IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5929 OF 2009
WITH
CIVIL APPLICATION NO.6 OF 2021
IN
WRIT PETITION NO.5929 OF 2009

The President,
Bank Employees Union, Kolhapur ....Petitioners
V/S
The Ichalkaranji Urban Co-op. Bank Limited & Ors. ....Respondents

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Mr. Prashant P. Kulkarni *for the Petitioners.*
Mr. Tejpal S. Ingale *for Respondent No.1.*
Mr. Kush M. Lahankar *a/w Ms. Nimisha Sharma i/b Mr. Shrikrishna R. Ganbavale for Respondent Nos.4/1 to 4/3.*

CORAM: SANDEEP V. MARNE, J.
DATE : 25 JULY 2024.

P.C.:

1 By this Petition filed by Bank Employees Union, Kolhapur, judgment and order dated 27 April 2009 passed by Member, Industrial Court, Kolhapur is under challenge. Industrial Court has dismissed Complaint (ULP) No.92 of 2007 filed by the Petitioner-Union under provisions of section 28 read with item 5 of Schedule II, items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act.**).

2 The grievance of the Petitioner-Union in Complaint (ULP) No.92 of 2007 was essentially regarding freeze of Dearness Allowances with effect from 1 April 2007. According to Petitioner-Union, an agreement was executed on 30 August 1996 agreeing for payment of Dearness Allowances at a particular rate. Another Settlement was entered on 15 October 2003 in which it was agreed that the pay-scales as well as Dearness Allowances would be as agreed in the Agreement dated 30 August 1996. It appears that on account of consents given by some of the employees, coupled with the directives issued by Reserve Bank of India to reduce expenses of staff, the Bank was required to take a decision for imposing the freeze on Dearness Allowances with effect from 1 April 2007. Complainant-Union raised a grievance that imposing such a freeze on Dearness Allowances without notice to the Union amounted to illegal change and therefore the decision of the Bank was illegal. It appears that initially an interim order was passed by the Industrial Court restraining the Respondent-Bank, implementing the freeze on Dearness Allowances. The said interim order came to be upheld by this Court by dismissing Bank's Writ Petition No.6943 of 2007 by order dated 1 October 2007 and further by dismissing Letters Patent Appeal No.246 of 2007 by the Division Bench by order dated 7 July 2008 however ultimately the Industrial Court has proceeded to dismiss the Complaint filed by the Petitioner-Union.

3 I have heard Mr. Kulkarni, the learned counsel appearing for Petitioner-Union and Mr. Lahankar, the learned counsel appearing for Liquidator appointed on the Respondent-Bank. Mr. Ingle is also present who used to represent the Bank earlier.

4 After having considered the submissions canvassed by the learned counsel appearing for parties and after going through the impugned order of the Industrial Court, it appears that the broad reasons given by Industrial Court for dismissal of the Petitioner's Complaint are (i) failure to lead evidence by office bearers of the Union, (ii) directives of Reserve Bank of India to reduce costs on employees and (iii) execution of subsequent Settlement by 113 employees on 13 January 2009.

5 Mr. Kulkarni would submit that despite passing of interim order by the Industrial Court as upheld by Single Judge and Division Bench of this Court, the Respondent-Bank implemented the freeze on Dearness Allowances. In my view the interim order passed by the Industrial Court would ultimately merge into the final judgment and order dated 27 April 2009. Therefore, mere grant of interim relief by the Industrial Court and upholding the said order by the learned Single Judge and Division Bench of this Court cannot be *ipso facto* be the reason for allowing the Complaint filed by Petitioner-Union.

6 So far as failure on the part of the Petitioner-Union to lead evidence on behalf of office bearers of the Petitioner-Union is concerned, though Mr. Kulkarni is not entirely wrong in contending that in given circumstances, it is open for aggrieved member of the Union to lead evidence and that it is not necessary that only an office bearers of the Union must lead evidence, however in the facts of the present case it was necessary for the Petitioner-Union to lead evidence on behalf of the office bearers. This is because during pendency of the Complaint, it appears that Settlement dated 13 January 2009

was executed by 113 employees. Therefore, whether Union was really interested in pursuing the Complaint became a relevant factor in the light of substantial number of its members signing the settlement dated 13 January 2009. Therefore, some form of mandate to office bearer of the Union to continue to prosecute the Complaint by leading evidence was necessary, in the light of peculiar facts and circumstances of the present case. The Complaint appears to be prosecuted by a singular employee named Shri Dayanand Vithoba Fagate, who alone filed Affidavit-in-lieu of examination-in-chief in support of the Complaint. It therefore becomes questionable as to whether said Mr. Fagate was espousing his individual cause or whether he had mandate to represent all members of the Petitioner-Union. In my view, therefore, no serious flaw can be traced in the view taken by the Industrial Court in expecting that some office bearers of the Union ought to have prosecuted the Complaint by leading oral evidence.

7 So far as the argument of imposition of freeze on dearness allowances amounting to change in the service conditions in absence of issuance of notice is concerned, Mr. Kulkarni has relied upon judgment of Single Judge of this Court in ***Pune District Central Co-operative Bank Limited vs. Bharat Karmachari Sangh, Pune.*** [1] However, in the present case such notice was not mandatory in view of the fact that several of the employees of the Bank signed subsequent Settlement dated 13 January 2009 during pendency of the Complaint, under which they agreed for cancellation of all the previous settlements.

1 2000 (4) BOM CR 811

8 What must also be noted in the fact that the Respondent-Bank was ultimately subjected to liquidation on 10 August 2010. The Reserve Bank of India had possibly foreseen the week financial position of Respondent-Bank and had accordingly issued directions for reduction of expenses on salaries and allowances of the employees. In that view of the matter, corrective steps taken by the Respondent Bank by reduction of expenses on salary and allowances of employees by freezing dearness allowances cannot really be considered as arbitrary. The same can also not to be treated as violative of any contract between parties in view of the fact that substantial number of employees have subsequently agreed for fresh Settlement dated 13 January 2009. It appears that despite freezing of the Dearness Allowances, the Bank has ultimately been liquidated on 4 October 2010.

9 Considering the overall conspectus of the case, I do not find any serious error in the impugned judgment and order dated 27 April 2009 passed by the Industrial Court. Writ Petition being devoid of merits, is **dismissed** without any order as to costs. Rule is discharged.

10 In view of the disposal of the Writ Petition, the Civil Application does not survive and the same is accordingly disposed of.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM

Digitally signed by SUDARSHAN RAJALINGAM KATKAM Date: 2024.07.29 14:42:29 +0530