

(2020) 01 BOM CK 0084
In the Bombay High Court
Case No : Writ Petition No. 4117 Of 2019

Chowgule Industries Pvt. Ltd

APPELLANT

Vs

Krishna Shrikant Kumbhar And Others

RESPONDENT

Date of Decision : 09-01-2020

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 10A, 10A(3)

Citation : (2020) 01 BOM CK 0084

Hon'ble Judges : S.C. Gupte, J

Bench : Single Bench

Advocate : Atul G. Damle, Rajesh Kinnerkar, Rupesh Lanjekar, Nitin A. Kulkarni, Vaishali Nimbalkar

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. Rule. Rule taken up forthwith for hearing by consent of the parties.
3. This writ petition challenges an order passed by the Industrial Court at Pune on a complaint of unfair labour practice made by Respondent Nos.1 to 6 herein (original complainants). The complainants' case before the Industrial Court was that they were working with the Petitioner establishment, and while in service, were charge-sheeted for various misconducts and suspended pending the enquiry without payment of subsistence allowance in accordance with law. It is not in dispute that for the first 90 days of their suspension, the complainants were paid subsistence allowance at the rate of 50 per cent of wages and 70 per cent of such wages for the remaining period of their suspension. The grievance of the complainants is two fold. In the first place, it is submitted that they were entitled for 100 per cent wages post 180 days of suspension and secondly, that the quantum of wages considered for such subsistence allowance was not in accordance with minimum wages payable under the Minimum Wages Act.
4. So far as the first objection, namely, as to the percentage of wages payable as

subsistence allowance after the first 180 days' suspension, is concerned, a learned Single Judge of our court in the case of *Bajaj Electricals Ltd. Vs. V. Subramaniam* 2005(3) ALLMR 24 has considered the matter in the light of the relevant legal provisions and case law. That was a case, where the concerned workman was seeking wages in accordance with Model Standing Orders applicable to the industry. Relying on a division bench decision of our court in the case of *May and Bakar Ltd Vs. Kishore Jaikrishandas Ichaporia* 1991(63) FLR 319, the learned Single Judge held that the expression "other law" used in sub-section (3) of Section 10A of Industrial Employment (Standing Orders) Act, 1946 would not include Model or Certified Standing Orders, since these would be law made under the provisions of the very Act, which contains Section 10A, namely, Industrial Employment (Standing Orders) Act 1946. The Supreme Court in the Case of *B.D. Shetty Vs. Ceat Limited* 2001(7) SCALES 513 was also considering a similar question. The argument before the court was that the appellants before it were entitled to 100 per cent subsistence allowance after 180 days of suspension under clause 25(5-A) of the Model Standing Orders framed under the Bombay Industrial Employment (Standing Orders) Rules, 1959, which are the same rules, under which, the present Respondents claim. This argument was not countenanced by the Supreme Court. On a careful consideration of Section 10A of the Industrial Employment (Standing Orders) Act 1946, the court rejected the appellants' argument that Model Standing Orders, appearing in Schedule I appended to the Rules made under the Act, being more beneficial, the appellants were entitled to 100 per cent subsistence allowance equivalent to their wages, dearness allowance and other compensatory allowance in case the enquiry was not completed within a period of 180 days, presumably on the basis of Section 10 A(3). The Supreme Court's attention was drawn to the Division Bench of our court in *May and Bakar Ltd* (supra) referred to above. The court accepted the view expressed by the Division Bench, observing as follows:

"We have every good reason to accept the said view. It is plain from the very language of Section 10A(3) that the words 'provisions of such other law' necessarily refer to the law other than one covered by the very Act and Rules made thereunder. In this view, we reject the contention of the learned counsel for the appellants. Similarly, his argument that there is a practice with the respondent to make 100% subsistence allowance if inquiry is not completed with 180 days, and as such the appellants are also entitled accordingly, cannot be accepted in view of the specific provision contained in Section 10A of the Act."

4. In the present case, what emerges from the record is that originally when this application was first made before it, the Industrial Court rejected the same after considering the relevant case law, including the case of *May and Bakar Ltd* (supra). Without considering this aspect of the matter, the Industrial Court appears to have thereafter proceeded to order payment of 100 per cent wages as subsistence allowance without considering these cases.

6. In view of the settled law, as stated in *May and Bakar Ltd* (supra) as well as in

B.D. Shetty (supra), and as followed by our court in the case of Bajaj Electricals Ltd. (supra), the impugned order of the Industrial Court cannot be sustained.

7. Rule is accordingly made absolute and the writ petition is allowed by quashing and setting aside the impugned order dated 21 September 2017, and dismissing the complaint of Respondent Nos.1 to 6 herein.