



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3485 OF 2025

Brihanmumbai Electric Supply and
Transport Undertaking through its
General Manager

...Petitioner

V/s.

President, BEST Workers Union

...Respondent

Mr. Suresh Pakale, *Senior Advocate with Ms. Shweta Singh and Ms. Aditi Giri i/b. M/s. M. V. Kini and Co. for the Petitioner.*

Mr. Rahul Nerlekar *with Ms. Amruta Nerlekar for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON: 10 DECEMBER 2025.
JUDGMENT PRONOUNCED ON: 23 DECEMBER 2025.

JUDGMENT:

1) **Rule.** *Rule* is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final disposal.

2) By this Petition filed by Brihanmumbai Electric Supply and Transport Undertaking (**BEST**) challenge is raised to the Judgment and Order dated 2 December 2021 passed by the Industrial Court, Mumbai, dismissing Appeal (IC) No.58 of 2018 and confirming the Judgment and Order dated 17 July 2018 passed by the learned Judge, 3rd Labour Court, Mumbai, in Application (BIR-I/C) No.3 of 2015. By

order dated 17 July 2018, the Labour Court has directed the Petitioner to withdraw Circular dated 1 April 2015 and to restore the transferred staff from the Time Keeping Department as per the establishment schedule in vogue prior to introduction of Computerised Time Recording System (**CTAS**) and new web based system.

3) The Petitioner is a statutory undertaking of Municipal Corporation of Greater Mumbai and provides municipal transportation service in the city of Mumbai and neighbouring urban area. A committee under Hon'ble Justice (Retd.) Shri H.R. Gokhale was appointed for conducting job evaluation and wage fixation on scientific point rating system in 1960 with mutual consent of management and BEST Workers' Union. An Award was made by Hon'ble Justice (Retd.) Shri Gokhale, which was accepted by the BEST Workers Union and implemented by the BEST. As per Gokhale Award functions of Time Keeping Department was to *inter alia* maintain attendance of all members of staff, their leave record, holidays, working on holidays, calculating wages taking into account early departure, late arrival, paid and unpaid offs, D.A., Overtime, Meal Allowance, etc.

4) In the year 1998, Petitioner attempted to introduce CTAS. By letter dated 17 September 1998 the Union was informed about introduction of CTAS in Dharavi Depot on trial basis. It was communicated that the CTAS could be extended to other depots as well. The Respondent-union claims that said letter dated 17 September 1998 was not served on it. According to the Petitioner since letter dated 17 September 1998 was issued there was no necessity of issuing notice

of change under Section 42(1) of the Maharashtra Industrial Relations Act, 1946 (**the MIR Act**).

5) A meeting was held between the Petitioner and the Respondent-union where Petitioner allegedly explained the convenience of recording of attendance by CTAS. Letter dated 27 March 2001 was issued by the Petitioner to the Respondent-union, receipt of which is again disputed by the Union. In 2002, CTAS was introduced in five other depots. In the year 2008, the CTAS project was taken over by EDP Department and CTAS was installed at 10 locations. In the year 2011 it was decided to switch over from Manual Time Recording System (Punching Cards) to Centralized Time Recording System where every employee was issued RFID smart cards, which was also valid for free travelling in BEST buses. The issue was apparently taken up with the Respondent-union on 5 July 2012. The Respondent-union pointed out certain discrepancies in implementing the RFID card by letter dated 22 January 2013. Thereafter further meetings were held and union representatives made some suggestions for use of RFID cards. Administrative Order No.380 was issued setting forth the procedure to be adopted for smooth implementation of CTAS and RFID based systems.

6) According to the Petitioner, due to technical errors and discrepancies, a new web based system was incorporated in CTAS. Therefore, Circular dated 1 April 2015 was issued for detailed procedure outlined therein for knowledge of all members of staff. It appears that on account of introduction of system of recording attendance and determination of wages through web-based program

and CTAS, there was reduction of work in Time Keeping Department. The Respondent-union felt aggrieved by the Circular dated 1 April 2015, which was construed by it as a change requiring notice under Section 42(1) of the MIR Act. Accordingly, the union filed Application (BIR-I/C) No.3 of 2015 challenging the Circular dated 1 April 2015. By Judgment and Order dated 17 July 2018 the Labour Court has allowed the complaint and directed the Petitioner to withdraw the Circular dated 1 April 2015 and to restore the transferred staff from Time Keeping Department as per establishment schedule in vogue prior to introduction of CTAS and new web-based system.

7) The Petitioner preferred Appeal (IC) No.58 of 2018 before the Industrial Court, which has been dismissed by Judgment and Order dated 2 December 2021. Accordingly, Petitioner-BEST has filed the present Petition challenging the orders passed by the Labour and Industrial Courts.

8) Mr. Pakale, the learned Senior Advocate appearing for the Petitioner -BEST would submit that Circular dated 1 April 2015 does not constitute 'change' within the meaning of Section 42 of the MIR Act and the Circular merely prescribes the procedure to be followed for smooth implementation of CTAS and web-based programme. That the Respondent-union was informed of computerised recording of attendance by letter dated 17 September 1998. That the said letter clearly informed that the computerised recording system would be implemented in other depot as well. He would invite my attention to letter dated 27 March 2001 issued to Respondent-union in which the concern expressed by the union about staff saving in Time Keeping

Department was addressed and it was assured that the excess staff would be accommodated elsewhere. He would therefore submit that the Respondent-union had full idea of shifting of excess staff in Time Keeping Department to other Departments. He would submit that CTAS/RFID/web-based system was implemented in phased manner over the period of next 15 years and therefore it cannot be contended that Circular dated 1 April 2015 constituted a change for the purpose of issuance of notice under Section 42(1) of the MIR Act. He would invite my attention to the settlement effected by the Respondent-union on 27 March 2012 and 28 April 2012, under which union agreed to extend all co-operation after taking into consideration accumulated losses of Rs.3103 crores by implementing of necessary economical and efficiency measures. Implementation of the impugned orders would result in a position that staff will have to be posted in Time Keeping Department where no work is available for them. That BEST cannot afford to pay salaries to such staff without extracting any work from them. He would submit that much water has flown after issuance of Circular dated 1 April 2015 as several other modes are introduced for recording attendance and for maintaining service records of the BEST employees. That the impugned order of the Labour Court, as upheld by the Industrial Court, is otherwise unworkable in the current scenario and that this is yet another ground for setting aside the same. He would accordingly pray for setting aside of the impugned orders.

9) Petition is opposed by Mr. Nerlekar, the learned counsel appearing for the Respondent-union. He would submit that the implementation of CTAS/web-based system for recording attendance vide Circular dated 1 April 2015 has resulted in reduction of posts in

Time keeping Department, which are abolished. That, therefore, the Circular dated 1 April 2015 undoubtedly constitutes 'change' as per Entry No.4 of Schedule II of the MIR Act. He would take me through the cross-examination of Petitioner's witness, in which admissions are given about reduction and abolition of posts. That the Petitioner has conducted the exercise of rationalisation and implementation of efficiency system and that the same cannot be implemented without issuing a notice of change under Section 42 of the MIR Act. That nature of duty of time keeping staff has been changed without issuing statutory notice of change. That the Labour Court has rightly appreciated this position while allowing the Complaint filed by the Respondent-union. He would rely upon judgment of this Court in ***Co-operative Bank Employees Union V/s. Yeshwant Sahakari Bank Ltd. & Ors.***¹ in support of his contention that notice of change under Section 42(1) is mandatory irrespective of the fact whether any employee is likely to be affected or not.

10) Mr. Nerlekar would further submit that service of letter dated 17 September 1998 on Respondent-union has not been proved. That in any case the said letter cannot constitute notice of change. He would submit that even letter dated 27 March 2001 was not served on the Respondent-union. The Petitioner has not produced willingness letter dated 16 March 2021, the production of which would prove that same was not issued for replying the letter dated 17 September 1998. He would submit that the Respondent-union is not averse to implementation of CTAS, however if any change in the nature of duties of employees is effected, mandatory requirement under Section

¹ 1992-II-CLR-840 (Bom. H.C.)

42(1) of the MIR Act must be followed. He would accordingly pray for dismissal of the Petition.

11) Rival contentions of the parties now fall for my consideration.

12) The short controversy involved before the Industrial Court was whether notice of change under Section 42(1) of the MIR Act was necessary in respect of implementation of Circular dated 1 April 2015. It would be apposite to reproduce the Departmental Circular dated 1 April 2015, which reads thus:-

बृहन्मुंबई विद्युत पुरवठा आणि परिवहन उपक्रम
(बृहन्मुंबई महानगरपालिका)
कर्मचारीय आणि कल्याण आस्थापना
कर्मचारीय विभाग

विभागीय परिपत्रक

संदर्भ क्र.: उप मुकव्य/का/डब्ल्यू-७७१/१७०३९/ दिनांक: ०१/०४/२०१५

विषय: सिटस प्रणाली मध्ये दि.०१/०४/२०१५ पासून अंतर्भूत होणारी नवीन web base कार्यपद्धती व सदर कार्यपद्धतीमध्ये सर्व विभागांनी समयपत्राच्या अनुषंगाने करावयाची कार्यवाही. (बाह्य वाहतूक कर्मचारी वगळता)

विविध विभाग/आगारांमध्ये काम करणा-या सर्व कर्मचा-यांना RFID कार्डद्वारे प्रवेशद्वारावर बसविलेल्या व्हेलेडेटिंग मशिनवर त्यांच्या दैनंदिन हजेरीची नोंद करण्याबाबत सर्व विभाग प्रमुखांना ह्यापूर्वीच कळविण्यात आले होते. त्याचप्रमाणे उपक्रमातील सर्व कर्मचारी ज्यांना कार्ड स्वाईप करणे अनिवार्य आहे, ते प्रत्येक आगारातील व्हेलेडेटिंग मशिनवर आपल्या हजेरीची नोंद करीत आहेत, ज्या कर्मचा-यांना त्यांच्या कामाच्या स्वरूपामुळे त्यांचे कार्ड स्वाईप करणे शक्य नाही, अशा कर्मचा-यांची नकारात्मक हजेरी संबंधीत विभागाने समयपालन विभागाकडे पाठवावी, असे निर्देशित केले होते, त्याप्रमाणे सिटस प्रणालीचे काम सुरु झाले.

२. परंतु, ह्या प्रणालीतील तांत्रिक अडचणी व त्रुटींमुळे काही कर्मचा-यांचे हजेरीपत्र अचूकपणे तयार होत नसल्यामुळे वेतन परिगणना अचूकपणे होत नसे. ह्या अडचणीवर मात करण्यासाठी नविन web base कार्यप्रणाली सिटसमध्ये अंतर्भूत करण्यात येत आहे. ही कार्यप्रणाली अधिक सुलभ असून ह्यामुळे वेतन परिगणनेचे काम वेगाने व अचूकपणे होणे शक्य आहे.

(i) सदर कार्यप्रणालीमुळे ह्यापुढे सर्व विभागप्रमुखांनी आपल्या अधिपत्याखालील कर्मचा-यांची कामाची वेळ (Duty Schedule), साप्ताहिक सुट्टी, सर्व प्रकारच्या रजांची प्रपत्रे, आऊट डोअर प्रपत्रे, ह्यांची नोंद नविन कार्यपद्धतीसाठी उपलब्ध करण्यात आलेल्या सिटॉस प्रणालीमध्ये करणे गरजेचे आहे. ही नविन प्रणाली खाली उद्धृत करण्यात आलेल्या संकेत स्थळावर उपलब्ध आहे.

(atnd.bestpass.co.in/attendance/index.php/login)

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ii) ह्या संकेत स्थळामार्फत हजेरी व संबंधित माहितीची नोंद करण्याची जबाबदारी विभागप्रमुखांनी ठराविक जबाबदार कर्मचा-यांस द्यावी. सदर काम करण्यासाठी प्रत्येक विभागाला user Name आणि Password हा समयपालन विभागाकडून देण्यात येईल. यासाठी संबंधित विभागाने समयपालन विभागाशी संपर्क साधावा. हे काम करण्यासाठी त्याच कर्मचा-यांना देण्यात येणा-या पासवर्डचा उपयोग करणे व त्याची गोपनीयता राखणे ह्याची जबाबदारी संबंधित कर्मचारी व विभागप्रमुखाची असेल.

iii) तसेच या संकेत स्थळावर हजेरी, शिफ्ट ड्युटी, रजेची प्रपत्रे इत्यादींची नोंद करण्याची अनुमती ही प्रत्येक विभागास पुढील महिन्याच्या ७ तारखेपर्यंत अथवा ७ तारीख हा रजेचा दिवस असल्यास पुढील लगतच्या कार्यालयीन दिवसापर्यंतच आहे. त्यामुळे सर्व संबंधित कर्मचा-यांनी आपल्या हजेरीची नोंद व प्रपत्रे ही उपरोक्त वेळेच्या आतच नोंदवावी, अन्यथा कर्मचा-यांची गैरहजेरी लागून त्यांचे वेतन कपात होईल. यानंतर राहिलेली रजेची प्रपत्रे अथवा ह्या हजेरी नोंदणी ही समयपालन विभागाकडे पाठवावीत. समयपालन विभागामार्फत त्या कालावधीचे वेतन पुढील महिन्यात प्रदान करण्यात येईल, याची कृपया संबंधितांनी नोंद घ्यावी.

३. एप्रिल २०१५ ची कोणत्याही कर्मचा-याची नकारात्मक हजेरी मे २०१५ पासून संबंधित विभागाने समयपालन विभागास पाठवू नये. सदर कर्मचा-यांची हजेरी नव्याने अंतर्भूत केलेल्या संगणकीय प्रणालीमार्फत पाठवावी.

४. सदर संगणकीय प्रणालीमध्ये काम करण्यासाठी आवश्यक असलेल्या मार्गदर्शक सूचना सोबत जोडलेल्या जोडपत्र 'अ' आणि 'ब' मध्ये नमूद केल्या आहेत. सदर प्रणालीबाबत अधिक माहितीकरिता समयपालन विभागाशी संपर्क साधावा.

५. सर्व विभाग प्रमुखांना असे सूचित करण्यात येते की, त्यांनी सदर संगणकीय प्रणालीची योग्यरित्या अंमलबजावणी आणि कार्यवाही करण्यासाठी त्यांच्या अधिपत्याखालील काम करणा-या संबंधित कर्मचा-यांना योग्य त्या सूचना द्याव्यात आणि त्याची काटेकोरपणे अंमलबजावणी करण्यात यावी.

सोबत: जोडपत्र 'अ' व 'ब' आणि
कार्यालयीन वेळापत्रकाचे विवरण

सर्व विभाग प्रमुख

(दि.ग. शेट्टे)
उप मुख्य कर्मचारिय व्यवस्थापक

13) Careful perusal of the Departmental Circular would indicate that the same merely prescribed the procedure to be followed

for implementing web based system for recording attendance and other matters of the employees. The Circular, in that sense, did not have any connection with nature of duties and responsibilities of employees working in the Time Keeping Department or reduction/abolition of posts in that Department.

14) Under Section 42 of the MIR Act, an employer intending to effect any change in respect of any industrial matter specified in Schedule II, needs to give notice of such intention in the prescribed form to the representative of the employee. Section 42 of the MIR Act provides thus:

42. Notice of change.- (1) Any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. He shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. He shall also affix copy of such notice at a conspicuous place on the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any particular case.

(2) Any employee desiring a change in respect of an industrial matter not specified in Schedule I or III give a notice in the prescribed form to the employer through the representative of employees, who shall forward a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(3) When no settlement is arrived at in any conciliation proceeding in regard to any industrial dispute which has arisen in consequence of a notice relating to any change given under sub-section (1) or sub-section (2), no fresh notice with regard to the same change or a change similar in all material particulars shall be given before the expiry of two months from the date of the completion of the proceeding within the meaning of section 63. If at any time after the expiry of the said period of two months, any employer or employee again desires the same change or a change

similar in all material particulars, they shall give fresh notice in the manner provided in sub-section (1) or (2), as the case may be.

(4) Any employee or a representative union desiring a change in respect of (i) any order passed by the employer under standing orders, or (ii) any industrial matter arising out of the application or interpretation of standing orders, or (iii) an industrial matter specified in Schedule III, except item (5) thereof shall make an application to the Labour Court and as respects change desired in any industrial matter specified in item 5 of Schedule III, to the Industrial Court:

Provided that no such application shall lie unless the employee or a representative union has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period.

15) In Schedule II of the MIR Act, the list of industrial matters, in respect of which, notice of change is required to be given under Section 42(1) is enumerated as under:-

SCHEDULE II (Section 42)

1. Reduction intended to be of permanent or semi-permanent character in the number post or of persons employed or to be employed in any occupation or process or department or departments or in a shift not due to force majeure.

2. Permanent or semi-permanent increase in the number of persons employed or to be employed in any occupation or process or department or departments.

3. Dismissal of any employee except as provided for in the standing orders applicable under this Act.

4. Rationalisation or other efficiency system of work, whether by way of experiment or otherwise.

5. All matters pertaining to shift working which are not covered by the Standing Orders applicable under this Act.

6. Withdrawal of recognition to unions of employees.

7. Withdrawal of any customary concession or privilege or change in usage.

8. Introduction of new rules of discipline or alteration of existing rules and their interpretation, except in so far as they are provided for in the standing orders applicable under this Act.

9. Wages including the period and mode of payment.

10. Hours of work and rest intervals.

11. All matters pertaining to leave and holidays, other than those specified in items 6 and 7 in Schedule I.

16) It is contended by the Petitioner, and which contention has been upheld by the Labour Court, that Circular dated 1 April 2015 amounts to rationalisation or implementation of efficiency system of work covered by item 4 of Schedule II.

17) Perusal of the findings recorded by the Industrial Court does not indicate that any enquiry is conducted as to whether Circular dated 1 April 2015 amounts to rationalisation of workforce or introduction of any efficiency measure in relation to workers. Circular dated 1 April 2015 only stipulated procedure to be followed for effective implementation of web-based system. Strictly construed, Circular dated 1 April 2015 would not be covered by Entry No.4 of Schedule II of Section 42 of the MIR Act. In that view of the matter, notice of change was not strictly required before implementation of Circular dated 1 April 2015.

18) The Labour Court has apparently confused itself with two concepts of (i) implementation of effective web-based attendance system and (ii) reduction of staff on account of computerised recording of attendance. Circular dated 1 April 2015 did not envisage or direct reduction or abolition of posts. May be that over a period of

time, since computerised recording attendance system was implemented, some of the staff in the Time Keeping Department might have been shifted to other departments. However, this happened over a period of years. As observed above, CTAS was initially introduced on trial basis by letter dated 17 September 1998. The said letter was issued to the Union. The Union stoutly denies having received the same. However, subsequent letter dated 27 March 2001 addressed by Petitioner to Respondent-union indicates that some correspondence took place between parties on installation of time recording system. It would be apposite to reproduce letter dated 27 March 2001, which reads thus:-

AGM(P)/L/578/15267/2001

27.03.2001

General Secretary,
BEST Workers Union,
42, Kennedy Bridge,
Mumbai-400004.

Sub: Installation of computerized Time Recording
System in the BEST Undertaking.

Ref: 1) Your letter No.GEN/739/00 dtd.15.7.2000;
2) Our letter No.AGM(P)/L/578/13327/2001 dtd.
16.3.2001;
3) Your letter No.GEN/312/01 dtd.22.3.2001.

Sir,

Vide our letter referred at (2) above, a meeting was conveyed in the office of the undersigned on Monday, the 19th March, 2001 at 3.00 p.m. to discuss the above issue, when S/Shri Ashok Joshi, Rajendra Shirgaonkar, Arvind Kaginkar, Jaywant Tawade, Naresh Thakur and the Personnel Officer were present.

During the discussion, the undersigned mentioned to your Union Representative that vide letter No.GEN/739/00 dated 15.7.2000 had asked about the staff saving on account of introduction of computerized Time Recording System in the BEST Undertaking. It was explained to them by the undersigned that this

is just a development in the existing attendance punching system to make the same more effective and convenient to the members of staff of the Undertaking, and it is a fact that there will definitely be some staff saving on account of the Installation of computerized Time Recording System in the Undertaking, however it is very difficult to estimate the staff saving at this juncture.

Further to your letter referred to at (3) above, in which you have mentioned that you basically oppose the Installation of Computerized Time Recording System due to reduction of employees/staff. In this context we have to state that after successful implementation of the system in the Undertaking, the excess staff, if any, will be accommodated elsewhere.

This is for your information.

Yours faithfully

sd/-.

(D.B. Kanwahi)

CHIEF PERSONNEL OFFICER

c.c. to: CAO & FA/Sr.STK for information please.
DGM(S)/DEMR

c.c. to: PO/OSP(L)-with pps.

19) Letter dated 27 March 2001 clearly depicts discussion between the BEST and union representatives and raising of queries by the union about staff saving on account of introduction of computerized time recording system. The BEST informed the union that there would be staff saving on account of installation of computerised time recording system, but it was difficult to estimate the exact extent of staff saving. However, the BEST promised the union representatives that if any staff is rendered excess, they will be accommodated elsewhere. Respondent-union has denied receipt of letter dated 27 March 2001 as well. However, during the course of his cross-examination, Mr. Ranganath Bhaskar Satavase, Union Secretary, admitted that since 1998 discussions were held with the union

regarding computerized time recording system. He did not appear certain about receipt of letter dated 17 September 1998 by the union. However, when his attention was invited to letter dated 27 March 2001, the witness admitted that an endorsement was put on the said letter about opposition thereto by the union. It would be apposite to reproduce relevant portion of cross-examination of Respondent-union as under:-

It is true to say that, since 1998 the discussion regarding computerized time recording system has been held between the undertaking and the union.(W.V. state that, but no details of the same has been furnished). Now I am show the letter dtd.17/9/1998 Annexure-I attached with written statement Exh.C-4, addressed to General Secretary, BEST Workers' Union. I cannot say whether the same has been received by the union. Now I am shown the letter dtd.27/3/2001 Annexure-II attached with written statement Exh.C-4, addressed to General Secretary, BEST Wrokers' Union and the endorsement has been put showing that, the same has been opposed by the union. It is true to say that, the system C.T.A.S. has been implemented by the undertaking on experimental basis at Dadar and Wadala Time Keeping Department from 1/1/2005 to 31/1/2005. (W.V. state that, it is failed). It is not true to say that, in the year 2008 this system C.T.A.S. was introduced at 10 locations namely Magathane, Bandra, Mulund, Goregaon, Backbe, Wadala, Dadar Workshop and Kussara Workshop, Colaba Offshore Building, Vij Bhavan. It is not true to say that, the chipe card were provided by the Head of the Department to the employees for recording in and out time. It is not true to say that, thereafter R.F.I.D. smart card was also provided to the employees. (W.V. State that, it is provided in the year 2012 to the employees of Dadar.

20) Thus, receipt of letter dated 27 March 2001 is expressly admitted by Respondent's witness. As observed above, letter dated 27 March 2001 gave clear idea to the union that implementation of CTAS was likely to result in reduction of staff and that BEST would

accommodate them in other departments. The witness has further admitted extension of CTAS system to other depots. Thus it is proved that the union had idea of possible staff reduction on account of implementation of CTAS, which was further updated in the form of issuance of RFID card and integration of web based system in CTAS. Union was made aware that there would be staff saving and that excess staff would be accommodated elsewhere. The process of implementation of CTAS gradually happened over next 15 years. With implementation of CTAS in each depot, there was bound to be some staff saving and the excess staff got accommodated in other departments. It is therefore impossible to believe that by issuance of Circular dated 1 April 2015, prescribing mere procedure for effective implementation of web based attendance system, reduction /abolition of staff suddenly took place. Such reduction happened over a period of years and it cannot be contended that reduction or abolition of staff is attributable only to the Circular dated 1 April 2015. The Labour Court has completely misconstrued the exact effect of Circular dated 1 April 2015. While it took into consideration reduction of staff through evidence, it did not pay any attention to the circumstance that reduction happened over a period of time. Even Industrial Court has failed to appreciate this vital position.

21) I have also gone through the cross-examination of Mr. Lahu Rajaram Pawar, Assistant Administrative Manager, Time Keeping Department, who was a witness examined by the Petitioner. Relevant portion of his cross-examination reads thus:-

15) ... Now I am shown Exh. U-24, it is the statistical data provided by Time Keeping Department under R.T.I. By which, the

strength of employees in the Time Keeping Department in the year 2015, reduced from 192 to 149 till the date of information was given. It is true to say that, the number of employees on the various post as mentioned in page no. 2 of Exh.U-25 has been abolished. I am not aware whether while doing so, the notice of change was given to Representative union, as required under section 42 of MIR Act, by the opponent undertaking. It is true to say that, the post which were abolished mentioned above were permanent in nature.

- 16) Now, I am shown Exh. U-28, it is true that in the year 2015, 77 permanent post of supervisor, clerk and peon were abolished from time keeping department. I am not aware whether while doing so, the notice of change was given to Representative union, as required under section 42 of MIR Act, by the opponent undertaking. It is true to say that, the award mentioned in para no. 2 of my affidavit is still in existence and it is applicable to all the staff members/employee of the opponent undertaking. It is true to say that, Transport Division and Electric Supply are the two industries of the opponent undertaking. It is true to say that, common administrative department of Transport Division and Electric Supply are represented by applicant union. It is true to say that, P.F. audit, account, civil, medical, security and vigilance, welfare, Secretariat, public relation, personnel, cash and time keeping departments are the only common administrative department of Transport and Electric Supply of the opponent undertaking. It is true to say that, because of CTAS, the employees from the Time Keeping Department has been transferred to Traffic Department.
- 17) ... Now I am shown clause 8 of certified standing order, the provision made therein has been wiped out because of the CTAS.
- 18) ... It is true to say that, because of the same, to some extent, the nature of duties of those employees are changed. ... I am not aware who has signed Article-B letter dtd. 27/3/2001 and also the same does not bear my signature. It is true to say that, the letter dtd. 17/9/1998 filed at Exh.C-9 does not bear acknowledgment that the same is received by the applicant union.
- 19)... It is true that, at one Zone there are about 5 to 6 Clerks. It is true that, if that is considered then total 125 clerks, 25 supervisors and 25 peon required for 25 Depot. It is true that, as on today for 25 Depot only 49 clerks are working and available. It is true to say that, because of introduction of CTAS, there is a rationalization. of staff in the Time Keeping Department.

20) ... I have not filed document regarding that, the letter dtd. 27/3/2001 Article-B has been received by the applicant.

21) ...As per the Gokhale Award, the nature of duties and responsibilities of the clerk employed in Time Keeping Department and Traffic Department are different. It is not true to say that the contents of para no.9 of my affidavit are false.

22) Based on the above evidence of Petitioner's witness, it is strenuously sought to be contended by Mr. Nerlekar that there are express admissions regarding reduction of staff and rationalization of staff in Time Keeping Department. However, what is missed by Mr. Nerlekar is the position that reduction in staff happened over a period of years and not by virtue of Circular dated 1 April 2015. As observed above, Circular dated 1 April 2015 did not envisage reduction of any staff. Petitioner's witness has admitted that CTAS system was implemented over a period of time in different depots. No documents are produced on record by Respondent-union to indicate that reduction of staff was a direct effect of Circular dated 1 April 2015. There is no dispute to the position that the staff, which was rendered excess on account of gradual implementation of CTAS was shifted to other departments and there is bound to be change in their duties and responsibilities. However, whether such change is attributable to the Circular dated 1 April 2015 was a relevant enquiry, which ought to have conducted by the Labour Court. The union was clearly given a notice in the year 2001 that staff would be rendered excess and they will be accommodated elsewhere. The Respondent -union thus had some idea about what the time keeping staff had in the stores. What must also be appreciated is the position that implementation of modern computerized and web based attendance system was necessary, even if staff in the Time Keeping Department were to be rendered surplus or

workless. It is not that they are terminated from service. They are accommodated in other departments.

23) Mr. Nerlekar fairly admitted in his submission that no staff was permanently deployed in Time Keeping Department. There was common seniority of Clerks, supervisor etc. There was no dedicated hierarchical level reserved for Time Keeping Department. Time Keeping Department staff was not retained within the Department. Whenever vacancy of higher post became available outside the Time Keeping Department, staff working in Time Keeping Department happily accepted the said promotions. In that view of the matter, mere movement of the staff from Time Keeping Department to other Department did not really affect their service conditions. In that view of the matter, it would be absurd to bring back the entire erstwhile staff of Time Keeping Department where there is no work for them. Such staff otherwise did not have any right to be permanently posted in Time Keeping Department. This is yet another reason why order passed by the Labour Court, as upheld by the Industrial Court, deserves to be set aside. Findings recorded by the Labour Court and Industrial Court thus suffer from the vice of perversity.

24) Petitioner has placed on record copy of Agreement dated 28 April 2012 executed with Respondent-union. In paragraph 23 of the said Agreement, union agreed as under:-

23. The Union agrees to maintain industrial peace and harmony and extend its full co-operation to the Undertaking for making the Transport business of the Employer self-reliant and to give better quality of service to the commuters.

25) It is a matter of public knowledge that the BEST has been suffering from huge financial losses while operating municipal bus service. It is pleaded by the Petitioner that as on 1 May 2014 the accumulated losses of BEST were to the tune of Rs.3,103 crores. If the impugned order of the Labour Court is to be implemented, the same would result in a situation where the Petitioner-BEST Undertaking would be forced to bring back and post the staff in Time Keeping Department, where there is no work for them to perform. The said staff is no longer required to manually record attendance and various other details of employees. Thus, implementation of Labour Court's order would result in an absurd situation where Petitioner-BEST will have to pay wages to the workers, who would have no work to perform in Time Keeping Department. On the other hand, against the posts vacated by them in other departments, new recruits will have to be appointed. Thus, implementation of the order passed by the Labour Court would put a huge financial burden on the Petitioner-BEST Undertaking as well as wastage of work funds. Therefore, it is otherwise not prudent to sustain the order passed by the Labour Court.

26) Implementation of computerised and web based modern attendance system is the need of the hour. Such system is for the benefit of the employees as well. As observed above, when RFID cards were issued, they facilitated not just recording attendance of employees but also enabled them to travel free of cost in the BEST buses. New Apps introduced and implemented by BEST have capacity of recording data relating to various aspects, which in fact benefits the employees as well. In such a situation, inflexible and pedantic approach cannot be adopted by ensuring strict adherence to provision under Section 42(1)

of the MIR Act. No doubt, statutory provisions are bound to be implemented and mere inconvenience or financial losses to Petitioner - BEST may not be a justification for violating the statutory provisions. However, in the present case, it is found that the Circular dated 1 April 2015 did not constitute a 'change' within the meaning of Section 42(1) r/w Schedule II of the MIR Act. Therefore, there is no violation of Section 42 in implementing the Circular dated 1 April 2015. Reliance by the Respondent-union on judgment of this Court in ***Co-operative Bank Employees Union*** (supra) does not cut any ice. This is because Circular dated 1 April 2015 does not constitute 'change' within the meaning of Section 42(1) of the MIR Act and therefore question whether the said Circular affecting the employees or not does not arise. In any case the issue is rendered more or less academic as the system of recording attendance has undergone further changes during past decade. The Time Keeping Department with reduced strength has been functioning for the past several years. The erstwhile employees posted in Time Keeping Department did not have any vested right to remain posted in that department for ever. They have already been accommodated in other departments and have been working there for substantial period of time. These developments after issuance of the Departmental Circular also need to be borne in mind.

27) Consequently, the Petition succeeds, and I proceed to pass the following order:-

- (i) Judgment and Order dated 17 July 2018 passed by the Labour Court in Application (BIR-I/C) No.3 of 2015 and Judgment and Order dated 2 December

2021 passed by the Industrial Court, Mumbai, in Appeal (IC) No.58 of 2018 are set aside.

(ii) Application (BIR-I/C) No.3 of 2015 is dismissed.

28) Writ Petition is **allowed** in above terms. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]