, the learned Member Industrial Court was justified in directing the recovery of the due amount calculated on the basis of the wages paid to the co- workmen. Award of interest on due amount is a standard norm of recompense where an employee is deprived of legitimate wages. Therefore, no fault can be found with the impugned order awarding interest, urged Mr. Bapat.

18) To bolster up of this submission, Mr. Bapat placed reliance on a judgment of this Court in the case of **Dilip T. Khandar Vs. State of Maharashtra and Others**[3]**,** wherein this Court had directed payment of interest on the due amount which was ordered to be recovered under Section 50 of the Act, 1971.

19) The aforesaid submissions now fall for consideration.

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3 2006 (2) Mh. L.J. 781

20) First and foremost, the scope of the jurisdiction exercised by the Industrial Court under Section 50 of the Act, 1971. Rival submissions, as noted above, were canvassed in respect of the contours of the power to order recovery under Section 50 of Act, 1971. It may thus be expedient to note the text of Section 50 of the Act, 1971. It reads as under:-

> "...**50. Recovery of money due from employer**:- Where any money is due to an employee from an employer under an order passed by the Court under Chapter VI, the employee himself or any other person authorized by him in writing in this behalf, or in the case of death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the Court for the recovery of money due to him, an if the Court is satisfied that any money is so due,l it shall issue a certificate for that amount to the Collector, who shall, proceed to recover the same in the same manner as an arrear of land revenue:
>
> Provided that, every such application shall be made within one year from the date of which the money became due to the employee from the employer.
>
> Provided further that, any such application may be entertained after the expiry of the said period of one year, if the Court is satisfied that the applicant had sufficient cause for not making the application within the said period.... "

21) From the phraseology of Section 50 of the Act, 1971, the following appear to be jurisdictional conditions for

issue of a certificate to the Collector for the recovery of the certificated amount as an arrear of land revenue:

(1) Money is due to an employee from an employer under an order passed by the Court under Chapter VI, which subsumes provisions containing unfair labour practices.

(2) An employee or an Authorized person or his assignee or heirs, in case of death of the employee, ought to make an application to the Court for the recovery of money due to the employee.

(3) The Court ought to be satisfied that the money is so due.

If aforesaid conditions are satisfied, then notwithstanding any other mode of recovery, the employee can approach the Court to grant a certificate of recovery.

22) Evidently, the linchpin of the provision is "money is due.... under an order of the Court". It is only when the Court exercising jurisdiction under Section 50 of the Act, 1971, is satisfied that money is due under the order of the

Court and it has not been paid, it would be justified in directing its recovery by the Collector as an arrear of land revenue. What is the import of the expression "money is due.... under an order passed by the Court" ?

23) Mr. Pai strenuously submitted the said expression has been judicially construed to mean the amount which has already been determined by the Court. The Court exercising jurisdiction under Section 50 of Act, 1971, can not resort to determination of "entitlement" of an employee and must restrict itself to recovery of the money which has finally been adjudged by the Court.

24) To lend support to this submission, Mr. Pai placed a strong reliance on the judgment of this Court in the case of **Mahatma Phule Krishi Vidyapeeth, Rahuri, Dist. Ahmednagar and Another Vs. Ahmednagar Zilla Shetmajoor Union, Trade Union Centre, Shrirampur and Another**[4]**,** wherein a learned Single Judge after adverting to the judgment of this Court in the cases of **V. Ramanathan** (supra) and **Ultra Drytech** (supra) enunciated the legal

4 2017 (4) Mh. L.J. 426

position that an application for recovery of money under Section 50 can be entertained only after the claimant's entitlement is determined finally by some authority. The Court, under Section 50, cannot resort to an adjudicatory process in the form of a complete trial and investigation to determine whether the claimant was basically entitled to the claim and then decide the amount of arrears of dues not paid by the employer. In short, the amount claimed must be due and payable and the jurisdiction of the Court under Section 50 cannot be expanded to permit a complete trial of the matter as if it is an original proceeding.

25) In the aforesaid case, it was further observed that the disputed claims like the difference in pay scales, entitlement to leave encashment, bonus, interest, dress allowance etc., which were claimed in the said case, were beyond the ambit of the jurisdiction of the Court exercising power under Section 50 of the Act, 1971.

26) A Division Bench of this Court in the case of **Ultra Drytech** (supra) expounded the scope of Section 50 of the Act, 1971, in the context of the law enunciated by the

Supreme Court in relation to Section 33-C (1) of the Industrial Disputes Act, 1947 ("the I.D Act"), which was held to be *pari materia* with the provisions contained in Section 50 of the Act, 1971.

27) To have a clear understanding of the nature of the jurisdiction exercised by the Court under Section 33C of the I.D. Act, it may be advantageous to note the provisions contained in Section 33-C (1) and (2), which read as under:-

> " .....**33C. Recovery of money due from an employer**:- (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:
>
> Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:
>
> Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.
>
> (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such

> benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government;[1][within a period not exceeding three months]
>
> [Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing extend such period by such further period as he may think fit.]"…….

28) Comparing and contrasting the provisions contained in Section 33 C(1) of I.D. Act and Section 50 of the Act, 1971 (extracted above) would indicate that the provisions are *pari materia*. Under Section 33 C(1) money ought to be due under a settlement or an award or under the provisions of Chapter V-A or V-B of the I.D. Act. Whereas under Section 50 of the Act, 1971, the money ought to be due under an order passed by the Court under Chapter VI of the Act, 1971. Undoubtedly, the authority which is empowered to grant recovery certificate differs under both the enactments but the essential conditions remain the same.

29) It would be profitable, at this juncture, to refer to a Constitution Bench judgment of the Supreme Court in the case of **Kays Construction Co.(Private) Ltd Vs. The State of**

U.P. and Others[5], wherein in the context of the provisions of Section 6-H, of U.P. Industrial Disputes Act, 1947, which were found to be *pari materia* with Section 33 C of the I.D. Act, the Supreme Court exposited the distinction between Sub Section (1) and (2) of Section 33 C, especially the difference in the terms "money due" used in Sub Section (1)" and "benefit which is capable of being computed in terms of money" used in sub Section (2) of Section 33 C.

30) The observations in paragraph 7 are instructive and, hence, extracted below:-

> 7. That there is some difference between the two sub-sections is obvious enough. It arises from the fact that the benefit contemplated in the second sub-section is not "money due" but some advantage or perquisite which can be reckoned in terms of money. The Divisional Bench has given apt examples of benefits which are computable in terms of money, but till so commuted are not "money due". For instance, loss of the benefit of free quarters is not loss of "money due" though such loss can be reckoned in terms of money by inquiry and equation. The contrast between ,'money due" on the one hand and a "benefit" which is not "money due" but which can become so after the money equivalent is determined on the other, marks out the areas of the operation of the two sub-sections. If the word "benefit" were taken to cover a case of mere arithmetical calculation of wages, the first sub- section would hardly have any play. Every case of calculation, however, simple, would have to

5 AIR 1965 SC 1488

> go first before a Tribunal. In our judgment, a case such as the present, where the money due is back wages for the period of unemployment is covered by the first sub-section and not the second. No doubt some calculation enters the determination of the amount for which the certificate will eventually issue but this calculation is not of the type mentioned in the second sub-section and cannot be made to fit in the elaborate phrase "benefit which is capable of being computed in terms of money". The contrast in the two sub-sections between "money due" under the first sub-section and the necessity of reckoning the benefit in terms of money before the benefit becomes "money due" under the second sub-section shows that mere arithmetical calculations of the).mount due are not required to be dealt with under the elaborate procedure of the second sub-section. The appellant no doubt conjured up a number of obstructions in the way of this simple calculation. These objections dealt with the "amount due" and they are being investigated because State Government must first satisfy itself that the amount claimed is in fact due. But the antithesis between "money due" and a "benefit which must be computed in terms of money" still remains, for the inquiry being made is not of the kind contemplated by the second sub-section but is one for the satisfaction of the State Government under the first sub-section. It is verification of the claim to money within the first sub-section and not determination in terms of money of the value of a benefit. The judgment of the Division Bench was thus right. The appeal fails and will be dismissed with costs. The companion appeal will also be dismissed but we make no order about costs in that appeal. Appeal dismissed."
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> (emphasis supplied)

31) The Supreme Court has in terms enunciated that where the money is due towards the backwages for the period of unemployment, it would be covered by sub

Section (1) and not sub Section (2). The Court proceeded to observe that some calculation to determine the amount for which the certificate has to be eventually issued is inevitable. However, such calculation does not partake the character of inquiry, which falls within the ambit of the elaborate phrase, "benefit which is capable of being computed in terms of money".

32) The aforesaid pronouncement was followed by another Constitution Bench Judgment in the case of **The Sawtram Ramprasad Mills Co. Ltd., Akola Vs. Baliram Ukandaji and another[6].** The observations in paragraph No. 5 again emphasize that a simple arithmetical calculation is permissible under Section 33 C (1) of the I.D. Act. They read as under:-

> "....5. The next contention is that the claim for lay off is not a claim for money due because calculations have to be made before the money due can be found. This argument has been considered on more than one occasion and it was rejected recently by this Court in Kays Construction Co. (P) Ltd. v. State of U.P. (C. AS.1108 and 1109 of 1963, D/26-11-1964:(AIR 1965 SC 1488). It is not essential that the claim which can be brought before the Government or its delegate under S. 33C(1) must always be for a predetermined sum. The Government or the Labour Court may satisfy itself

6 AIR 1966 SC 616

> about the exact amount and then take action under that section. In the present case the dates of lay off are known and each workmen will show to the Second Labour Court that he is qualified to receive compensation for lay off. That will be shown from the muster roll which the employer is required to maintain and it will then be a simple arithmetical calculation which, in our judgment, S.33C permits to be made. If there is any question whether there was lay off or not the Labour Court will decide it. This argument, therefore, has no force...."
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> (emphasis supplied)

33) Again in the case of **U.P. Electric Supply Co. Ltd Vs. R.K. Shukla and Another, Etc.**[7] , the distinction between sub Section (1) and (2) of Section 33 C of I.D. Act was illuminatingly postulated as under:-

> ".....14.....The legislative intention disclosed by Sections 33 C (1) and 33 -C (2) is fairly clear. Under Section 33-C(1) where any money is due to a workman from an employer under a settlement or an award or under the provisions of Ch. V-A, the workman himself, or any other person authorised by him in writing in that behalf, may make an application to the appropriate Government to recover of the money due to him. Where the workman who is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, applies in that behalf, the Labour Court may under Section 33-C(2) decide the questions arising as to the amount of money due or as to the amount at which such benefit shall be computed. Section 33-C(2) is wider than Section 33C(1). Matters which do not fall within the terms of Section 33C(1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of Section 33C(2). If the liability arises from an

7 1969 (2) SCC 400

> award, settlement or under the provisions of Ch. V-A, or by virtue of a statute or a scheme made thereunder, mere denial by the employer may not be sufficient to negative the claim under Section 33-C(2) before the Labour Court. Where however the right to retrenchment compensation which is the foundation of the claim is itself a matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon a reference, it would be straining the language of section 33C(2) to hold that the question whether there has been retrenchment may be decided by the, Labour Court. The power of the Labour Court is to compute the compensation claimed to be payable to the workmen on the footing that there has been retrenchment of the workmen. Where retrenchment is conceded, and the only matter in dispute is that by virtue of Section 25-FF no liability to pay compensation has arisen the Labour Court will be competent to decide the question. In such a case the question is one of computation and not of determination, of the conditions precedent to the accrual of liability. Where, however, the dispute is whether workmen have been retrenched and computation of the amount is subsidiary or incidental, in our judgment, the Labour Court will have no authority to trespass upon the powers of the Tribunal with which it is statutorily invested....."
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> (emphasis supplied)

34) In the case of **Ultra Drytech** (supra), the Division Bench referred to the aforesaid judgments to draw support to the following enunciation about the scope of Section 50 of the Act, 1971:-

> "....10....A mere perusal of the said section indicates that the said provisions are in fact summary provisions and provide for recovery of dues by an employee from the employer which are already due and payable and/or determined by the earlier proceedings.

> The provisions of Section 50 nowhere prescribe that the money which is due and payable should be the exact determined sum and that an Industrial Court cannot undertake an exercise of simple arithmetical calculation. Once the rights of the parties are already determined under a valid award or an order then for the execution of such determined rights the provisions of Section 50 of the MRTU and PULP Act, 1971 are enacted. The provisions of Section 50 of the said MRTU and PULP Act, 1971 are in *para materia* with the provisions of Section 33(C)(1) of the Industrial Disputes Act, 1947 which have been the subject matter of interpretation in various pronouncements of the Honourable Supreme Court of India……"
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> (emphasis supplied)

35) The aforesaid exposition of law thus indicates that the remit of power under Section 50 of Act, 1971, is not restricted to ordering recovery of predetermined amount. The Court is not precluded from arriving at what was the "money due" after resorting to arithmetical calculation. What the Court is certainly precluded from is determination of the entitlement to the money and not the computation of money. If it is a question of computation of money as distinct from determination of entitlement, the power under Section 50 of the Act, 1971, can be legitimately exercised. A constricted view of Section 50 of the Act, 1971, as was sought to be urged on behalf of the

petitioner, would defeat the legislative object of providing a swift remedy by empowering the Court to issue the recovery certificate and would drive the employees to protracted proceedings to recover the amount, entitlement to which has already been adjudicated by the Court under Chapter VI of the Act, 1971. Such construction is required to be avoided.

36) What is the nature of the jurisdiction exercised by the Industrial Court in the case at hand ? Would it fall within the ambit of computation and recovery or determination of entitlement? These are the questions which crop up for consideration. To explore an answer, of necessity, recourse to the order passed by Industrial Court in complaint (ULP) No.1161 of 1989, dated 24th December, 1999, becomes inevitable.

37) By the said order, the petitioner was directed to provide the service conditions and benefits of permanent employees to the workmen in the said complaint taking into consideration their initial appointment. The petitioner was also directed to pay the arrears of those

benefits/wages within two months from the date of the said order.

38) Mr. Pai would urge that the aforesaid order can not be construed as an order crystallizing the money, which became due and payable to the employees.

39) I am afraid to accede to this submission. There was a clear direction to the petitioner to extend the service conditions and benefits of permanent employees to respondent Nos. 2 to 6 and also pay the arrears of those benefits/wages. The money thus became due to respondent Nos. 2 to 6 under the said order. What remained to be determined was the quantum of the said benefits/wages, which is essentially a matter of computation.

40) Reverting to the impugned order, the learned Member Industrial Court has computed the amount due and payable to the respondent Nos. 2 to 6 on the basis of the benefits extended and wages drawn by similarly circumstanced employees. The said course, in the circumstances of the case, can not be said to be unjustifiable. It is pertinent to note that the learned

Member Industrial Court took care to cap the benefits/wages payable under the order dated 24th December, 1999 to 6th July, 2000, the day respondent Nos. 2 to 6 were terminated, a challenge to which is subjudice.

41) This leads me to second limb of the submissions of Mr. Pai.

42) It was urged that in any event the benefits/wages ought to have been computed on the basis of minimum wages. On the one hand, the respondent Nos. 2 to 6 did not produce any material of unimpeachable character to lend support to the calculation sheets tendered for the perusal of the Industrial Court and, on the other hand, the assertion of petitioner's witness that the amounts which were offered by the petitioner to respondent Nos. 2 to 6 were calculated on the basis of minimum wages went untraversed, submitted Mr. Pai.

43) The learned Member Industrial Court was of the view that it was incumbent upon the petitioner to place documents on record to show the wages paid to the similarly circumstanced employees. No material was placed

to show that the petitioner had paid a particular salary in a particular month. An attempt was made to wriggle out of the situation by asserting that since the matter was very old, no documents were available. The Industrial Court was not prepared to accede to this submission.

44) The approach of the learned Member Industrial Court can not be faulted at. In the given circumstances, the applicants adduced the evidence, which they were capable of, place on record the calculation sheets of the benefits extended and wages paid to similarly circumstanced employees. The applicants, thus, did do, what was within their power. If the petitioner intended to establish to the contrary, the petitioner ought to have brought credible material on record, as it was enjoined to maintain the muster roll and other documents which would have facilitated the computation of the amount due and payable under the order of the Court. Failure to bring such material on record was at the own peril of the petitioner.

45) Lastly, a feeble attempt was made on behalf of the petitioner to urge that the learned Member Industrial

Court could not have awarded interest on the due amount. The submission is required to be stated to be repelled. Interest on the delayed payment of wages due to an employee is a well recognized mode of compensating the employee, who has been kept away from legitimate dues.

46) In the case of **Dilip T. Khandar** (supra), a Division Bench of this Court awarded interest on the amount, for which a recovery certificate was granted under Section 50 of the Act, 1971. The Division Bench had drawn support from provisions contained in Section 267 (1) of the Maharashtra Land Revenue Code, 1966, under which the amount is to be recovered as an arrear of land revenue. The Court thus awarded interest on the amount due under the recovery certificate at the rate of 6% p.a.

47) An issue which merits consideration is the rate at which the interest is awarded by the Industrial Court. Interest has been ordered to be paid from the date of the judgment in complaint (ULP) No. 1161 of 1989 till the date of realisation. The said period exceeds 20 years. It is

common knowledge that interest rate moves in cycles. It is rarely static for even a couple of years.

48) In the totality of the circumstances, in my view, it would be appropriate to modify the rate of interest awarded by the learned Member Industrial Court. A direction for payment of interest at the rate of 8% p.a. would be just and equitable.

49) For the foregoing reasons, I am persuaded to partly allow the Petition and modify the impugned order to the extent of rate of interest only.

Hence, the following order.

-:ORDER:-

(i) The Petition stands partly allowed.

(ii) The order passed by the learned Member Industrial Court dated 26th August, 2021, in Recovery Application (ULP) No.4 of 2018, stands modified to the extent of interest only.

(iii) The respondent Nos. 2 to 6 are entitled to recover the arrears of wages as ordered by the Industrial

Court along with interest at the rate of 8% p.a. from the date of judgment in complaint (ULP) No. 1161 of 1989 i.e. 24th December, 1999.

(iv) Rest of the order stands affirmed.

(v) No costs.

(vi) Rule made absolute to the aforesaid extent.

(vii) The amount deposited by the petitioner be paid to respondent Nos. 2 to 6 in proportion to their entitlement under the impugned order as modified by the aforesaid order.

At this stage, the learned Counsel for the petitioner seeks continuation of the interim order for a period of two weeks.

Mr. Bapat makes a statement that the respondent Nos. 2 to 6 would not withdraw the amount deposited by the petitioner in this Court for a period of two weeks from today.

Statement accepted.

[N. J. JAMADAR, J.]