

**BEFORE SHRI JEETENDRA L. GANDHI, MEMBER,
INDUSTRIAL COURT, MUMBAI**

**COMPLAINT (ULP)No.70 of 2021.
(CNR No. MH1C01-000194-2021)**

Shri Chandrakant Atmaram Koli,
Shri Niwas, House No.367,
Naigaon Koliwada, Near Ice Factory,
Tal.Vasai,Dist.Palghar-401 207.... Complainant.

Versus

1. Municipal Corporation of Greater Mumbai.
2. Municipal Commissioner.
3. Dy. Municipal Commissioner(G.A.).
4. Add. Municipal Commissioner.

All at:- Municipal Head Office,
Mahapalika Marg,
Mumbai-400 001. ... Respondents.

Coram:- Shri Jeetenda L. Gandhi, Member.

Appearances:-Smt. Vidula Patil, Ld. Counsel
for the Complainant.
Smt. Tanuja Tadvi, Ld. Counsel
for the Respondents.

**O R D E R (Below Exhibit U-2)
(15.03.2022)**

01. This is an Application filed by the Complainant under section 30(2) of the MRTU & PULP Act, 1971 (hereinafter, referred to as "**the Act**") in the Complaint under item 9 of Sch.IV of the Act, seeking stay to the punishment order dated 02.06.2020.

02. The facts of the case are as under:-

The Complainant is in the employment of the Respondent No.1 Corporation as a Rent Collector since July 1999. Respondent No.1 is a Corporation constituted under the provisions of Mumbai Municipal Corporation Act, 1888(hereinafter, referred to as "**the MMC Act**") and Respondent No.2 is the Municipal Commissioner who is the Chief Executive of the Respondent No.1. It is contended that the Complainant was issued memo dated 23.07.2019 containing some allegations, which he replied vide his letter dated 16.08.2019. However, the Corporation, without conducting enquiry, issued punishment order on 02.06.2020 of imposing punishment of stoppage of one increment with immediate effect. The entire process of so-called enquiry and infliction of punishment is only a completion of formality and it is not legal and valid.

03. It is contended that there is prevailing practice in the Corporation to conduct the enquiry by issuing charge-sheet, examine the Corporation witnesses, cross-examine them and examination of delinquent employee and in the case of the

Complainant, this practice has been altered and simply punishment is inflicted without conducting any enquiry. It is the contention of the Complainant that before altering this prevailing practice of conducting enquiry, the Corporation has not given notice of change under section 9-A of the I.D. Act and hence the same amounts to unfair labour practice under item 9 of Sch.IV of the Act. It is contended that the punishment of withholding of increment is not one of the punishments provided in the Standing Orders and therefore such punishment cannot be inflicted. The Complainant has not received any findings of the enquiry officer. The Complainant has made representation, but in vain.

04. It is the case of the Complainant that no opportunity of hearing was given before inflicting the punishment and as such there is violation of principles of natural justice. It is the case of the Complainant that Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 are applicable to the Respondent Corporation in the

absence of Certified Standing Orders. It is further submitted that even otherwise if the charge under Model Standing Order 24(c)-Negligence in performing duties, is proved, the workman could be warned, censured or fined for said misconduct, but the Corporation has inflicted the punishment of withholding of one increment permanently, which is not provided under the Model Standing Orders and hence the said punishment is illegal, unfair and as such the Respondents have engaged in unfair labour practice under item 9 of Sch.IV of the Act. It is in these circumstances, the punishment order needs to be stayed. The Complainant has made out a strong prima facie in its favour. Balance of convenience tilts more in favour of the Complainant than the Respondents because there is blatant violation of the provisions of Model Standing Orders. If the interim relief as prayed for is granted, no harm or prejudice would be caused to the Respondents. However, if the same is not granted, irreparable loss, harm and prejudice will be caused to the Complainant. Hence, it is prayed that the Interim

Application be allowed.

05. The Respondents by filing their Reply/Written Statement at Exhibit C-3 have resisted the Interim Application as well as the Complaint. It is contended that the action of the Respondents is purely an administrative act in accordance with law and it would not constitute unfair labour practice under item 9 of Sch.IV of the Act, as alleged. No prima facie case much less strong prima facie has been made out by the Complainant for grant of reliefs, as prayed for. The present Complaint is nothing but abuse of process of law and hence the Application as well as the Complaint is liable to be dismissed.

06. It is contended that one Mr. Brijesh R. Thakur submitted a complaint letter through Chief Minister to Municipal Commissioner that the Colony Officer i.e. the Complainant has misused his power and help to developer to get the LOI and he supported to developer to Slum Hutment Partly distribution on survey helpfulness on time. Summary departmental enquiry was conducted and it was found that the Complainant

is liable for negligence and misconduct under the Rules and Regulations of MCGM. The summary departmental enquiry was conducted against the Complainant as per MSR and Departmental Enquiry Manual. During the said enquiry, Complainant was given full opportunity to rebut the charges and he has availed the said opportunity and cross-examined the Corporation witness and thereafter submitted the statement of final defence. It is contended that charge-sheet dated 23.07.2019 was served. It is further contended that the Complainant did not maintain integrity in carrying out his duties and he has behaved indecently with the employees of the Corporation and as such he has violated 3(1) of the Brihanmumbai Municipal Corporation Service(Conduct) Rules, 1999. Considering the entire facts, punishment Order was issued on 02.06.2020 thereby withholding one increment of the Complainant with permanent effect. It is contended that the provisions of IESO Act and the Model Standing Orders Act are not applicable to the Corporation and hence there is no question of applicability of the same.

The Municipal Service Rules and the Departmental Enquiry Rules of the Corporation are applicable to the employees of the Municipal Corporation of Gr. Mumbai. No unfair labour practice is committed by the Respondents, as alleged. No prima facie case is made out by the Complainant. Balance of convenience tilts in favour of the Respondents rather than the Complainant. Hence, the Application be rejected.

07. In view of the rival submissions of the parties, following points arise for my determination. I have recorded my findings thereon. The reasons are given below.

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the Complainant has made out prima-facie case of unfair labour practice?	In the affirmative.
2) Whether balance of convenience is in favour of the Complainant?	In the affirmative.
3) Whether the Complainant is entitled for relief sought?	In the affirmative.
4) What Order?	As per final Order.

REASONS

As to Point Nos.1 to 3:-

08. Heard Ld. Counsel Smt. Vidula Patil for the

Complainant and Ld. Counsel Smt. Tanuja Tadvi for the Respondents.

09. Ld. Counsel Smt. Vidula Patil vehemently submitted that Model Standing Orders are applicable to the Respondent Corporation. There is no provision under the Model Standing Orders to impose the punishment of stoppage of increment. Despite that, the Respondents have imposed the punishment of stoppage of increment, which is illegal and amounts to unfair labour practice under item 9 of Sch.IV of the Act as there is breach of conditions of employment. She further submitted that the stoppage of increment itself is illegal and hence the Complainant succeeded to make out a strong prima facie case. Balance of convenience is in favour of the Complainant. If the punishment is imposed, the Complainant will be put to suffer irreparable loss and there will be greater hardship to him as compared to the Respondents.

10. Ld. Counsel Smt. Tanuja Tadvi, on the other hand, submitted that the Order of punishment is as per Section 83(3) of the MMC Act and proper and legal

punishment was imposed. She further submitted that punishment has already been imposed. Hence, there is no reason to stay the Order of punishment. According to her, the Complaint itself has become infructuous. Hence, the Application for Interim Relief is required to be rejected.

11. I have given thoughtful consideration to the submissions canvassed by both the parties. It is not in dispute that the Respondent Corporation is constituted under the MMC Act, 1888 and Municipal Commissioner is the Chief Executive of the Respondent Corporation. It is also not in dispute that the Complainant was working as Rent Controller from July 1999 and on complaint, enquiry was initiated against him and after enquiry, punishment was imposed on finding that he is guilty of the offence charged. The punishment imposed was stoppage of one increment with permanent effect. So, the question is that, whether the Corporation is justified in imposing the punishment of stoppage of increment under the MMC Act?

12. The Respondents have filed various documents at Exhibit C-4, which include the enquiry papers, wherein there is specifically mention that after enquiry, if the offence is proved, as per Section 83(3) of the MMC Ac, punishment of stoppage of increment can be imposed. Ld. Counsel Smt. Vidula Patil, at this juncture, submitted that the imposition of punishment, is itself illegal and against the provisions of Model Standing Orders and hence it is an unfair labour practice. She relied on the judgment in the case of **Shri Sitaram Tukaram Walunj v/s. Municipal Corporation of G. Mumbai-Writ Petition No.8711 of 2007**, decided on **15.04.2008**, wherein the Hon'ble Bombay High Court specifically ruled that stoppage of increment is not one of the penalties provided therein. In **Writ Petition No. 2661 of 2009 (Municipal Corporation of Gr. Mumbai & ors. V/s. Shri Rakesh Uttam More & anr)**, decided on **20.04.2009**, the Hon'ble Bombay High Court in the Order against Interim Relief, has upheld the Order of the Industrial Court, wherein the Industrial Court was

pleased to direct the Respondents to give specific instances of misconduct under the Model Standing Orders by holding that Model Standing Orders are applicable to the Municipal Corporation of Gr. Mumbai and the Rules of Corporation, which are not certified, will not prevail over the Model Standing Orders. In Complaint (ULP)No. 401 of 2007, the Ld. Industrial Court has held that Model Standing Orders are applicable to the Municipal Corporation of Gr. Mumbai and in Review, same view was taken.

13. Thus, it is obvious that Model Standing Orders are applicable to the Municipal Corporation of Gr. Mumbai. Though it is submitted that the punishment is already imposed and there is implementation of the punishment, no evidence is brought by the Corporation to that effect. In such case, when there is a dispute as to the application of provisions of Section 83(3) of the MMC Act and Sections 24 and 32 of the Model Standing Orders, I find that the Applicant succeeded to make out a strong prima facie case in his favour in view of specific law

laid down by our Hon'ble High Court to the effect that Model Standing Orders will prevail. If the punishment, which is not given in the Model Standing Orders, is imposed upon the Complainant and it is implemented, it will cause irreparable loss to him. No doubt the finding on the interim relief appears to be final relief granted to some extent at the interim stage, but so far as the punishment aspect is concerned, I feel that it is an appropriate case wherein direction can be issued to the Respondents and it would not amount to final relief. Hence, I find that the balance of convenience is also in favour of the Complainant. If the punishment is imposed and implemented by the Corporation, the very purpose of filing the present Complaint will be frustrated. In view of this, I answer Point Nos.1 to 3 in **Affirmative** and proceed to pass the following Order:-

ORDER

- i) The Application is allowed.*
- ii) The implementation of the punishment of stoppage of increment inflicted vide Order dated 02.06.2020*

to the Complainant, is stayed till the disposal of the Main Complaint.

Date:-15.03.2022.

*(JEETENDRA L. GANDHI)
Member,
Industrial Court, Mumbai*

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