

(1983) 04 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 2809 of 1982

Pune Municipal Corporation

APPELLANT

Vs

Keshav Ganpat Bhise and Another

RESPONDENT

Date of Decision : 05-04-1983

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C

Industrial Employment (Standing Orders) Act, 1946 — Section 1(3), 13B, 2, 2A, 5A

Payment of Wages Act, 1936 — Section 2

Citation : (1983) 2 BomCR 715

Hon'ble Judges : V.S. Kotwal, J

Bench : Single Bench

Advocate : C.J. Sawant, for the Appellant; S.M. Dharap, Advocate, for the Respondent

Judgement

V.S. Kotwal, J.—After facing a departmental enquiry and getting himself exonerated, further proceeding has been initiated by the respondent herein for the recovery of certain amount pertaining to the period of suspension. The respondent was employed by the petitioner-Corporation on April 14, 1969 in the capacity as a Mixer Driver in Roads Division. On account of certain allegations about the misconduct on his part, with which we are not much concerned in this proceeding, he was suspended as and from January 16, 1978, in pursuance of the directions to hold departmental enquiry. The Enquiry Officer was appointed as late as on 1st July, 1978. Show-cause notice was issued on 31st January, 1979. The enquiry was concluded in due course when the respondent, the alleged delinquent was exonerated of all charges. In pursuance of this order he was directed on 7th March, 1979 to resume duties as the stigma was wiped out. He actually resumed the duty as and from 13th March, 1979. He was paid 50% of the wages as the subsistence allowance in accordance with Rule 58 of the suspension period between 17th January, 1978 and 13th March, 1979.

2. However, being dissatisfied with the said conduct the respondent filed an application on 24th June, 1980 u/s 33-C of the Industrial Disputes Act in the First

Labour Court, Pune being No. 222 of 1980 contending that he was entitled to full amount of wages D.A. etc., for the said period of suspension as according to him, the provisions contained in the Industrial Employment (Standing Orders) Act, 1946 squarely apply under which he was entitled to the said amount, which according to him, tuned to Rs. 2230.16, which was the difference after deducting 50% amount which was already paid.

3. This application was resisted on behalf of the Corporation mainly on the ground that the provisions of the said Act did not apply whereas the respondent was governed by the Model Standing Orders and as such he has been properly paid for he period of suspension.

4. The learned Presiding Officer upheld the contention of the respondent and held that the parties are governed by the Standing Orders under the said Act and as such the respondent was entitled to the said amount. This order recorded on July 17, 1982 is placed under challenge in this petition under Article 227 of the Constitution of India.

5. Shri C.J. Sawant, the learned Counsel for petitioner-Corporation mainly, assails the impugned order on the ground that the parties would be governed by the Model Standing Orders and not by the Standing Orders under the said Act in which event the amount paid is proper. It is also submitted that only a few divisions under the Corporations cannot get the label as Industrial Establishment since they have to independent existence or entity. Shri Dharap, learned Counsel of the respondent, counters these contentions on the same lines as recorded by the Labour Court.

6. Inspite of the controversy, the point falls in a very narrow field. Admittedly the respondent was employed as a Mixer Driver in Roads Division of the petitioner-Corporation and as such he was associated with a division under the Corporation which related to the construction, development or maintenance of buildings, or roads, etc. I have already indicated the course of events from the date of suspension till his resuming the duty. The Corporation has already paid the subsistence allowance as contemplated by the Model Standing Orders.

7. These Model Standing Orders are enacted under the said Act and if all other conditions are satisfied then these would be applicable to the case of the respondents. Order 5-A makes a split up of the period during the pendency of enquiry after suspension for which different slabs of subsistence allowance are to be paid. Thus, under the first clause, for the period of first 90 days the said allowance payable per month should be equal to one half of basic pay, D.A. and other allowances. If the enquiry is prolonged the allowances for the further period of 90 days would be equal to 3/4 of such basic wages and allowances and the last category in sub-clause (3) stipulates that if prolongs even after 180 days then the subsistence allowance should be equal to basic wages and allowances in full.

8. Shri Sawant, the learned Counsel, however, submits that these Model

Standing Orders would not be applicable to the instant case as according to him, the Corporation has framed its own Rules and Regulations and under its competence it has framed Standing Orders and, therefore, the Corporation employees would be governed by those standing orders and not by one under the Act. Under the said Standing Orders of the Corporation irrespective of any suspension period, the subsistence allowance at the maximum for a certain period only would be at 50% of the wages and allowances whereas it may be further decreased as the duration increases.

9. The Standing Orders under the said Act were enacted in the year 1946. Sub-section (3) of section 1 pertaining to its applicability prescribes that it would be so applicable to every industrial establishment where in 100 or more workers are employed on any day of the preceding 12 months. An authority vests in the Government to make it applicable even to such industrial establishment where the number of employees is less than the prescribed one, for which purpose certain procedure is prescribed. In the instant case the said division in which the respondent was employed by the Corporation had a strength of more than 100 workers and this is not controverted by the Corporation. Therefore, one part of that provision is satisfied. The only other requirement pertains to the question as to whether the establishment in question can be styled as industrial established under the said Act. Section 2 sub-clause (e) defines Industrial establishment under the said Act, and it splits up into difference clauses. Clause (1) however, is more relevant under which an industrial establishment as defined in sub-clause (2) of section 2 of Payment of Wages Act is embraced by the concept and definition of Industrial Establishment under the Act. This therefore, makes it necessary to read the said provision of payment of Wages Act and under sub-clause (g) of section 2(ii) an establishment in which any work relating to construction, development and maintenance of building roads, bridges etc. are carried out, it is embraced by the definition of Industrial Establishment. Transplanting this phrase in section 2(e) sub-clause (i) as contemplated under that provision itself, it would be clear that the respondent who has been working in the establishment is concerned with the construction, development of buildings and roads etc., could be squarely covered (sic). The net result would be that the division or establishment in which the respondent was working is an industrial establishment as defined under the said Act and it has a strength of more than 100 workers and, therefore, both the requirements of section 1, sub-section (3) are satisfied.

10. Section 2-A refers to the applicability of the Model Standing Orders for every matter set out in the schedule applicable to such category. It also provides that it may not affect any other Standing Order provided those have been duly and properly served after following certain procedure as contemplated u/s 2-A and further provisions thereafter. This has not been done by the Corporation and, therefore, the Model Standing Orders under the Act would be the governing factor. Under Item 9 of the schedule the suspension or dismissal for misconduct etc. are attracted by the said Model Standing Orders under the Act. I have

already reproduced the said Standing Orders under the Act, which prescribe different slabs starting from the first slab of 90 days wherein allowance would be 50%; for the next slab of 90 days it would be 3/4th and after a period of 180 days it shall be full. Under the Rules, the Corporation prescribe certain Standing Orders under which for the entire duration of the suspension the delinquent is entitled to only 50% which is irrespective of the duration how so long it may be. This is in contrast with the Model Standing Orders under the Act where the three slabs are made. It is on that basis that the difference is claimed, though the respondent would be entitled to get 50% only for the period of first 90 days and after a period of 180 days he will be entitled to get full wages. There is no dispute about the calculation as figured under the claim pertaining to the difference.

11. Shri Sawant the learned Counsel, also relied on the provisions contained in section 13(B) of the Act to suggest that the provisions under the Act would not be applicable to the respondent since the Corporation have themselves made Rules and Regulations, and, therefore, those Standing Orders or Rules would govern the parties. For obvious reasons this contention cannot be upheld inasmuch as the dominating requirement of the said provision is that such rules or regulations are required to be notified in this behalf meaning thereby that a general prescription or enactment of the rules is not enough and those must be so notified, so as not to make them applicable to certain industrial establishment as contemplated by section 13(B). That contention therefore, also is of no substance.

12. The net result, therefore, would be that the Model Standing Orders under the Act would be applicable, under which the respondent would be entitled to full wages with allowances for a period after 180 days, whereas the Corporation has granted even for this period only 50% wages. This would also be in addition to his claim that he would be entitled to 3/4th of wages and allowances for the slab between 90 and 180 days. In effect, therefore, the respondent would be entitled to the differences calculated on this basis.

13. The connotation to the provisions of section 13(B) assigned earlier and the provisions of this Act being special provisions would override the general rules or regulations or other Standing Orders of the Corporation as has been enunciated by the Supreme Court in the ratio of U.P. State Electricity Board and another v. Hari Shankar Jain and other AIR 1979 S.C. 65. Both the points are, therefore, squarely governed by that ratio.

14. In this view of the matter, the Labour Court is fully justified in granting the claim of the respondent in its entirety and as such there is no reason to interfere with the impugned order. Shri Dharap, the learned Counsel, also submits with justification that even de hors of all these provisions, once it is established that his client is exonerated of all the charges on that premise also he is entitled to full wages. This alternate plank is, quite formidable and on that count also the respondent would be entitled to the said claim. Thus the respondent is entitled to

succeed on both the counts.

15. In the result, rule is discharged with no order as to costs.