

(2015) 06 BOM CK 0133
In the Bombay High Court
Case No : Writ Petition No. 2248 of 2012

Smita Yohan Godbole

APPELLANT

Vs

The State of Mah. and Others

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A

Citation : (2015) 146 FLR 1025 : (2015) 3 LLN 348 : (2015) LLR 880 : (2016) 1 MhLj 121

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Chaudhari Nitin K., for the Appellant; Y.M. Kshirsagar, AGP, Advocates for the Respondent

Judgement

R.V. Ghuge, J.

1. Rule.

2. Rule made returnable forthwith and heard finally by the consent of the parties.

3. I have considered the extensive submissions of Mr. Chaudhari, learned Advocate for the Petitioner, Mr. Shah, learned Advocate for Respondent Nos. 4 and 5 and the learned AGP on behalf of Respondent Nos. 1, 2 and 3.

4. A host of factors have been canvassed by the litigating sides. In the light of the order that I intend to pass in view of Section 9A of the Industrial Disputes Act, 1947 and the fourth schedule thereunder, I am not adverting to the entire submissions of all the learned Advocates since the matter is being relegated for proper compliance of the procedure laid down under Section 9A of the Industrial Disputes Act, 1947.

5. The Petitioner along with another employee, namely, A.P. Chaudhari have suffered reduction in monthly salary from January, 2010. Page 168 of the petition paper book pertains to Mr. A.P. Chaudhari whereby his salary as paid in

December, 2009 at the rate of Rs. 13,085/- per month was reduced to Rs. 10,701/-per month from January, 2010. It is not in dispute that Mr. A.P. Chaudhari had challenged the decision of Respondent Nos. 4 and 5 by preferring Complaint (ULP) No. 4/2010 before the Industrial Court, which was dismissed. However, Mr. A.P. Chaudhari has accepted the verdict of the Industrial Court and has not questioned the same till this date.

6. Mr. Shah, therefore, has made two fold submissions. Firstly, the judgment in this petition be restricted only to the extent of the Petitioner and secondly, this judgment shall not be treated as a leverage to Mr. A.P. Chaudhari to retract from his decision to accept the verdict of the Industrial Court.

7. Mr. Chaudhari, learned Advocate points out from page 68 that the salary of the Petitioner has been paid at the rate of Rs. 9038/-per month. Page 70 is the document dated 30.01.2010 indicating that salary paid to the Petitioner is reduced to Rs. 4630/-per month.

8. The Petitioner had preferred Complaint (ULP) No. 3/2010 before the Industrial Court. She had specifically invoked Section 9A of the Industrial Disputes Act, 1947 alleging alteration in the service condition under clause (1) of the Fourth Schedule to Section 9A. The said issue has been brushed aside by the Industrial Court concluding that Respondent Nos. 4 and 5 have justified the reduction in wages and therefore, notice of change need not be issued to the Petitioner.

9. Mr. Chaudhari, learned Advocate, submits that the other employee Mr. A.P. Chaudhari has accepted the verdict of the Industrial Court vide it's judgment dated 01.11.2011. The Petitioner has alone questioned the impugned judgment dated 01.11.2011 delivered in Complaint (ULP) No. 3/2010.

10. Mr. Shah, learned Advocate, has strenuously contended that the decision of Respondent Nos. 4 and 5 is appropriate, is justifiable and therefore, the judgment of the Industrial Court need not be termed as perverse. The explanation put forth by Respondent Nos. 4 and 5 while opposing the complaint filed by the Petitioner and the evidence adduced, has been accepted by the Industrial Court and therefore, the conclusions drawn need no interference.

11. Mr. Shah has made every endeavour to explain the scheme and procedure under which the salary of the Petitioner is paid by Respondent Nos. 4 and 5 and the grants received from the Government on which the amount of salary is based. He, however, submits, on the basis of the record, that no opportunity of hearing was given to the Petitioner before taking the decision to reduce her salary.

12. It is pointed out by the Petitioner that the witness of Respondent Nos. 4 and 5 before the Industrial Court has admitted in cross-examination that the Petitioner's salary has been reduced and she was not issued with any notice and was not afforded any opportunity to explain as to why her salary should not be reduced.

13. I have considered the evidence adduced before the Industrial Court. It appears that the Industrial Court has got carried away by the explanation put forth by Respondent Nos. 4 and 5. The Industrial Court has overlooked the fact that the reduction in wages falls under Item No. 1 of the Fourth Schedule to Section 9A of the Industrial Disputes Act, 1947.

14. Section 9A of the Industrial Disputes Act, 1947 reads as under:-

"9A. Notice of change.

No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, -

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change -

(a) where the change is effected in pursuance of any settlement or award; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply; or

(c) Where the change is effected due to updating or replacing of the existing machinery, computerisation or increase in the immovable property and increase in production and that,-

(i) Such change shall not affect the total wages of the workmen and their hours of work; and

(ii) the employer provides all the legitimate and required facilities such as training etc., to the workmen to acquire the skill of new job."

15. The Fourth Schedule framed under Section 9A pertains to the conditions of service for change of which notice is to be given. Item No. 1 thereof mentions "Wages, including the period and mode of payment".

16. It is evident that Section 9A prevents an Employer from effecting any change in conditions of service applicable to any workman in respect of any matter specified in the fourth schedule without following the procedure laid down in sub-sections (a) and (b) of Section 9A. It is not in dispute that no notice of change is required to be given in the event change in the service conditions is an effect or outcome of a settlement or an award between the Employer and Employees.

17. In the light of the above, it is evident that the said procedure was not followed. It is not disputed that the monthly salary of the Petitioner was reduced. It is admitted by the witness of Respondent Nos. 4 and 5 in his cross-examination that the salary of the Petitioner was reduced and no opportunity of hearing was given to her. The Industrial Court has either lost sight of this fact or has disregarded the same for reasons which have not been set out in the impugned judgment.

18. It is beyond comprehension as to what were the circumstances which restrained the Industrial Court from considering the oral and documentary evidence on record and the admission given by the witness of Respondent Nos. 4 and 5 coupled with the law on Section 9A of the Industrial Disputes Act, 1947. A notice of change can be done away with only if there is a settlement or award between the parties. The Industrial Court on its own accord could not have nullified the effect of Section 9A.

19. In the light of the above, the impugned judgment and order dated 01.11.2011 delivered by the Industrial Court in Complaint (ULP) No. 3/2010 is perverse and is rendered unsustainable in law. For the reasons as recorded above, the impugned judgment and order is quashed and set aside. Complaint (ULP) No. 3/2010 deserves to be allowed.

20. Nevertheless, in the event Respondent Nos. 4 and 5 desire to comply with the provisions of law in effecting a change in the service conditions of the Petitioner, they are at liberty to do so. However, Respondent Nos. 4 and 5 are required to pay the difference of salary to the Petitioner from the month it has been reduced until the decision is arrived by the competent authority under Section 9A of the Industrial Disputes Act, 1947, if any application is preferred by Respondent Nos. 4 and 5. The difference in salary, therefore, be paid to the Petitioner with simple interest of 3% per annum within a period of FOUR MONTHS from today.

21. Rule is accordingly, made absolute in the above terms.