Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5627 OF 2013

Managing Director
Pune, Mahanagar Parivahan
Mahamandal Ltd.
Swargate, Pune 411 037. … **Petitioner**

V/s.

1. **P.M.T. Kamgar Sangh (INTUC) Pune**
   P.M.T. Building, Shankarsheth Road,
   Swargate,
   Pune -411 037.
2. **The Chief Secretary,**
   Urban Development Department
   Government of Maharashtra
   Mantralaya, Mumbai -400 032.
3. **The Commissioner,**
   Pune Municipal Corporation Pune.
4. **The Commissioner,**
   Pimpri Chinchwad Municipal Corporation
   Pimpri, Pune.
5. **The Commissioner,**
   Regional Provident Fund Office,
   Golibar Maidan, Pune 411 001. … **Respondents**

WITH
INTERIM APPLICATION NO.633 OF 2022
IN
WRIT PETITION NO. 5627 OF 2013

Suryakant Tukaram Gaikwad & Ors. … Applicants

In the matter between

Managing Director … Petitioner

V/s.

P.M.T. Kamgar Sangh (INTUC) Pune & Ors. … Respondents

INTERIM APPLICATION NO.3484 OF 2023
IN
WRIT PETITION NO. 5627 OF 2013

Muralidhar Krishnaji More & Ors. … Applicants

In the matter between

Managing Director … Petitioner

V/s.

P.M.T. Kamgar Sangh (INTUC) Pune & Ors. … Respondents

Mrs. A. P. Purav, for the Petitioner.

Mr. A. S. Rao, for Respondent No.1.

Mr. Girish B. Badiger, for the Applicant in IA/3484/2023.

Mr. Shivram A. Gawade i/b Mr. Deepak K. More, for Respondent No.4.

Mr. Rakesh R. Bhatkar, a/w Mr. Mohan N. Devkule, Mr. Mohit Dalvi, and Ms. Sakshi Kamble, for Intervener in IA/633/2022.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 5, 2026

PRONOUNCED ON : MARCH 26, 2026

JUDGMENT:

1. By the present Petition, the Petitioner calls in question the legality and correctness of the Judgment and Order passed by the Industrial Court at Pune in Complaint (ULP) No.129 of 2011. The said complaint was instituted by Respondent No.1 – Union under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, alleging commission of unfair labour practices on the part of the Petitioner.

2. The Petitioner is a company engaged in the business of providing public transport services by operating buses within the territorial jurisdiction of the Pune Municipal Corporation and the Pimpri Chinchwad Municipal Corporation. It is the case of the Petitioner that, prior to 18 July 2007, Pune Municipal Transport functioned as a transport undertaking of the Pune Municipal Corporation and Pimpri Chinchwad Municipal Transport functioned as a transport undertaking of the Pimpri Chinchwad Municipal Corporation, both constituted under the Bombay Provincial Municipal Corporations Act, 1949. It is further stated that, in the year 2007, both undertakings came to be amalgamated and, pursuant thereto, a company by the name of Pune Mahanagar Parivahan Mahamandal Ltd. was incorporated under the Companies Act. The Petitioner Company thus came into existence with effect from 19 July 2007, and the employees of the erstwhile PMT and PCMT stood absorbed in the services of the Petitioner. It is also not in dispute that the Pune Municipal Corporation and the Pimpri Chinchwad Municipal Corporation are the principal shareholders of the Petitioner Company.

3. The case of the Petitioner is that, since the year 1952, the employees of the erstwhile PMT were governed by the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. It is further submitted that, upon correspondence with the Government of Maharashtra during the years 1965–66, a pension scheme was formulated and, in the year 1970, exemption from the applicability of the Provident Fund Act was granted to the PMT employees under Section 20 of the said Act read with

Paragraph 27-A of the Employees' Provident Fund Scheme, 1952. According to the Petitioner, under the said pension regulations, eligibility was restricted to those employees who were in service prior to 31 March 1971 and who exercised an option to be governed by the pension scheme. It is further stated that opportunities to exercise such option were provided in the years 1971, 1975 and 1985, pursuant to which approximately 1311 employees opted for and were extended the benefits under the said scheme.

4. The Petitioner further submits that those employees who were appointed after 31 March 1971, as also those who did not exercise the option for the pension scheme, continued to remain governed by the provisions of the Provident Fund Act. It is contended that such employees were fully aware of the deductions made from their wages towards provident fund contributions and of the corresponding contributions made by the employer, which were duly deposited with the office of the Regional Provident Fund Commissioner. It is also the specific case of the Petitioner that the employees of the erstwhile PCMT were never governed by any pension scheme and were at all material times covered only by the provisions of the Provident Fund Act. It is further submitted that, upon the merger of PMT and PCMT and the incorporation of the Petitioner Company under the Companies Act, the provisions of the Bombay Provincial Municipal Corporations Act ceased to have application to the Petitioner.

5. It is the case of the Petitioner that, in the year 1999, Respondent No.1 – Union raised a charter of 39 demands on

behalf of the employees of PMT. Demand No.15 pertained to the extension of the departmental pension scheme to those employees who were appointed after 01 April 1971 and who were otherwise governed by the Provident Fund Act. The Petitioner submits that the said demand came to be settled by recording that the pension scheme may be made applicable to all employees of PMT, subject to obtaining approval from the Government and subject to compliance with necessary procedural formalities.

6. The Petitioner contends that, despite being fully aware that implementation of the said demand was contingent upon approval from the Government, Respondent No.1 – Union instituted Complaint (ULP) No.129 of 2011 before the Industrial Court under Items 5 and 9 of Schedule IV of the MRTU and PULP Act. In the said complaint, it was alleged that the Petitioner had indulged in unfair labour practices by failing to implement Clause 15 of the settlement and by adopting a discriminatory approach towards the employees. The Petitioner filed its Written Statement resisting the complaint and denied all allegations made therein. It was specifically contended that the complaint was not maintainable either in law or on facts. The parties thereafter led evidence and placed on record relevant documentary material. The Respondent examined its witness, namely Anjeneyya Nagapaa Anapur, who was duly cross-examined on behalf of the Petitioner.

7. Upon consideration of the pleadings, evidence and material placed on record, and after hearing the parties, the Industrial Court, by its Judgment and Order dated 02 May 2013, allowed the complaint. The Industrial Court recorded a finding that the

Petitioner had engaged in unfair labour practices within the meaning of Items 5 and 9 of Schedule IV of the MRTU and PULP Act. Consequently, the Petitioner was directed to implement Clause 15 of the settlement dated 20 May 1999 and to extend pensionary benefits in terms thereof. Being aggrieved by the said Judgment and Order, the Petitioner has approached this Court by way of the present Petition.

8. Ms. Purav, learned Advocate appearing for the Petitioner, submitted that the Judgment and Order dated 02 May 2013 passed by the Industrial Court at Pune in Complaint (ULP) No.129 of 2011 is manifestly erroneous and unsustainable in law. It is her contention that the Industrial Court failed to properly appreciate the material facts and applicable legal position, and thereby arrived at findings which are contrary to the pleadings on record, the evidence adduced by the parties, and the settled principles governing the field. It was further submitted that the Industrial Court committed a serious error in holding that the Petitioner had breached Clause 15 of the Settlement dated 20 May 1999. According to the learned Advocate, it is an admitted position on record that the Petitioner was not a party to the said settlement. In such circumstances, no liability for breach could have been fastened upon the Petitioner. The Industrial Court, by overlooking this fundamental aspect, rendered a finding which cannot be sustained in law. The learned Advocate further contended that the Complaint was essentially filed on behalf of retired employees. It was submitted that retired employees do not fall within the ambit of the term “employee” as defined under Section 3(5) of the MRTU

and PULP Act, 1971. On this premise, it was urged that such persons lack the requisite locus to invoke the provisions of the Act, and therefore the Complaint itself was not maintainable and ought to have been rejected at the threshold.

9. It was also submitted that Clause 15 of the Settlement dated 20 May 1999 was expressly subject to fulfillment of certain conditions, namely obtaining prior approval from the Appropriate Government and compliance with statutory requirements. The Petitioner, according to the learned Advocate, had undertaken all necessary steps in this regard, including correspondence with the Government and the Provident Fund authorities. However, the Industrial Court failed to consider this material aspect and proceeded to issue directions for unconditional implementation of pensionary benefits.

10. The learned Advocate further submitted that the exemption granted by the Appropriate Government under the Provident Fund Act was confined only to those employees of PMT who were in service prior to 01 April 1971. It was emphasized that no such exemption or approval was ever granted in respect of employees appointed thereafter. In this view of the matter, it was contended that the Petitioner had no authority in law to extend the pension scheme to post-1971 employees, and any direction to that effect would be beyond the jurisdiction of the Industrial Court and contrary to statutory provisions. It was also urged that the Complaint pertains to events which had taken place several decades ago and was filed predominantly on behalf of retired employees. Entertaining such a stale claim, according to the

learned Advocate, amounts to an error apparent on the face of the record and has resulted in serious prejudice to the Petitioner. The learned Advocate further submitted that all the concerned employees were governed by the Provident Fund Scheme and that the retired employees had already withdrawn their provident fund accumulations, including the employer's contribution. It was contended that once such benefits are availed, the employees are not entitled to claim pensionary benefits under any alleged scheme. The Industrial Court, it was submitted, failed to consider this settled legal position.

11. It was further contended that the Complainant Union was not a recognized union insofar as the Petitioner establishment is concerned. This fact, according to the learned Advocate, was admitted by the witness of the Union during the course of evidence. Despite this, the Industrial Court failed to take note of this relevant circumstance and erroneously entertained the Complaint. The learned Advocate also submitted that the pension scheme in question was applicable only to those employees of PMT who were in service prior to 01 April 1971 and who had exercised their option in terms of the opportunities granted in the years 1971, 1975 and 1985. It was emphasized that employees of PCMT were never governed by any such pension scheme. Further, the Petitioner Company itself came into existence only on 19 July 2007 upon the merger of PMT and PCMT. In such circumstances, it was contended that the Industrial Court failed to appreciate that the scheme could not be extended either to post-1971 PMT employees or to employees of PCMT. It was further submitted that the finding

recorded by the Industrial Court regarding discrimination under Item 5 of Schedule IV of the MRTU and PULP Act is wholly unsustainable. According to the learned Advocate, the concerned employees were not entitled to pensionary benefits in the first place. In the absence of any enforceable right, the question of discrimination does not arise. The finding of unfair labour practice on this ground, therefore, is perverse and contrary to the statutory provision. In light of the aforesaid submissions, it was urged that the impugned Judgment and Order dated 02 May 2013 deserves to be quashed and set aside. It was submitted that the Industrial Court ought to have dismissed the Complaint as being devoid of merit and not maintainable in law, and no direction for implementation or extension of pensionary benefits could have been issued against the Petitioner.

12. Per contra, Mr. Rao learned Advocate appearing for Respondent No.1 submitted that the Petitioner establishment came into existence in the year 2007 upon incorporation, following the merger of the two transport undertakings of the Pune Municipal Corporation and the Pimpri Chinchwad Municipal Corporation. It was submitted that, prior to such incorporation, an agreement dated 08 October 1970 had been entered into by the erstwhile undertakings providing for a pension scheme applicable to their employees, and that the said agreement continues to bind the Petitioner. It was further submitted that although the employees of the erstwhile PMT were initially governed by the Provident Fund Scheme, a separate pension scheme was subsequently introduced upon grant of exemption from the Provident Fund Act. However,

the said agreement applied only to employees who were in service on or after 01 April 1971 and did not cover those who had retired prior thereto. The learned Advocate submitted that the Respondents had consistently raised demands for extension of the pension scheme to retired employees as well. It was in response to such demands that a Settlement dated 20 May 1999 came to be executed, wherein Clause 15 specifically dealt with the issue of extending the pension scheme to all employees of the erstwhile undertaking.

13. It was further submitted that even after incorporation of the Petitioner Company, the issue regarding implementation of the pension scheme continued to be raised from time to time. However, according to the learned Advocate, the Petitioner failed to take any effective decision in the matter. Several meetings were held in this regard, wherein it was suggested that approval from the Government was required. In a meeting held with the Government of Maharashtra on 28 July 2010, it was indicated that the Petitioner was required to take an appropriate decision on the issue. The learned Advocate submitted that despite repeated follow-up, the Petitioner failed to implement the terms of the Settlement and sought to evade its obligations. It was pointed out that the Petitioner addressed correspondence to the Regional Provident Fund Commissioner, Pune, who clarified that the grant of exemption from statutory provisions was within the domain of the Government. Thereafter, in a meeting held on 16 July 2012, the Petitioner resolved that implementation of the pension scheme was not feasible.

14. In the aforesaid circumstances, Respondent No.1 was constrained to approach the Industrial Court by filing Complaint (ULP) No.129 of 2011 seeking, inter alia, implementation of the Settlement dated 20 May 1999, which, according to the Respondent, continues to remain valid and binding as it has neither been terminated nor superseded. It was submitted that the Industrial Court, upon appreciation of the material on record, rightly held that the Petitioner could not avoid its obligation to implement the Settlement. The Industrial Court further held that Clause 15 thereof remains operative and binding, and that the plea of financial constraints cannot absolve the Petitioner from compliance. Accordingly, the Industrial Court concluded that the Petitioner had engaged in unfair labour practices under Items 5 and 9 of Schedule IV of the MRTU and PULP Act and directed implementation of the pension scheme. The learned Advocate submitted that the impugned order passed by the Industrial Court is a well-reasoned order rendered after due consideration of the evidence and applicable legal principles. It was contended that the finding that the Petitioner is bound by Clause 15 of the Settlement dated 20 May 1999 and that its failure to implement the same amounts to an unfair labour practice is correct and does not warrant interference.

15. Mr. Rao further placed on record a resolution passed by the Board of Directors of the Petitioner dated 23 December 2016, whereby it was resolved that a voluntary pension scheme, applicable to the erstwhile Pune Municipal Transport undertaking, may be extended to retired as well as serving officers and

employees, subject to its passing legal scrutiny. It was submitted that the existence of this resolution has not been disputed by the Petitioner.

16. In view of the aforesaid submissions, it was prayed that the present Petition challenging the Judgment and Order dated 02 May 2013 passed by the Industrial Court, Pune, be dismissed. It was contended that the Industrial Court has correctly held that the Petitioner is bound to implement Clause 15 of the Settlement dated 20 May 1999 and that its failure to do so constitutes an unfair labour practice within the meaning of Items 5 and 9 of Schedule IV of the MRTU and PULP Act, 1971.

REASONS AND ANALYSIS:

17. I have given my thoughtful consideration to the rival submissions, the pleadings and the documents placed on record. The real question is whether the Industrial Court was right in holding that the Petitioner could not avoid the Settlement and that its refusal to extend the pension benefit amounted to an unfair labour practice.

18. At the outset, the background facts are not in serious dispute. The transport undertakings of Pune Municipal Corporation and Pimpri Chinchwad Municipal Corporation were merged and the Petitioner Company came into existence in the year 2007. The workmen who had earlier served in the old undertakings continued under the new establishment. It is also clear from the record that for a long period there was a pension arrangement in respect of certain employees of the erstwhile PMT,

and that the issue of extension of similar benefit remained alive even thereafter. Thus, this is not a case where pension was a new and sudden claim raised without any past foundation. The history of the service conditions matters, and it shows that the parties had for years dealt with this subject as a continuing service issue.

19. The first objection raised by the Petitioner is that it was not a party to the Settlement dated 20 May 1999. At first glance, this may appear to be a strong point. However, on closer consideration, this contention cannot be accepted. It is correct that the Petitioner Company came into existence at a later point of time. Still, the matter cannot be decided only on this point. The real issue is that the Petitioner did not come as a totally new or unrelated body. It took over the entire transport activity. Along with that, it also took over the employees and their service conditions. So, the continuity of employment is not in dispute. When such continuity exists, the successor cannot simply say that earlier arrangements do not bind it. Service conditions do not vanish just because the legal form of the employer changes. If the employees continue, their rights and expectations also travel with them. Therefore, the Industrial Court was right in not restricting itself only to the question of signature on the Settlement. It correctly examined whether the obligation created earlier continued in substance. Looking at the record, this approach appears to be in accordance law.

20. The next contention relates to the complaint being filed on behalf of retired employees. It is argued that retired persons are not “employees” under Section 3(5) of the Act. The dispute is not about a personal claim by a retired employee. It arises from a

settlement which governed service conditions of a group of workmen. The Union has come forward representing that group. Some of those workmen have retired over time. That, by itself, does not break the chain of the dispute. If a benefit arises out of service and is denied later, the dispute can still survive. Otherwise, any employer can avoid obligations simply by waiting till employees retire. That cannot be the intention of the law. The definition of “employee” cannot be read in such a narrow and rigid way. The Industrial Court has therefore rightly refused to dismiss the complaint on this ground.

21. There is also much emphasis on Clause 15 being conditional. It is said that implementation depended on Government approval and legal formalities. This aspect cannot be ignored. Courts cannot compel something which is legally prohibited or dependent on statutory approval. But at the same time, a party cannot rely on such condition only as an excuse without showing real effort. The record shows that the issue was discussed several times. Letters were exchanged with authorities. It is not a case where the matter was never considered. However, what is noticeable is that the Petitioner has not shown any final refusal from the Government. Instead, it continued to say that approval is required and the matter is not feasible. This kind of stand keeps the issue in uncertainty without resolving it. If the Settlement required compliance with formalities, then a genuine attempt had to be made to complete those formalities. A mere statement that approval is needed is not enough. The Industrial Court has therefore rightly held that the Petitioner cannot avoid

responsibility by simply pointing to the conditional nature of the clause.

22. The argument regarding provident fund also needs careful consideration. It is true that many employees were covered under the Provident Fund Act and have received their dues. But this fact alone does not settle the matter. Provident fund and pension are different in nature. Provident fund is a lump sum benefit accumulated during service. Pension is a continuing benefit after retirement. One does not automatically cancel the other. Unless there is a clear rule or agreement stating that taking provident fund will bar pension, such conclusion cannot be drawn. No such clear bar has been shown in this case. Therefore, the fact that provident fund amounts were received cannot by itself defeat the claim for pension.

23. The Petitioner has also relied on the fact that exemption under the Provident Fund Act was limited to employees before 01 April 1971. This submission has some relevance in understanding the original scheme. But the dispute before the Court is not limited only to that original position. Over time, demands were raised. A settlement was entered into. Once the matter is taken forward in this manner, it cannot be shut down by referring only to the original limit. The proper question is whether, in light of the settlement and later developments, there was a lawful way to extend the benefit. The Industrial Court has found that such extension was not legally impossible. The Petitioner has not shown any absolute legal bar. Therefore, the finding of the Industrial Court cannot be said to be unreasonable.

24. The point of delay is also raised. It is true that the events are old and the complaint came later. But in matters like pension, the effect is continuous. Every time pension is denied, the cause continues. It is not a one-time wrong which ends once and for all. Because of this, delay alone cannot be a ground to reject the claim. At the most, it may affect certain aspects, but it does not wipe out the right itself. In the present case, the Industrial Court has rightly treated the issue as a continuing one.

25. The objection about the Union not being recognized also does not carry much weight. The important question is whether the Union was actually representing the employees and raising their dispute. The material shows that the Union was actively involved and the issue was discussed at various levels. Recognition is relevant in some situations, but it is not an absolute condition in every case. The Industrial Court has therefore rightly not treated this objection as fatal.

26. Another important aspect is the resolution passed by the Board of Directors of the Petitioner. This resolution shows that the question of extending pension was considered even by the management. It was stated that the scheme could be applied, subject to legal scrutiny. It shows that the issue was not closed in the mind of the Petitioner itself. If the Petitioner truly believed that no such benefit was possible, there was no reason to pass such a resolution. This circumstance supports the case of the Union that the demand was genuine and required consideration.

27. On the question of discrimination, the Industrial Court has found that similarly placed employees were treated differently without proper justification. This finding is based on the material on record. If a benefit is available to one set of employees and denied to another without a valid reason, it amounts to unfair treatment. The Petitioner has not shown any clear legal basis for such difference. Therefore, the conclusion of the Industrial Court on this aspect cannot be said to be wrong.

28. The argument that the Industrial Court exceeded its jurisdiction also does not hold. The Court did not create any new scheme. It only examined an existing settlement and the conduct of the employer. It then decided whether failure to act according to that settlement amounts to unfair labour practice. This is well within its powers. The reasoning given by the Industrial Court shows that it has considered the material and has not acted mechanically.

29. Taking the matter as a whole, it becomes clear that the Petitioner has not shown any serious legal error in the impugned order. The findings of the Industrial Court are supported by reasons and by the record. The objections raised by the Petitioner are mainly technical and do not answer the real substance of the dispute. The case reflects a long pending issue where employees have been seeking a benefit based on a settlement, and the employer has not taken a clear and lawful stand. In such circumstances, the conclusion reached by the Industrial Court that there was unfair labour practice appears to be justified.

30. In view of the foregoing discussion and reasons recorded hereinabove, the following order is passed:

31. The Writ Petition stands dismissed.

32. The Judgment and Order dated 02 May 2013 passed by the Industrial Court, Pune in Complaint (ULP) No.129 of 2011 is hereby confirmed.

33. The Petitioner shall comply with and implement Clause 15 of the Settlement dated 20 May 1999, in accordance with law, and shall take all necessary steps for extending pensionary benefits to the concerned employees, subject to compliance with statutory requirements, within a period of six months from the date of this order.

34. Rule is discharged. No order as to costs.

35. In view of disposal of the writ petition, all pending interim applications stand disposed of.

(AMIT BORKAR, J.)