

(2010) 03 BOM CK 0162

In the Bombay High Court

Case No : Writ Petition No. 3988 of 2009

Kolhapur Municipal Transport

APPELLANT

Vs

Dhairyasheel Keshav Mane and Another

RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2010) 6 BomCR 319 : (2010) 125 FLR 934

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : S.S. Patwardhan, for the Appellant; M.S. Topkar, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—The present Writ Petition is filed by the Petitioner-Municipal Corporation in the matter of unfair labour practice under item Nos. 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (for short, "The MRTU & PULP Act") whereby, the learned Industrial Court, Kolhapur, by an order dated 08/12/2008 directed the Petitioner as under:

- 1) The Complaint ULP No. 46/2008 is allowed.
 - 2) It is hereby held and declared that the Respondents have committed the unfair labour practice under Item 9 of Schedule IV of the MRTU Act, 1971.
 - 3) Complainant is entitled to receive the suspension allowance as per the provisions of Industrial Employment Standing Orders read with Model Standing Orders applicable to Maharashtra under Clause 25-5(A) (i), (ii) and (iii) from Respondents.
2. This Court in Association of Engineering Workers Vs. Permanent Magnets Ltd. and another, , has considered that the Industrial Court has jurisdiction to pass

and deal with the issue regarding the subsistence allowance during the suspension. The learned Counsel appearing for the Petitioner, therefore, in view of this Judgment, has not pressed the issue further as the point is already covered and decided of raising the plea of subsistence allowance in view of Section 28 and Schedule IV , Item No 9 of the MRTU & PULP Act.

3. So far as the entitlement of suspension allowance, as observed by the Industrial Court, in my view, the delay cannot be attributed only to the Complainant, in the present facts and circumstances of the case. The Industrial Court has observed that:

The reasons for adjournment was different and enquiry officer has granted the adjournments after the Complainants have been able to prove that the Complainants have been put under suspension, the enquiry has prolonged beyond the period of 90 days and they are entitled for 3/4th of the basic wages, dearness allowance and other composite fareness allowance after 90 days of the suspension and as the enquiry is not completed within the period of 180 days, the Complainants herein should be paid full subsistence allowance for month until the enquiry is finally concluded and accordingly Complainants have proved that reduction in payment of suspension wages against the provision of Industrial Employment Standing Orders Act, 1946 and demand No. 3 of the settlement amounts to breach of settlement under Item No. 9 of Schedule IV.

4. It is apt to note the observations of the Supreme Court in this regard in B.D. Shetty and Others Vs. M/s Ceat Ltd. and Another, .:

The reference to the delay directly attributable to the conduct of the workman in the said provision is obviously to the one where the workman unjustifiably, deliberately or designedly drags on or prolongs the domestic inquiry. To put it in other way, a workman cannot be permitted to take advantage of delay caused by himself in the absence of any order passed by a Court.

5. The parallel Criminal Investigation was going on, therefore also the applications were moved for adjournments and as, after considering the objection, the inquiry officer had granted the adjournments and accordingly the Departmental inquiry was adjourned from time to time. Therefore, it is difficult to attribute the delay only because of applications for adjournments moved by the Complainant/ Petitioner. The reasons for the adjournments were different. There is nothing on record to show that the Petitioner was non-cooperative. Admittedly the inquiry could not be completed within stipulated period. That itself is sufficient to claim subsistence allowance as per the service conditions unless proved otherwise.. Once the Tribunal grants adjournment after hearing both the parties or even otherwise, only one party cannot be blamed for the same. The suspended employee is entitled for his legal rights of subsistence allowance as relationship of employer and employee subsists, but only as per the service conditions.

6. In view of this, I see there is no case made out to interfere with the order as

passed. The Petition is accordingly dismissed with no order as to costs.