IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2118 OF 2008

Madura Coats Employees Union …Petitioner
Versus
Coats India & Anr. …Respondents

Ms. Suvarna Joshi, Advocate, for the Petitioner.
Ms. Shraddha Naik, Advocate, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.
DATED : 1st AUGUST 2024

JUDGMENT:

1. Heard Ms. Joshi, learned Counsel appearing for the Petitioner-Union and Ms. Naik, learned Counsel appearing for the Respondent No.1-Company.

2. By the present Writ Petition preferred under Article 226 of the Constitution of India, the Petitioner is challenging the legality and validity of the Order dated 6th August 2008 passed by the learned Member, Industrial Court, Mumbai in Complaint (ULP) No.1415 of 2000.

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3. The factual position involved in the present Writ Petition is as follows:

(a) The Respondent No.1-Company ("**the Company**") had filed an Appeal No.604 of 2000 in this Court and a notice dated 16th November 2000 was given by the learned Advocate appearing for the Company to the learned Advocate appearing for Madura Coats Employees Union-present Petitioner ("**the Union**") i.e. Respondent in said Appeal No.604 of 2000. By the said notice it was communicated by the learned Advocate appearing for the Company to the learned Advocate appearing for the Union that the said Appeal would be mentioned on 17th November 2000 at 2:45 p.m. for clarification of Order dated 1st August 2000.

(b) Thereafter, on 17th November 2000 at about 2:02 p.m., a fax was sent by the learned Advocate appearing for the Company to the learned Advocate appearing for the Union in said Appeal No.604 of 2000 stating that due to certain office objections the

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papers of the said Appeal No.604 of 2000 would not be produced at 2:45 p.m. before the Court and therefore, notice dated 16th November 2000 be treated as cancelled.

(c) It is the case of the Petitioner that the Union representatives had attended the High Court in view of said notice dated 16th November 2000 and inspite of that, the Respondent No.1-Company contrary to mandate of Section 23 of the *Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972* ("the said Act") had deducted the salary of the representatives of the Union equivalent for the period of absence for that date.

4. Ms. Joshi, learned Counsel appearing for the Petitioner pointed out the Order dated 15th October 2008 passed by this Court while admitting the present Writ Petition. The said Order reads as under:

> "*.Heard Counsel for the parties.* ***Prima-facie, I find force in the submission of the petitioners that it was long standing practice followed by the parties***

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> ***permitting the office bearers of the union to attend the proceedings before the High Court and produce proof of attendance, failing which it was to be treated as casual leave.***
>
> *2. The Court below has completely glossed over the argument that the said practice was in the nature of an agreement between the parties and the allegation in the complaint was one of breach of the said agreement by the respondent company. This aspect has not been dealt with by the Court below at all.*
>
> *3. In the circumstances, arguable questions are raised. Hence Rule.*
>
> *4. As short question is involved, hearing of petition is expedited. It will be open to the parties to move for fixed date of hearing if the matter is not notified for hearing till March 2009.*"
>
> (Emphasis added)

5. It is the submission of Ms. Joshi, learned Counsel appearing for the Petitioner that although the present Writ Petition is only pertaining to deduction of salary of one day i.e. 17th November 2000, however, the Respondent No.1-Company is not following the well established long standing practice followed by the parties permitting office bearers of the Company to attend the proceedings before the High Court and produce proof of attendance for the same, failing which the same was to be treated as casual leave.

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6. As regards the controversy involved in the present Writ Petition i.e. attendance of the representatives of Union on 17th November 2000, it is required to be noted that on 16th November 2000 a notice has been given to the Union that the said Appeal No.604 of 2000 would be produced before the Division Bench on 17th November 2000 at 2:45 p.m. At about 02:02 p.m., on 17th November 2000 a fax was sent by the learned Advocate appearing for the Company to the learned Advocate appearing for the Union that due to some technical difficulties papers of said Appeal No.604 of 2000 would not be produced and therefore, notice dated 16th November 2000 be treated as cancelled. However, it is required to be noted that the Respondent No.1-Company is at Goregaon (E), Mumbai-63. To attend the matter at 2:45 p.m. in the High Court, the representatives have to start very early and therefore, by no stretch of imagination, a fax notice sent at about 02:02 p.m. on the very day i.e. on 17th November 2000 can be said to be an adequate notice of cancellation of notice dated 16th November 2000 so that the representatives of the Union need not attend the High Court.

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7. A learned Single Judge while admitting this Writ Petition has recorded *prima facie* opinion that the learned Member, Industrial Court, Mumbai has not taken into consideration the long standing practice followed by the parties permitting the office bearers of the Union to attend the proceedings before the High Court and produce proof of attendance. It is the case of the Petitioner that apart from one incident which is mentioned in the Writ Petition, the Company is not following the long standing practice as noted in Order dated 15th October 2008.

8. The learned Member, Industrial Court while dismissing the complaint has held that the requirements of Section 23 of the the said Act are not fulfilled. It has been held that Section 23 of the said Act contemplates that a certificate shall be produced by the members of the recognized Union issued by the authority or the Court before which he or they appeared or acted and then only, they are entitled for the salary and allowances to be paid. It is required to be noted that in the context of above reasoning recorded by the learned Member, Industrial Court, Mumbai, learned Single Judge while admitting the Writ Petition has observed that the learned Member, Industrial Court has completely

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overlooked the long standing practice followed by the parties permitting the office bearers of the Union to attend the proceedings before the High Court and produce proof of attendance, failing which it was to be treated as casual leave.

9. For the purpose of appreciating the reasoning of the learned Member, Industrial Court, Mumbai, it is necessary to set out Section 23 of the said Act, which reads as under:

> "23. *Employees authorised by recognised union to appear or act in certain proceedings to be considered as on duty.-*
>
> ***Not more than two members of a recognised union duly authorised by it in writing who appear or act on its behalf in any proceeding under the Central Act or the Bombay Act or under this Act shall be deemed to be on duty on the days on which such proceedings actually take place, and accordingly, such member or members shall, on production of a certificate from the authority or the court before which he or they appeared or acted to the effect that he or they so appeared or acted on the days specified in the certificate, be entitled to be paid by his or their employer his or their salary and allowances which would have been payable for those days as if he or they had attended duty on those days.***
>
> *Explanation.- For the purpose of this section "recognised union" includes a representative union under the Bombay Act.*"
>
> (Emphasis added)

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10. Ms. Joshi, learned Counsel appearing for the Petitioner has relied on the decision of a learned Single Judge in the case of *Madura Coats Ltd. vs. S. L. Mehendle, Member, Industrial Court*[1] and more particularly on paragraph 7 of the same. The said paragraph reads as under:

> "*7. The objects and reasons clause of the M.R.T.U. and P.U.L.P. Act does not also throw any light on the expression to 'appear' and 'act'. It may be noted that the word 'appear' and 'act' is also used under the Bombay Industrial Relations Act, an Act which came into force much before the enactment of the M.R.T.U. and P.U.L.P. Act . Earlier the expression used was to appear. Thereafter by amendment the word 'act' has also been included.* ***The only question is whether the expression 'appear' or 'act' in section 23 of the Act must be so read so as to mean to plead, argue and/or conduct the proceedings and excludes assistance by office bearers of a Trade Union to Legal Practitioners. Section 23 of the M.R.T.U. and P.U.L.P. Act is nothing but a recognition of the long standing practice whereby the employers and Unions either as a matter of practice or by settlement have been permitting office bearers to represent the union in various proceedings wherein disputes of collective nature and/or disputes connected with the rights of the members or Unions. Such practice has been existing for a long time and has been understood as a necessary part of collective bargaining in as much as it would be the office bearers of the Union who would be best equipped to represent the interests of***

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> ***the members of the Union by themselves or instruct pleaders and Advocates to appear on their behalf. Section 23 of the Act, therefore, is a statutory recognition of this prevailing practice whereby the office bearers used to act for the Union in the proceedings.*** "

(Emphasis added)

Thus, the learned Single Judge in *Madura Coats Ltd.* (supra) has held that the expression to 'appear' and to 'act' in Section 23 of the said Act also includes instructing pleaders and Advocates to appear in their behalf. It has been held that such practice has been existing for a long time and has been understood as a necessary part of collective bargaining in as much as it would be the office bearers of the Union who would be best equipped to represent the interests of the members of the Union by appearing themselves or by instructing pleaders and Advocates to appear on their behalf.

11. Thus, the reasoning of the learned Member to the effect that attending the High Court proceedings will not be covered by the expression 'appear' or 'act' in Section 23 of the said Act is contrary to the decision of this Court in *Madura Coats Ltd.* (supra). Learned Member in the impugned order has also observed that the Union has not complied with Section 23 strictly i.e. such proceedings

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actually take place and members of Union shall produce certificate from the authority or the Court before which they have appeared or acted to the effect that they have so appeared or acted on the days specified in the certificate. However, learned Member while recording the said reasons has completely ignored the long standing practice followed by the parties permitting the office bearers of the union to attend the proceedings before the High Court and produce proof of attendance, failing which it was to be treated as casual leave. It is required to be noted that on many occasions, matters are listed on board before the High Court but could not be taken up for hearing due to paucity of time. Thus, the reasoning recorded by the learned Member by completely ignoring the said long standing practice is not proper.

12. In view of the above position, Ms. Naik, learned Counsel appearing for the Respondent No.1 fairly states that two members of the Union who had attended the High Court on 17th November 2000 shall be paid salary and allowances for their attendance. On instructions, she further states that whenever in future the matter between Company/Union/Worker will be listed in the High Court, on production of relevant pages of the High Court Cause List and

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on production of the proof of attendance the two representatives of the Union will be paid salary and allowances for the said attendance. The said proof can also include certificate issued by the learned Advocate appearing for the Union, apart from other proof of attendance.

13. Accordingly, the impugned Order dated 6th August 2008 passed by the learned Member, Industrial Court, Mumbai in Complaint (ULP) No.1415 of 2000 is quashed and set aside and said Complaint (ULP) No.1415 of 2000 is allowed in terms of the statement made by the learned Counsel appearing for the Respondent No.1-Company as noted in paragraph No.12.

14. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]

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