

MAHARASHTRA STATE ELECTRICITY DIST.CO.LTD.

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No.GAD/DC/ACB/Trap Cases/

ADMINISTRATIVE CIRCULAR No.198 Dated 30/12/2008

Sub: Disciplinary action under summary proceedings against employees trapped by ACB – Judgement of the Hon'ble High Court.

The employees who have trapped by the ACB are being dealt with under summary proceedings as notified under Administrative Circular No.117 dated 09/8/2007.

It is observed that whenever show cause notice proposing the punishment is issued by the Competent Authority the employees are approaching Labour Court under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTUPULP) and seeking interim relief restricting us to proceed further. In some of the cases we have filed revision application in Industrial Court for vacating the interim relief granted by the Labour Court and cases are still subjudice. Because of such interlocutory orders of the Labour Court and Industrial Court the Competent Authority could not proceed after issuing show cause notices.

In one of the such case after issue of the show cause notice an employee approached the Labour Court under MRTUPULP. The Labour Court refused to grant interim relief therefore, the said employee approached the Industrial Court in revision. The Industrial Court granted the stay in favour of the employee.

Therefore, on behalf of the Company we have approached the Hon'ble High Court of Judicature at Bombay through Writ Petition No.6751 of 2008. The said Writ Petition has been decided on 17/11/2008 in favour of the Company. While deciding the Writ Petition the Hon'ble High Court has made certain observations. Some of such observations are that, prima-facie, however there is material to indicate at the interlocutory stage that the action

of the Petitioner can not be regarded as de hors or extraneous to a governing provision having the force of law or contract. The employer has prima-facie taken recourse to a Service Regulation which empowers him to take action when an employee is caught red-handed having committed or while committing acts of misconduct as a ground for invoking summary procedure. The Labour Court under MRTUPULP Act, 1971 has to exercise their power to grant interim relief sparingly and with great caution in cases such as where the employer is acting manifestly malafide and for extraneous purposes. Otherwise, interference with the disciplinary jurisdiction of the employer by Labour Courts at the interlocutory stage is not warranted. Such interference is liable to impede the efficiency of service and to lead to grave consequences particularly in the context of an employer such as the Petitioner who discharges duties having a bearing on the provision of utility service to the public and the community at large.

A copy of the aforesaid judgement is attached herewith. The concerned field officers are requested to bring this judgement to the notice of our Advocates appearing in ACB cases on behalf of the Company, where either Labour Court or the Industrial Court or any Civil Court has granted the interim relief to the employee restricting us to act on show cause notice and ensure that such stay is got vacated.

Encl: Copy of the Judgement in
W.P.No.6751/2008



(S. Y. Patil)

Chief General Manager(P)

To
As per Mailing List upto Divisions.

**IN THE COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6751 OF 2008.**

The Managing Director,
Maharashtra State Electricity,
Distribution Company Ltd.

Petitioner

Vs

Mohan Moreshwar Agashe

Respondent

Ms. A.R.S. Baxi for the Petitioner
Mr. M.S. Topkar for the Respondent

CORAM : DR. D. Y. CHANDRACHUD. J.

17th November, 2008.

P.C. :

1. Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondent waives service. By consent of the learned counsel and at their request, taken up for hearing and final disposal.

2. The Respondent was appointed as a Sub-engineer in the erstwhile Maharashtra State Electricity Board (since reconstituted into four companies) and at the material time held the post of Junior Engineer. The allegation is that on 12th September, 2007 the Respondent was caught red handed in a trap case by the Anti-Corruption Bureau. The Respondent was suspended on 14th September, 2007. On 29th September, 2007 a charge-sheet was issued to the Respondent under Regulation 90 of the Employees' Service Regulations. The Respondent filed his reply on 3rd October, 2007. On 3rd January, 2008 a notice was issued to the Respondent to show cause as to why his services should not be terminated. The Respondent filed a reply there to on 7th January, 2008. Before the Petitioner could take any final decision on the notice to show cause, the Respondent instituted a complaint of unfair labour practices before the Labour Court at Ratnagiri. An application for the grant of interim relief was moved before the Labour Court. The Labour Court declined to grant interim relief by its order dated 8th May, 2008. This order was challenged by the Respondent before the

Industrial Court in revision. The Industrial Court allowed the revision application and by its order dated 15th July, 2008 directed the Petitioner to continue the Respondent in service on his original post.

3. In assailing the order passed by the Industrial Court, Counsel appearing for the Petitioner urged that the Petitioner had in exercise of its powers under Regulation 90 (a) proceeded to hold a summary proceeding, the Respondent having been caught red handed while committing an act of misconduct. The Labour Court, it was submitted, had declined to grant interim relief for cogent reasons. The Industrial Court, it was urged, transgressed the limits on its jurisdiction in interfering with the interlocutory order of the Labour Court declining relief.

4. On the other hand, it was urged on behalf of the Respondent workman that the final sanction for the grant of electric connection to the complainant consumer on whose complaint action was initiated was received only on 14th September, 2007 while the trap was alleged to have been laid on 12th September, 2007. Learned counsel submitted that the charge-sheet which was issued to the workman on 29th September, 2007 would show that the allegation of misconduct pertains not only to the trap case but also to the alleged negligence of the Respondent in keeping the file of the consumer for an inordinately long period. In these circumstances, it was submitted that Regulation 90 could not have been invoked. Moreover, it was submitted that in the reply of the Respondent dated 7th January, 2008. it has specifically been set up as a defence that the amount of the bribe was not found on the person or body of the Respondent and that the Panchanama was false. Hence, in these circumstances, it was submitted that the revisional Court was justified in directing the continuance of the Respondent in service since the charge of misconduct in the present case would not fall within the purview of the summary procedure contemplated by Regulation 90. It was urged that a regular departmental enquiry under Regulation 88 ought to have been held.

5. Regulation 90 of the service regulations contemplates summary proceedings in certain specified eventualities. Clause (a) envisages a situation "Where the employee is caught red handed having committed or while committing an act of misconduct."

6. At this stage, it is neither appropriate nor proper for this Court to make a conclusive determination of the question as to whether Regulation 90(a) would stand attracted to a cause such as the present since that is evidently a matter which would have to be decided in the course of the adjudication that will take place in the complaint of unfair labour practices. Prima facie, however, there is material to indicate at the interlocutory stage that the action of the Petitioner cannot be regarded as de hors or extraneous to a governing provision having the force of law or contract. The Petitioner had in the exercise of powers under Regulation 90 issued a charge-sheet to the Respondent on 29th September, 2007 to which the Respondent filed a reply. Following this a notice to show cause was issued on 3rd January, 2008 to which again the Respondent had filed a reply. It was open to the Respondent to canvas before the Petitioner grounds in regard to the legality of the proposed action under Regulation 90 including the question as to whether Regulation 90 was attracted in the first instance. Having submitted a reply to the charge sheet and notice to show cause which followed, the Respondent preempted the employer from arriving at that determination by moving the Labour Court in a complaint of unfair labour practices. This was improper and such a practice ought to be discouraged. There was no reason to presume that the Petitioner would not act reasonably or in accordance law.

7. The Industrial Court found fault with some of the reasons which weighed with the Labour Court in declining interim relief. The fundamental question, however, is as to whether a case for the grant of interim relief was made out. The employer has, prima facie, taken recourse to a service regulation which empowers him to take action when an employee is caught red handed having committed or while committing an act of misconduct as a ground for invoking the summary procedure. At this stage, the regulation has not been challenged. In these circumstances, the Industrial Court was manifestly in error, particularly in the exercise of its revisional powers to issue a direction to the effect that the Petitioner should be continued in his original post. An order of this nature is liable to seriously prejudice the functioning of a public utility such as the Petitioner when it deals with an employee against whom there is an allegation that he has demanded and accepted a bribe from a consumer who has sought an electric connection. It is necessary to clarify at this stage that the factual allegations should not be construed as having been accepted by this Court since indeed that is a matter which must await determination in appropriate proceedings. However, it was manifestly inappropriate for the Industrial Court to interfere with the order passed by the Labour Court declining interim relief. Should the

Respondent succeed in the complaint of unfair labour practices, he will be entitled to consequential reliefs. A Division Bench of this Court in **Vasant Raghunath Tupekar V. Maharashtra State Electricity Board** construed the provisions of clauses (b) and (c) Regulation 90. Clause (b) of Regulation allows the employer to take recourse to summary procedures where there is an obvious act of misconduct. Clause (c) allows the employer to take action where his misconduct is considered "too grave and convincing" to warrant or justify the normal procedure to be followed. The Division Bench held that the expression "obvious evidence" and the words "misconduct or misbehaviour considered too grave and convincing" indicate that the summary procedure should be utilized where there is no margin of doubt in the mind of a reasonable person about the guilt of an employee so as to warrant dispensation of a regular procedure for a disciplinary action. In the present case, apart from the provisions of Regulation 90(c) and (d) it has been urged on behalf of the Petitioner that the exercise of power can be sustained with reference the provisions of Clause (a) of Regulation 90 as well. Whether recourse to the summary procedure has been validly taken by the employer cannot be finally adjudicated upon at this stage and will be the subject matter of the determination in the complaint of unfair labour practices.

8. The Labour Courts under the Maharashtra Recongnition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 do have the power to grant interim relief and in exceptional cases may grant relief of a mandatory nature. But this power has to be exercised sparingly and with great caution in cases such as where the employer is acting manifestly malafide and for extraneous purposes. Otherwise, interference with the disciplinary jurisdiction of the employer by Labour Courts at the interlocutory stage is not warranted. Such interference is liable to impede the efficiency of service and to lead to grave consequences particularly in the context of an employer such as the Petitioner who discharges duties having a bearing on the provision of utility service to the public and the community at large.

9. In these circumstances, the order passed by the Industrial Court is unsustainable and will have to be set aside. Rule is made absolute in terms of clause (b). The order passed by the Industrial Court on 15th July, 2008 in revision is set aside and the application for interim relief shall stand dismissed. However, all the observations contained in the present judgment are confined to the issue as regards the grant of interim relief and shall not come in the way of the final disposal of the complaint on merits. The Labour Court may consider the expeditious disposal of the complaint and may set down a time schedule accordingly. There shall be no order as to costs.

10. There is no valid basis to interdict the employer from taking a decision in accordance with law. Moreover, any such decision will be subject to the outcome of the complaint of unfair labour practices. Hence, the application for stay is refused.