

**BEFORE SHRI S.G. THUBE, MEMBER**

**INDUSTRIAL COURT, MUMBAI.**

**COMPLAINT (ULP)No.11 of 2024**

**(MHICO1-000035-2024)**

Mrs. Bhakti Gajanan Masurkar  
28/B/203, Sankalp Siddhi Co-op.  
Housing Society, Near Mantri Park,  
New Mhada Colony, Dindoshi,  
Goregaon (East), Mumbai-400 065.

...Complainant.

Versus

1. General Manager  
Greater Mumbai Milk Scheme,  
Worli, Mumbai-400 018.
2. Daily Manager,  
Central Dairy Aarey,  
Aarey Milk Colony,  
Goregaon (E),  
Mumbai-400 065.

...Respondents.

**Appearances:** Shri. S.S. Pathak, Ld. Counsel for the Complainant.  
Shri. Shirish Shigvan, Ld. Advocate for the Respondents.

**ORDER BELOW EXH.U-2**

**(Dated: 28.03.2024)**

01. This is an Application for Interim Relief in the Complaint filed by the Complainant under item 5 and 9 of Schedule IV of the MRTU & PULP Act, 1971 in respect of unfair labour practices, as alleged to be engaged in by the Respondents.

02. Brief facts of the Complaint are as under:-

Complainant was in employment of the Respondent since August 1985. She was lastly working as Milk Dispatcher at

Greater Mumbai Milk scheme, Aarey Dairy and her last drawn salary was Rs.36,400/- per month. She retired from the employment on 28.02.2019. This Complaint is filed by her for claiming the payment of legal dues including gratuity, provident fund, pension and GIS amount. Respondent Dairy is carrying on the business of distribution of Milk throughout Greater Mumbai. Respondents have engaged in unfair labour practices, as alleged from 28.02.2019. As per statutory rules and regulations, Complainant is entitled to receive an amount of gratuity, provident fund, pension and GIS. Complainant orally demanded her dues under the above-mentioned heads, but the Respondents failed to pay that amounts. In the said oral request, Complainant mentioned her need of the amount. Respondents without paying statutory legal dues to the Complainant issued notice dated 16.01.2023 and threatened to charge penal rent on quarter/premises in which she is/was residing. Complainant already vacated Govt. premises/quarter on 07.06.2022 and agreed to deduct the amount of rent which is due towards her as per the order passed by the principal judge of City Civil Court, Mumbai in the matter of Indumati Chougule, Nimba Patil, Mrs. Anusaya Bansode, Ram Virksha Gound, Vivekanand Dutta, Mrs. Kesarbai Gaikwad and Bhagwan Jadhav. She was unable to vacate the quarter within three months after her retirement due to pandemic situation of Covid-19. Means after retirement she had been at her native place and thereafter after some months, the pandemic situation of Covid-19 was came in existence i.e. from the month of March 2020 Central as well as State Govt, declared lock-down i.e.

imposed restrictions on transportation and other business of Govt. Undertaking, private sector and semi Govt undertaking. So also, after her retirement, when she had been at her native place, and after completion of the period of lock-down of pandemic situation of Covid-19 she is/was suffering from various disease. Hence, her doctor gave her advise to taken bed rest. Thus, due to aforesaid grounds also she was unable to vacate the quarter within stipulated period of three months after her retirement or within reasonable time.

Thus in view of the above-mentioned material averments and other averments, submit that, she succeeded to show strong prima facie case and balance of convenience is lies in her favour and that if the interim relief, as prayed, is not considered, then she will suffer great irreparable loss which is not compensated in terms of money i.e. she herself and her family would come on street if she do not receive her legal dues amount and if her pension is not continued.

03. On the other hand, Respondents have given various opportunities for filing reply to interim relief application, but respondents failed to file reply. Hence, this court passed no reply order against the respondents. The Ld. Counsel on behalf of respondents argued on some factual aspects and on law point though he directed to argue only on law point. Thus, the application at Exh.U-2 is decided without reply of the respondents.

04. On the basis of pleading of Complaint (ULP) and considering rival submissions advanced by both sides learned counsels. So also carefully gone through the documents which are placed on record on behalf of both the parties. According to my opinion following points are arise for my determination. My finding and reasoning on the said points are discussed herein after in foregoing para of the order are as under.

	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1)	Whether the Complainant has succeeded to make out a strong prima facie case in her favour about commission of unfair labour practice by the Respondents under item 5 and 9 of Sch.IV of the MRTU & PULP Act, 1971?	...In the affirmative.
2)	Whether balance of convenience is lies in favour of the Complainant?	...In the affirmative.
3)	To whom irreparable loss would be caused if interim relief is granted/ refused?	...As per final Order
4)	What Order?	...As per final Order.

### **REASONS**

#### **As to Point Nos. 1 to 3 :-**

05. These points are interconnected with each other hence for the purpose of avoiding repetition of same facts again and again, I decide to discuss these points jointly.

06. As to these points, the learned counsel on behalf of complainant argued in the line of points raised in Complaint and Application for Interim relief. On the other hand, learned counsel on behalf of the Respondents argued on law point and in the line

of grounds raised in notice vide Annexure-B dated 16.01.2023, resolution issued by State of Maharashtra on the basis of situation of Covid-19 vide Annexure-E dated 22.04.2022.

07. Learned Counsel on behalf of the Complainant submits that, Complainant is claiming whatever amounts are the amounts of statutory benefits of the service of Complainant which arises/due after her retirement from the service of Respondent Dairy. The said amount is not denied by the Respondents. Respondents taken whatever objection for paying the amount of gratuity due to pending enquiry, is not sustainable. So also raised whatever other objections i.e. Govt. Circular dated 22.04.2022 is not helpful to complainant on the ground that she retired from the service of respondent prior to come in existence pandemic situation of Covid-19. The said argument of respondent is not acceptable.

Then argued that Hon'ble Principal Dist. And Sessions Judge, City Civil Court, Mumbai in Misc. Appeal Nos. 73/2023, 68/2022, 69/2022, 70/2022, 71/2022 and 72/2022 appears that, Ld. Competent Authority imposing whatever penalty by way of rent is modified by Hon'ble Principal Dist. And Sessions Judge, City Civil Court, Mumbai and directed respondent dairy to recover the compensation/rent of quarter which is dues towards concerned appellants as per the rate of Rs.10/- per sq. ft. Hence, submits that, in this matter also directed respondents to recover or deduct the amount of rent of the relevant period or of concerned period as per the rate of Rs.10/- per sq. ft. from the payment of amount of gratuity which is payable to her by respondents.

Thus, submit that, Complainant is having strong prima facie case and balance of convenience is lying in her favour. If the interim relief, as prayed, is not considered, then Complainant would suffer irreparable loss which cannot be compensated in terms of money. Because after retirement for livelihood of Complainant and her family, except the source of pension and above-mentioned amount of legal dues, she is not having any other source. Hence, the above-mentioned amount be paid to the Complainant. Thus, prays that application may be allowed as prayed.

08. On the other hand, Ld. Counsel on behalf of the Respondents, argued on law point i.e. submitted that, the complaint (ULP) which filed by complainant is not maintainable and complainant at this initial stage nowhere succeeded to show prima facie case in respect of engaging in unfair labour practice by respondents under Item 5 and 9 of Schedule IV of MRTU & PULP Act. Then submitted that, it is a fact that complainant retired from her service in the month of February of the year 2019. Thereafter she is entitled to retain the alleged quarter only for the period of three months i.e. till the end of May 2019. But she withhold the possession of alleged quarter till 07.06.2022. Hence, she is liable to pay penal rent as calculated in notice dated 16.01.2023. Then submitted that, the circular issued by State Govt. of Maharashtra on the basis of pandemic situation of Covid-19 and in view of that circular gave relaxation of imposing penal rent for stipulated period i.e. from 01.08.2020 to 30.04.2022. But Complainant is not entitled to take the benefit of aforesaid Govt.

Circular because she retired prior to said circular and during the above mentioned period of extending benefits, she was not in service of respondent. Hence, she is not entitled to take the benefit of this circular. Thus, in view of above mentioned argument points which touching to the facts of case and law submits that, the interim relief application may be rejected with cost.

Thus considering the rival submissions advanced by both the sides Ld. Counsels and carefully gone through the documents which are placed on record on behalf of both the parties, it appears that it is an admitted fact that the complainant was in employment of the respondents till 28.02.2019 and she retired from the service of respondents on the said date. So also as regards last drawn salary of the complainant, respondent nowhere disputed the same. Respondent taken whatever objection during argument on the basis of M.C.S.R. in support of that not placed on record documents of enquiry. On the contrary, complainant placed on record document in support to show, in the said enquiry complainant is/was not guilty. As well as respondents failed to show, how as per the provisions of M.C.S.R, rule 27 provides that Govt. has right to withhold or withdraw the pension. So also respondent as regards withholding gratuity amount as per M.C.S.R., not shown any provision. In this matter it is a fact that the Ld. Counsel on behalf of respondent without filing reply only argued this matter on law point and during that argument touched to the facts of present case. Thus, considering the oral submissions of both the sides Ld. Counsel in respect of paying the

amount of gratuity and issuing direction to initiate procedure for continuing the process of pension of the complainant, this court is not having any hesitation. So also, in the present case, in view of decision of Misc. Civil Appeal Nos. 73/2023, 68/2022, 69/2022, 70/2022, 71/2022, 72/2022 shows that respondents have shown favouritism and partiality to one set of workers regardless of merit. As well as disclosed that respondent fails to implement the service conditions of complainant i.e. as per MCSR, respondent is bound to pay the amount of gratuity. Hence, at this initial / primary stage, I hold that complainant succeeded to show prima facie case in her favour in respect of alleged unfair labour practice under respective items of Schedule IV of MRTU & PULP Act. As well as balance of convenience is lies in her favour of complainant.

09. Then in respect of prayer clause 'A' of the interim relief application, I hold that complainant is entitled in view of judgment of Misc. Civil Appeal which filed against respective orders of competent authority i.e. in view of the decision of order of Misc. Civil Appeal Nos. 73/2023, 68/2022, 69/2022, 70/2022, 71/2022, 72/2022 which delivered by Hon'ble Principal Judge, City Civil Court, Mumbai i.e. in the said orders Hon'ble Principal Judge of City Civil Court, Mumbai directed that the order of compensation which passed by competent authority is modified / varied from Rs.150/- per sq. ft to Rs.10/- per sq. ft., including the grant of benefit of Covid period from the appellant. So also in the cases of above-mentioned Misc. Civil Appeals, appellants were not vacated the premises / quarters but in the case in hand

complainant vacated her quarter on 07.06.2022. It is true prior to issuing Govt. notification dated 22.04.2022 complainant is retired from her service i.e. retired from her service on 28.02.2019. But as per her pleading after retirement she went with her family members at her native place and thereafter after some months, the pandemic situation of Covid-19 came in existence i.e. in the month of March 2020. So also as per her pleading of complaint, appears that she was suffering from various disease. Hence, as per the advise of doctor who gave medical treatment to her, was advised for bed ridden. Therefore, she was unable to left the house of her native place. Hence, till 07.06.2022 she was unable to vacate the premises/quarter which was allotted to her. On the contrary respondents to challenge her above mentioned theory failed to file reply in affidavit, written statement as against her pleading of complaint (ULP)No.11/2014. Thus, in view of non challenging the pleading of Complaint (ULP)No.11/2014, I hold that, though the decision of Misc. Civil Appeals which mentioned above are not binding on this court and though complainant have not challenged the order of competent authority dated 16.01.2023 before the Principal Judge, City Civil Court, Mumbai as well as though the Govt. notification 22.04.2022 issued after her retirement, then also she is entitled to take the benefit of said G.R. and observations which observed by principal judge, City Civil Court, Mumbai in above-mentioned Misc. Civil Appeals. Thus again I hold that complainant is succeeded to show strong prima facie case for grant of interim relief as prayed and balance of convenience is also lies in her favour.

10. Then in respect of aspect of irreparable loss, in the case in hand, if the interim relief is consider or not to be consider. In the case in hand if interim relief as prayed is not considered then complainant is suffering irreparable loss which is not compensated in terms of money i.e. prevent from getting the amount of statutory benefits. So also if interim relief is not considered in favour of complainant, then the possibility of facing economic problem to her cannot be ruled out. On the contrary, if the interim relief is considered then respondents are not suffering irreparable loss because complainant claiming whatever amounts are the amounts of her statutory benefits which given to her after her retirement. Thus, in result of above reasoning I recorded my findings on point no. 1 and 2 in the affirmative and on point no. 3 as per final order and proceed to pass the following order.

### **ORDER**

- (i) The Application vide Exh U-2 is hereby partly allowed.
- (ii) Respondents are directed to pay the amount of gratuity to the Complainant within 3 and ½ months and if the Respondents fail to pay within the above mentioned period, then they are liable to pay interest on the said amount @ 7% p.a. till realization.
- (iii) Respondents are at liberty to deduct the rent charges of the residential quarter occupied by the Complainant till the period 07.06.2022 after taking into consideration the direction / order passed by the Hon'ble Principal Judge of City Civil Court, Mumbai in Misc. Appeal Nos. 73/2023, 68/2022, 69/2022, 70/2022, 71/2022 and 72/2022.

(iv) Respondents are directed to initiate the proposal of pension of complainant as early as possible as per rules and procedure of Maharashtra Civil Service Rules.

(iv) No order as to cost.

Date:- 28.03.2024.

*sd/-*  
(S.G. THUBE)  
Member  
Industrial Court, Mumbai.

ams/-