
(2002) 02 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No's. 294, 265 and 330 of 1995

Transport Manager and Another

APPELLANT

Vs

Vilas Sanu Deokar and Others

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

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

Citation : (2002) 4 BomCR 257 : (2002) 2 BOMLR 439 : (2002) 94 FLR 772 : (2003) 1 LLJ 59

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : R.G. Ketkar, for the Appellant; K.S. Bapat, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.

1. These three petitions challenge the order of the Industrial Court whereby the petitioners were directed to pay subsistence allowance to the respondents, who were admittedly Badli workers, in accordance with Section 10-A of the Industrial Employment (Standing Orders) Act, 1946. The undisputed facts in these petitions are as follows:

The respondents were "Badli" workmen employed as drivers with the petitioners. Their names were maintained in the register of Badli-Hangami-Rozandari workmen. On account of certain acts of misconduct, they were charge-sheeted and an enquiry was instituted against them. While the enquiry was being conducted against the respondent-workmen, the petitioners did not give them any work and a "no duty order" was issued to them. The workmen filed a complaint under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 contending that issuance of "no duty order" amounted to suspension from work and therefore, they were entitled to subsistence allowance for the period during which they

were not given any work by the petitioner-employer.

2. The Industrial Court, on the basis of the contentions raised before it, held that the petitioner-employer was guilty of unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as M.R.T.U. & P.U.L.P. Act) and directed the employer to pay to the workmen subsistence allowance u/s 10-A of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as "Standing Orders Act") during the period when it had issued the "no duty order" to the workmen. Being aggrieved by this order of the Industrial Court, the petitioners have challenged the same by filing the present petitions under Article 226 of the Constitution of India.

3. Mr. Ketkar, learned counsel for the petitioner-employer, submits that issuance of "no duty order" to Badli workmen could not by any stretch of imagination amount to a suspension from work and, therefore, there is no question of payment of subsistence allowance during the period when the enquiry was held and no work was assigned to the respondent-workmen. He further submits that in any event, the petitioners are covered by Bombay Provincial Municipal Corporations Act and the Rules and Regulations framed thereunder. He submits that this Act and the Regulations framed thereunder covering the service conditions of employees would have an overriding effect and would be applicable to the workmen employed by the petitioner rather than the Standing Orders Act.

4. He further submits that in any event, the petitioner's certified Standing Orders have been certified under the Standing Orders Act on July 26, 1953 and, therefore, they would prevail over the Model Standing Orders. He submits that under the certified Standing Orders and Regulations governing the Pune Municipal Transport Services, which were framed under the Act and which came into effect from March 2, 1961, no amount of subsistence allowance is payable to the Badli workmen and, therefore, the respondent-workmen were not entitled to any subsistence allowance.

5. In contrast, Mr. Bapat, learned advocate appearing for the respondent-workmen, submits that the effect of the "no duty order" issued to the workmen pursuant to a charge-sheet and disciplinary proceedings being initiated against them amounts to depriving the respondent-workmen of work on account of disciplinary proceedings. This disciplinary action, he submits, is in accordance with the certified Standing Orders and, therefore, the respondent is entitled to subsistence allowance during the period when the enquiry was being held against him and no duty order was issued to them. He submits that since the certified Standing Orders do not contain any provisions regarding payment of subsistence allowance, one would have to turn to the Standing Orders Act. He submits that u/s 10-A of the Standing Orders Act, the subsistence allowance is payable to a workman at the stipulated rate and, therefore the respondent-workmen are entitled to the same. He further submits that in any event, it is the Standing Orders Act which will prevail over both the B.P.M.C. Act as well as the service

regulations of the Pune Municipal Transport. He relies on the judgments of the Apex Court in the case of U.P. State Electricity Board v. Hari Shanker Jain and Ors. ; Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another, and judgment of this Court in the case of Pune Municipal Corporation Vs. Keshav Ganpat Bhise and Another, in support of this contention. He further submits that the word "suspension" according to the OXFORD DICTIONARY means (sic) and therefore, if a workman had been temporarily deprived from being able to perform his duty with the petitioner would amount to suspension from service which would then, as a consequence, require the petitioner to pay subsistence allowance.

6. In my view, there cannot be suspension of a workman whose name figures on the register of Badli-Hangami-Rozandari workers. A. Badli workman is a workman who is able to perform his duty as and when work is made available to him by the employer. He is a substitute for a workman who is appointed in a permanent post as a permanent workman or for a probationer who is temporarily absent. Under the certified Standing Orders which are applicable to the petitioners also, a Badli workman is one who is appointed to the post of a permanent employee or a probationer due to their temporary absence from duty, provided his name is maintained in the register of Badli workers. This means that a Badli is a person who, although his name is maintained in a register, does not get work as a matter of right but only when the employer finds that work is available due to exigencies or due to the temporary absence of the permanent workmen or of probationers. The Badli workman is required to present himself for work and it is only if work is available that the employer would first have to consider allotting work to those persons whose names figure in the Badli register. Badli workers can be made permanent workers if they have completed the required number of days in service as stipulated under the certified Standing Orders and on the basis of seniority-cum-merit.

7. Therefore, it would be futile to suggest that Badli workman has a right to secure work in the establishment every day or at least on the day he reports for duty. It may so happen that an employer is able to provide the Badli workmen work for 30 days at a stretch and no work thereafter for 2 or 3 months continuously. However, this would not mean that the employer has placed the workman under suspension by not providing him work, as it is only when work is available that the employer is required to allot work to a Badli if his name is listed in the register maintained and on the basis of seniority-cum-merit.

8. Therefore, if an employer does not provide work to a Badli workman by issuing a no duty order, it would not amount to suspension from work, A person can be suspended from work provided there is a vested right in the workman to secure work from the employer on every day while the contract of employment subsists. However, in the case of a Badli workman, the contract of employment comes into effect only on the day he is given employment, and therefore, the question of suspension from work on account of "no duty order" does not arise. If there can, be no suspension from work of a Badli workman, the question of

being entitled to subsistence allowance during the period he is not allotted work also does not arise.

9. Mr. Bapat's submission, that in the present case, issuance of no duty order on account of an enquiry being held against the Badli workmen would amount to suspension, cannot be accepted and, therefore, the question of paying subsistence allowance to the respondents does not arise. The order of the Industrial Court, therefore, in my view, will have to be set aside.

10. It is not necessary for me to consider the other question raised by Mr. Ketkar as to whether the Standing Orders Act would prevail over the Bombay Provincial Municipal Corporations Act as in the present case, there is no suspension in the eyes of law. In view of this, Rule made absolute. However, in the circumstances of the case, there shall be no order as to costs.