

*MPBalekar*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 18758 OF 2024**

Divisional Controller MSRTC,  
Palghar Division and Anr. ... Petitioners  
**V/s.**  
Ananat Mahadev Sawardekar ... Respondent

Mr. Yashodeep Deshmukh a/w Vaidehi Pradeep and  
Pratham Gawali for the Petitioners.

Mr. Vaibhav J. a/w Pandurang A. for the Respondents.

**CORAM : AMIT BORKAR, J.**

**DATED : MARCH 7, 2026**

**P.C.:**

1. The present writ petition arises from an order passed by the Industrial Court. By the said order, the Industrial Court directed the present petitioner not to deduct any amount from the wages of the respondent for the purpose of recovery under Departmental Establishment Order No. 557 of 2020 dated 12 September 2020, unless such recovery was made after following due process of law. The Industrial Court also directed the petitioner to refund the amount of wages which had already been recovered from the respondent for the period between September 2019 and November 2019. While directing such refund, the Industrial Court further ordered that the said amount should carry interest at the rate of 7 percent per annum. Being dissatisfied with this direction, the employer has approached this Court under its writ jurisdiction. The grievance of the petitioner is that the Industrial Court has

passed the impugned order without properly examining the governing service circular and the factual background under which the recovery was initiated.

2. The facts which give rise to the dispute are largely undisputed. The respondent employee was suffering from paralysis, which is a serious medical condition affecting the ability of a person to discharge his duties. Because of this illness, the respondent was granted special leave for a period of 303 days commencing from 2 December 2017 and continuing until 30 July 2018. After the expiry of this period, further leave was sanctioned for additional periods of 61 days and thereafter 181 days. Subsequently, the employer issued Departmental Establishment Order No. 557 of 2020 dated 12 September 2020. By this order, the leave taken by the respondent for the period from 2 January 2019 to 30 June 2019, which consisted of 180 days, was treated as leave without wages. As a consequence of this declaration, the employer proceeded to recover wages paid for the said period. The respondent felt aggrieved by this action and therefore filed a complaint before the Industrial Court under Items 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The said complaint was registered as Complaint No. 162 of 2020. Upon hearing the parties, the Industrial Court allowed the complaint and passed the impugned order which is now under challenge in the present writ petition.

3. Certain aspects of the case are not in dispute between the parties. It is admitted that the respondent was indeed suffering

from paralysis. The fact of his illness has never been questioned by the employer. It is also not disputed that the various periods of leave earlier granted to the respondent were sanctioned by the competent authority. Further, the issuance of the order dated 12 September 2020 declaring the period of 180 days as leave without wages is also not in dispute. However, upon examining the record, it appears that the Industrial Court has not taken into consideration an important circular governing such situations. The circular in question is Circular No. 2 of 2010 dated 4 March 2010. This circular lays down the policy of the employer in respect of employees who suffer from serious sickness. It provides that where an employee is suffering from specified serious ailments, and the sickness is duly certified by a Medical Board constituted for that purpose, such employee can be granted special leave for a period extending up to three years. This benefit is in addition to the ordinary leave which the employee is otherwise entitled to under the service rules.

4. The illness of paralysis clearly falls within the category of sickness contemplated by the said circular. It is also not disputed that the respondent's medical condition was examined and certified by the Medical Board as required by the circular. Once these conditions were satisfied, the respondent became entitled to the benefit contemplated by the circular. In other words, the respondent was eligible to receive leave for a period of up to three years on account of the certified sickness, over and above the normal leave otherwise admissible to him. This position flows directly from the terms of the circular itself. When such a

governing policy exists and when the factual requirements under the policy are satisfied, the benefit provided under the circular cannot be ignored while determining the legality of the employer's action. In this background, the declaration that the leave for 180 days was without wages required careful examination in light of the circular.

5. The Industrial Court, while granting relief to the respondent, appears to have modified the nature of the entitlement by directing that the respondent should receive half of his average salary for the said period. In my opinion, the Industrial Court did not have sufficient basis to alter the nature of the entitlement in this manner without fully addressing the implications of the circular and the service rules governing the case. The role of the Court in such matters is to ensure that the rights flowing from the applicable policy are properly applied. Once the circular recognized the respondent's entitlement to special leave on account of the certified illness, the dispute essentially concerned the extent to which the salary paid during that period could be adjusted or recovered. Therefore, the relief granted required appropriate modification so that it reflects the correct balance between the employer's right to regulate service conditions and the employee's entitlement arising from the circular.

6. Taking into consideration the entire material on record, the nature of the illness suffered by the respondent, the certification by the Medical Board, and the governing circular dated 4 March 2010, I am of the opinion that the impugned order requires limited modification. Justice would be served if the respondent is held

entitled to half of his average salary for the relevant period, while permitting the employer to recover the remaining portion. Hence, following order:

### **ORDER**

(i) The impugned judgment and award passed by the Industrial Court stands modified. It is held that the petitioners shall be entitled to recover dues only to the extent representing half of the average salary of the respondent for the relevant period. Consequently, the petitioners are directed to repay to the respondent the remaining half of the average salary for the period from 2 January 2019 to 30 June 2019.

(ii) The aforesaid amount shall be paid to the respondent within a period of six weeks from today. In the event the amount is not paid within the said period of six weeks, the same shall carry interest at the rate of 7 percent per annum until payment.

7. The writ petition stands disposed of in above terms.

**(AMIT BORKAR, J.)**