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**BEFORE SHRI. S.K. SHALGAONKAR, MEMBER,
INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI**

COMPLAINT (ULP) NO.253 OF 2007

Nirmal Laxmikant Mhatre of Mumbai,
Indian Inhabitant, residing at Flat No.201,
'VIDHI', Genl. J. Bhosle Marg,
Mumbai – 400 021.

....Complainant

Versus

1. ACC Ltd.,
'Cement House', Maharshi Karve Road,
Opp. Churchgate Rly. Station,
Mumbai – 400 020.

2. The Managing Director,
ACC Ltd.,
'Cement House', Maharshi Karve Road,
Opp. Churchgate Rly. Station,
Mumbai – 400 020.

....Respondents

COMPLAINT (ULP) NO.268 OF 2007

Vijay Ramchandra Prabhu of Mumbai,
9/1, Sahakar Nagar, Naigaon Cross Road,
Wadala, Mumbai – 400 031.

....Complainant

Versus

1. ACC Ltd.,
'Cement House', Maharshi Karve Road,
Opp. Churchgate Rly. Station,
Mumbai – 400 020.

2. The Managing Director,
ACC Ltd.,

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'Cement House', Maharshi Karve Road,
Opp. Churchgate Rly. Station,
Mumbai – 400 020.

....Respondents

COMPLAINT (ULP) NO.280 OF 2007

M.N. Kamath, adult, Indian Inhabitant,
residing at Plot No.RH-26, M.I.D.C.,
Phase II, Residential Zone, Tiara Apts.,
303, 3rd Floor, Dombivli Indl. Area P.O.,
Dombivli (E), Pin 421 203.

....Complainant

Versus

1. ACC Ltd.,
'Cement House', Maharshi Karve Road,
Opp. Churchgate Rly. Station,
Mumbai – 400 020.

3. The Managing Director,
ACC Ltd.,
'Cement House', Maharshi Karve Road,
Opp. Churchgate Rly. Station,
Mumbai – 400 020.

....Respondents

COMPLAINT (ULP) NO.330 OF 2007

Associated Cement Staff Union,
A Trade union having office “Cement House”
Maharshi Karve Road, Opp. Churchgate,
Mumbai – 400 020.

....Complainant

Versus

1. ACC Ltd.,
having its registered office at
'Cement House', Maharshi Karve Road,
Opp. Churchgate, Mumbai – 400 020.

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2. The Managing Director,
ACC Ltd.,
'Cement House', Maharshi Karve Road,
Opp. Churchgate Rly. Station,
Mumbai – 400 020.

....Respondents

In the matter of complaint of unfair labour practice
under Section 28 read with Item 9 of Schedule IV of
the MRTU & PULP Act, 1971.

CORAM :- Shri. S.K. Shalgaonkar, Member.

APPEARANCES :- Shri. P.M. Patel, Advocate for the complainants.
Shri. B.G. Goyal, Advocate for the Respondents.

- : COMMON JUDGMENT : -

(Dictated and declared in open Court on 15 & 16th November 2010)

1. Though all these 4 complaints got separately filed, but as against the common Respondent Nos.1 and 2 below Exh.U-1 on different dates as mentioned therein in this Court; for unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (hereinafter referred to as the Act, 1971) and they are being decided through this 'common judgment' on merits as under:-

2. According to the complainant in Complaint (ULP) No. 253/2007, it is the case of the complainant that, he has been working as a Sectional Head in 'Finance-Department' of the respondents; since August 1978 and has been also working as a General Secretary of the Associated Cement Company Staff Union (hereinafter referred to as the

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ACC-Staff-Union). By starting vindictive action of pressuring the complainant and other office bearers of the said ACC Staff Union by the respondents, they have been indulged into an unfair labour practice under the Act, 1971, so is under challenge in this matter.

3. According to the complainant, the ACC Staff Union is a recognised union for the establishment of the 1st respondent at Cement House under the Act, 1971. He was one of the complainant in the proceedings i.e. Complaint (ULP) No.865/2002; wherein various documents have been filed by their advocate on 17.3.2006; alongwith one Shri. Vijay P. Prabhu, Joint Secretary of the ACC Staff Union.

4. According to the complainant further, he was issued with the chargesheet dated 10.10.2006 alongwith one Shri. V.P. Prabhu, Joint Secretary of the said union and they were suspended. Accordingly, he submitted his reply to the said chargesheet on 13.10.2006 and the said enquiry was scheduled on 5.12.2006. But according to the complainant, though he remained present in the said enquiry, he was not paid subsistence allowance as per law.

5. According to the complainant further, as his personal matter was with the Industrial Court, he was cross-examined in the Complaint (ULP) No.1138/2002. Hence, the enquiry was posted on 23.1.2007.

6. The complainant stated further that, as he has completed 90 days of suspension, he was entitled to 75% of his monthly earning

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towards subsistence allowance; but the enquiry was deferred from time to time.

7. On 4.4.2007 he remained present in the said enquiry and filed his objection to Mr. V.B. Kamat representing the company and matter adjourned to 19.4.2007.

8. According to the complainant, the establishment of the respondent; namely "Cement House", Maharshi Karve Road, Mumbai – 400 020, is a commercial-establishment and having more than 100 employees employed with it. Therefore, as per the Industrial Employment (Standing Orders) Act 1946 the establishment of the respondents have no certified Standing Orders framed under SO Act. Hence, after subsequent 90 days, he was entitled to 75% of monthly salary and thereafter full salary towards subsistence allowance; unless the enquiry is prolonged at the instance of the employee.

9. According to the complainant, the subsistence allowance was not 'wages' and no such contribution can be made towards Provident Fund, but inspite of the same, it was deducted and thereby the respondents have indulged into an unfair labour practice by deducting the amount towards PF, Income Tax and other heads as per Item 9 of Schedule IV of the Act, 1971. The Enquiry Officer has permitted to be represented by an advocate who was not a professional in legal field; though no express provision for permitting an outsider to represent the company. According to the complainant, he is only an office bearer of the

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union, which is an internal union. By breaching the standing orders, it is an unfair labour practice as per Item 9 of Schedule IV of the Act.

10. Non-payment of subsistence allowance has created great prejudice to it. As the President of the union was suspended; the office bearers were also suspended. Thereby according to the complainants, the respondents have indulged in an unfair labour practice as per Item 9 of Schedule IV of the Act, 1971.

11. Therefore, it is lastly prayed by the complainant that, by allowing this complaint, the respondents be directed to pay this complainant subsistence allowance at the rate of 50% for first 90 days of suspension; 75% for the subsequent 90 days and thereafter at the full rate without deduction other than one permissible in law.

12. The respondents be restrained, from appointing any advocate, legally trained person or any non-employee of the Respondent No.1 to represent respondents in the domestic enquiry held against him. The said enquiry be stayed.

13. It seems from the record that, there is an interim-relief application below Exh.U-2 filed on record by the complainant under Section 30(2) of the Act, 1971. It is supported with an affidavit below Exh.U-3.

14. Though titled as affidavit-in-reply on behalf of the

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respondents below Exh.C-2, but with the endorsement so made on behalf of the respondents learned advocate on record below it on 26.10.2007; thereby adopting the said affidavit-in-reply as the 'written-statement' on behalf of the respondents in this matter. It is being taken down in short as under:-

That, the contentions, averments and allegations so levelled by the complainant, as against it are denied to be true.

15. According to the respondents, as the complainant did not disclose any cause of action amounting to an unfair labour practice as per Item 9 of Schedule IV of the Act, 1971, the present complaint is not maintainable under the Act, 1971.

16. As per the provisions of SO Act 1946; more particularly as per Section 10-A(2) of the Act, any dispute as per the provisions of the said Act may refer the dispute to the Labour Court so constituted under the Industrial Disputes Act, 1947, which shall be decided as per the provisions of the Act, 1947. Therefore, this Court has no jurisdiction to entertain this complaint on the grounds so alleged against it.

17. The very complainant; according to these respondents has been rightly paid subsistence allowance in accordance with the Standing Orders Act, 1946, but the said enquiry has been delayed for the reasons directly attributable to the conduct of the complaint.

18. The second respondent was neither necessary, nor proper

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party to the present proceeding; as the said authority has not issued any chargesheet/suspension-order or the notice of enquiry in respect of this complainant. The very complaint is bad in law for not impleading the Enquiry Officer as a necessary and proper party in this proceedings.

19. By way of 'amendment' dated 16.9.2010 vide Para 4(4) it is added that, as the respondent-company has been since engaged in the manufacture of cement and has establishments located all over India. Therefore, as per the Circular dated 8.11.1977, the industries engaged in manufacture and production of cement have been declared as “controlled industry” for the purpose of Section 2(a)(i) of the ID Act, 1947. Therefore, for the respondent-company as a “controlled industry”, the 'Central-Government' is the appropriate Government in relation to it. Therefore, the complaint so filed by the complainant under the Act, 1971 would not apply to the respondent-company as a “controlled industry”. Hence, it is not maintainable before this Court under the Act, 1971; it be dismissed accordingly.

20. According to the respondents, the respondent-company has been engaged in the manufacture of cement and is having its manufacturing establishments located all over India. Though, its registered office is located at Cement House, 121, Maharshi Karve Road, Churchgate, Mumbai – 400 020. It is admitted that, the complainant was issued a chargesheet-cum-suspension order dated 10.10.2006; whereby he was suspended pending enquiry for various acts of misconducts so mentioned therein against him. It was in accordance with the provisions

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of the Industrial Employment (Standing Orders) Act, 1946. He submitted his written explanation to the said chargesheet; as it was found unsatisfactory and domestic enquiry is to be restricted against the same. One Shri. Arun Gadkar was appointed as an Enquiry Officer into the same and initially one Shri. Salve, who was an employee was representing the management in the said enquiry. But as he resigned, in place of Mr. Salve one Mr. Kamat was appointed as a management representative in the said enquiry dated 14.3.2007. As the complainant was suspended pending enquiry on 10.10.2006, then enquiry proceeded/commenced on 5.12.2006. There was a joint enquiry in respect of the complainant as well as another employee by name Mr. Vijay Prabhu, since the charges levelled against both of them were identical nature. The complainant, however, unreasonably and unjustifiably raised an objection that, a separate enquiry be conducted and on 5.12.2006 the enquiry proceedings had to be adjourned to 14.12.2006. On 14.12.2006 the complainant failed to remain present in the said enquiry. On 7.3.2007 the Management Representative has brought to the notice of the Enquiry Officer that, the delay in proceedings of the enquiry has been directly attributable to the conduct of the complainant, hence, not entitled to the payment of subsistence allowance even beyond the period of 90 days at the rate of 50% of his wages. There was a rule ruling given by the enquiry office on 4.6.2007 in respect of computation of subsistence allowance.

21. The very complainant has objected to the appointment of Mr. V.B. Kamat as the Management Representative in the said enquiry. On

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14.6.2007 a ruling was given by the Enquiry Officer; wherein it has been held that, Mr. Kamat has been appearing in the enquiry with valid authority from the management and could continue to appear as the Management Representative therein. But the complainant has not chosen his Defence Representative of his choice as per the provisions of the law. Hence, the complainant did not demonstrate before the enquiry officer as to what prejudice has been caused to him by appointment of an advocate as the Management Representative in the said enquiry. As the said enquiry was delayed for reason attributable to the complainant. Hence, no unfair labour practices got committed by the respondents within the meaning of Item 9 of Schedule IV of the Act, 1971.

22. According to the respondents, the complainant was the General Secretary of the Associated Cement Staff Union and was well versed and proficient in defending himself in the said enquiry. Hence, there was no breach of standing orders committed by the company and no unfair labour practice as per Item 9 of Schedule IV of the Act, 1971 got done by it.

23. Therefore, it is lastly prayed that, both interim-relief application as well as the main complaint be dismissed with costs.

24. Below Exh.C-3 the list; the copies of enquiry proceedings in a separate booklet got filed on record on behalf of the respondents from running Page Nos.1 to 138; respectively.

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25. Below Exh.U-7; the complainant has also filed on record the xerox copies of the documents running 11 in number.

26. Below Exh.U-8 it seems from the record that, there is a separate application for additional interim-relief as per Section 30(2) of the Act, 1971 filed on record on 21.4.2008 on behalf of the complainant alongwith supporting affidavit below Exh.U-9 dated 25.3.2008.

27. Below Exh.C-5; the respondents have also produced on record xerox copies of the documents running 4 in number. Below Exh.C-8 the 'reply' got filed by the respondents on record on 14.8.2008.

28. However, in the second session, the learned advocate for the complainant below Exh.U-15 has submitted an application with a request that, some submissions were required to be done. Hence, the matter may be kept tomorrow. Accordingly, the judgment stands deferred till tomorrow i.e.16.11.2010. Today the Court resumed in the first session in this matter on 16.11.2010.

29. Accordingly, the learned advocate for the complainant has filed pursis below Exh.U-16 today in the morning session stating therein that, the cross-examination of the respondents witness so recorded in the earlier Complaint (ULP) No.273/2007 in the matter between Sirpuram Ashok Chakravarti V/s. ACC Ltd. & Anr., it be read in evidence in this matter as a cross of the said witness; accordingly.

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30. Thus, on the basis of rival contentions of both sides as narrated above; the Learned Predecessor of this Court below Exh.O-2 on 13.12.2007 has framed in all 3 issues and these issues are being answered by this Court, of course, through its findings supported with the reasons thereof as under:-

	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Does complainant prove that the respondents have engaged in the unfair labour practice under Item 9?	Yes, in Part
2.	Do the respondents prove that this Court has got no jurisdiction and the complaint is untenable?	No
3.	Whether the complainant is entitled to the reliefs claimed?	As per final order.
4.	What is the order?	As per final order.

-: R E A S O N S :-

31. Heard the learned advocate Shri. P.M. Patel for all these complainants, particularly in Complaint (ULP) No.253/2007 on 28.10.2010 and the learned advocate Shri. B.G. Goyal for the common respondents on 9.11.2010; respectively at length. In addition to, the learned advocate for the complainant below Exh.U-14 has filed his 'written-synopsis of argument' on 28.10.2010, alongwith the case-laws, on which he has relied upon; respectively. Similarly, on the other hand, the learned advocate for the respondents below Exh.C-13 has filed 'written-synopsis of argument', alongwith the case-laws on which he has relied upon through the compilation below Exh.C-14; respectively. On 9.11.2010 the learned advocate for the complainant has orally argued on the point of maintainability of this complaint and on the law point also;

respectively.

32. **Issue No.2 :-**

In this respect, it is the oral submission of the learned advocate for these complainants, particularly in the Complaint (ULP) No. 253/2007 that, though the respondents have sought amendment to the 'written-statement' on the ground that, it has been engaged in manufacture and production of cement, where the respondents have been declared the 'cement-industry' as controlled-industry; for which the appropriate Government is the 'Central-Government' and not the State Government. Hence, the complaint is not maintainable. But according to the learned advocate for the complainant that, no GR on which, the respondents point out to rely upon has been brought on record issued by the Government to that effect; nor produced in the file before the Court, till the date. In fact, all these complainants'-employees have been employed with the head-office/registered-office of the respondent company and they were not at all involved/concerned with any manufacturing activities/production of cement and as a factory. Hence, the very judgment is not attracted of our Hon'ble Bombay High Court to this complaint. Similarly, it is his oral submission that, all these complainants were chargesheeted by the respondent-establishment as per the provisions of the Industrial Employment (Standing Orders) Act, 1946; for which the 'State-Government' has been the 'appropriate-Government', Accordingly, this complaint be allowed.

33. In respect of other complaints i.e. Complaint (ULP) Nos.

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268/2007, 280/2007 and 330/2007 are concerned; they are to the limited issue i.e. only an issue of whether an outsider can be represented for the management in the said enquiry. Hence, as the interim-relief order/additional-interim-relief order so passed already in their favour, at this juncture, that are not pressed by these complainants.

34. The learned advocate for the respondent has no doubt submitted before the Court that, as far as this issue is concerned, they have taken the 'plea' in its 'written-statement' to the fact that, this Court has no jurisdiction, but by way of amendment to this written-statement, it has solely relied upon the judgment of our Hon'ble Bombay High Court, known as 'Ultra Tech Cement Ltd.', which has declared it as controlled-industry, and therefore, the complaint so filed by the complainants under the provisions of the Act, 1971 is not maintainable and this Court has no jurisdiction to try and decide, the same as per the Act, 1971; since only the 'Central-Government' is the appropriate Government for this controlled-industry/cement-industry and not the State Government; at all.

35. By way of 'reply', the learned advocate for the complainants has invited the attention of this Court to Para 3 of the said judgment and since these complainants were not concerned with the very production/manufacturing activities of cement, hence, it does not come under the purview as a 'cement-industry'. In support of the same, he has filed on record the xerox copies of the separate-statute known as the Industries (Development and Regulation) Act, 1951; particularly Section

3(bb) i.e. existing 'industrial-undertaking', as well as Section 3(d) on Page No.897 of the said statute under the title as 'industrial undertaking'.

36. It is not disputed at this juncture that, in all these matters, the respondents have moved this Court and sought an amendment to its written-statement. Accordingly, the amendment has been carried out.

37. The judgment on which; the respondents have relied upon as far as this issue is concerned, it is the matter of our Hon'ble Bombay High Court (Nagpur Bench) between Ultra Tech Cement Ltd., Chandrapur V/s. Shrinivas Narayanrao Moharil, Chandrapur, reported in 2010-I-CLR-656; wherein it is held that.....

“Mere delegation by Central Government to State Government does not constitute State Government an appropriate Government – State Government while acting as appropriate Government, discharges the role as an agent of Central Government – Thus for S.2(3), it cannot be said that for Cement Industry, State Government is appropriate Government – Provisions of MRTU & PULP Act, cannot apply to industry of the petitioner – The impugned order unsustainable.”

38. On this count, this Court has found substance in the oral submissions of the learned advocate for the complainant that, the 'recognised-union' under the provisions of the Act, 1971, has been working with the respondent-company since a long and between them a number of settlements/agreements did take place as per the provisions of the ID Act, 1947. Similarly, these concerned-complainants have not been working with its manufacturing/production-unit of the factory of cement. They have been associated since long with its head-office/registered-

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office alike to that of the cotton-industry, head-office and the 'shop' attached with the mills concerned; though its godown have been treated separately than to that of the actual manufacturing of the cotton-mills, where it has been continued and two separate settlements have taken place for both the employees attached with head-office; as well as involved in actual production/manufacturing cotton in the mills-concerned. To that effect, if the Court reads Para 3 on Page No.657 of the said judgment (2010-I-CLR-656 cited supra) of our Hon'ble Bombay High Court; it gets clear that an 'industry', which has been engaged in manufacture and production of cement has been declared as “controlled industry”, for which, the Central Government is the appropriate Government and not the State Government; though the powers have been delegated to State Government.

39. With due respect, the facts and circumstances as emerged in this matter do not give a sufficient plethora on record to attract this ratio decidendi as laid down by our Hon'ble Bombay High Court (Nagpur Bench) in the matter reported in **2010-I-CLR-656 (cited supra)**; since it is the mixed-question of fact and law; which could be decided by leading oral evidence on behalf of both the sides to the litigation on this issue; but since it has not been done. It is observed that, it has tried to be raised at the fag end of the litigation at the instance of the respondents mainly relying upon this judgment of our Hon'ble Bombay High Court (2010-I-CLR-656 cited supra). With this view in mind, the present complainants since have been working with the respondents till fling of this complaint with its head-office in Mumbai and not concerned with the

manufacturing of cement/production of cement unit of the respondent-company as such.

40. The definition-clause of 'existing-industrial-undertaking'; as well as 'industrial-undertaking' so provided as per the provisions of the Industries (Development and Regulation) Act, 1951 is having no relevance, precisely at this juncture; while deciding this Issue No.2; since it is in relation to concisely 'industrial-undertaking' and not an 'industry' as defined under the provisions of the ID Act, 1947, which is relevant in this matter.

41. Thus, on the basis of limited material on record; in the file before the Court, it is held that the complaints so filed by the complainants below Exh.U-1 under Section 28 for unfair labour practice under Item 9 of Schedule IV of the Act, 1971 is maintainable. Thus, Issue No.2 stands answered accordingly.

42. **Issue No.1 :-**

In this connection, it is the oral-submission, as well as written-submission on behalf of the complainants in this matter that, these complainants have been admittedly suspended pending enquiry, but during the course of the said enquiry; an outsider was appointed by the management and that was objected to on behalf of these complainants. However, by way of an interim order that was complied with by the management of the respondents.

43. However, in respect of non-payment of subsistence allowance as per the provisions of the Industrial Employment (Standing Orders) Act, 1946; they were not paid with the subsistence allowance, but when made a deduction from it on account of Home Loan, Professional Tax, Income Tax etc. got done unauthorisedly and illegally by the respondents.

44. The term 'wages' got defined as per Section 2(rr) of the ID Act, 1947; as well as under the Payment of Wages Act, 1936 and thereby it is his oral submission further that, the management has indulged into an unfair labour practice as per Item 9 of Schedule IV of the Act, 1971. In support of his oral, as well as written submissions; the learned advocate for these complainants has referred to and relied upon the following judgments/case-laws through the compilation below Exh.U-14. They are as under:-

1. *It is the judgment of our Hon'ble Bombay High Court in the matter between **Motor Industries Company Ltd. V/s. Popat Murlidhar Patil & Ors., reported in 1997(1)-LLN-749;** wherein it has been held that.....*
“Subsistence allowance does not bear the stamp of “remuneration” at all. Conceptually, subsistence allowance is a payment of money to the employee during the period of suspension so that the employee and his family may “subsist”. The employer is put under an obligation to ensure that some money is paid to the employee so that he may “subsist” during the period of his suspension. That subsistence allowance is not paid for work done, is thus obvious.
2. *Then, he has referred to the words wages/basic wages as provided under Section 2(pp) of The Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the dictionary meaning of the term wages/subsistence allowance as per the 'Oxford English*

Dictionary' in the written synopsis of argument filed on record below Exh.U-14; too.

45. On the other hand, it is the oral-submission, as well as written-submission below Exh.C-13 for the respondents that, in the Complaint (ULP) No.253/2007; admittedly the interim order dated 9.7.2007 was passed and in compliance thereof, the management has kept its employee as a 'management-representative' during the course of the said enquiry in question. Therefore, allegation on that count so made by the complainant below Exh.U-1 in the main complaint got removed with by the management of the respondents; accordingly. Similarly, additional-interim-relief also granted in favour of these complainants dated 27.9.2007; that is also been complied with by the management of the respondents; accordingly.

46. However, it is his oral-submission that, it is a quite identical and similar contentions of the complainant in Complaint (ULP) No. 273/2007 in the matter between one Sirpuram Ashok Chakravarti V/s. ACC Ltd. & Anr.; it was decided by the Learned Judge Shri. B.C. Chandrikapure in the month of March 2010, that has remained intact till the date; since it has not been challenged by the either side to the litigation particularly on behalf of the complainants in this group of Complaint (ULP) matters.

47. With regard to another Complaint (ULP) No.268/2007 as well as 280/2007 and 330/2007; wherein no oral evidence have been adduced by the respective-complainants on record till the date; but in

Complaint (ULP) No.280/2007 the complainant by name Mr. Kamat has opted for VRS and took of his dues on 10.11.2008. In the said matter also, Mr. Kamat did not adduce oral evidence before this Court till the date. Xerox copies of payment of his legal dues; the learned advocate for the respondents has filed accordingly during the course of his argument only.

48. In support of his oral, as well as written-submissions below Exh.C-13, the learned advocate for the respondents has placed on record; xerox copy of the judgment and order so passed by the Incharge Member, Industrial Court, Mumbai in Complaint (ULP) No.273/2007 dated 12.3.2010 and also relied upon the unreported-judgment and order of our Hon'ble Bombay High Court, in Writ Petition No.2301/2009 dated 13.1.2010; that is in respect of disposing of the Complaint (ULP) No. 273/2007, within a period of 8 weeks.

49. Then, he took shelter of the judgment of Hon'ble Allahabad High Court, in the matter between **Kshetriya Sri Gandhi Ashram, Gorkhpur V/s. Dy. Labour Commissioner/Prescribed Authority & Anr., reported in 2009-II-CLR-292** and the law laid down therein that.....

“As per Section 2(vi), 15, 16, the word “Wages” has been defined, whether subsistence allowance is part of the wages or not? Query is answered in the affirmative; wherein it is held that this part of wages is contemplated under S.2(i)(vi) of the Payment of Wages Act. Subsistence Allowance is that allowance which the workman gets pending enquiry, even though he is not working and would be covered as an allowance under S.2(vi) of the Payment of Wages Act.”

50. Then, the judgment of the Hon'ble Supreme Court of India, in the matter between **Rajasthan Gramin Bank V/s. Bishan Lal Bairwa, reported in 2009-II-CLR-296** i.e. in respect of “Wages” as per Section 17-B of the ID Act, 1947.

51. Then, on the same law-point, there is a judgment of the Hon'ble Gujrat High Court in the matter between **United Catalsts India Ltd. V/s. Prabhat Mottabhai Gohil, reported in 2000-II-CLR-494.**

52. Then, on the similar law-point i.e. judgment of the Hon'ble Supreme Court of India, in the matter between **Regional Director, Employees' State Insurance Corpn. V/s. Popular Automobiles etc., reported in 1998-SC-621**; wherein it is held that as per Section 2(22) of the ESI Act, 1948 subsequent allowance paid to suspended-employee is part of wages. Therefore, requisite contributions on such wages have to be paid by employer, as well as employee.

53. Then, on the same law-point, there is a judgment of our Hon'ble Bombay High Court, in the matter between **Jagdish V. Gursahani V/s. Air India Ltd. & Ors., reported in 2001(3)-LLN-534.**

54. Then, the judgment of our Hon'ble Bombay High Court, in the matter between **Air India Ltd. V/s. L.R. Solanki & Anr., reported in 2005-II-CLR-1025**; wherein it has been held that.....

“The earning of increments during the period of suspension does not follow automatically or as of right. The question as to whether a workman should be entitled to increments depends

upon the outcome of the enquiry for it is only upon the conclusion of the enquiry that the disciplinary authority will determine as to how the period under suspension should be treated.”

55. On the same law-point, there is a judgment of the Hon'ble Rajasthan High Court, in the matter between **Rajasthan State Electricity Board Jaipur & Anr. V/s. Narayan Lal Meena, reported in 1995-LLR-854.**

56. Again on the same law-point, there is a judgment of the Hon'ble Supreme Court of India, in the matter between **Burn & Co. Ltd. V/s. Their Workmen & Ors., reported in 1959-II-LLJ-SC-450.**

57. In addition to the same; as an admitted fact below Exh.C-14 the list of various orders passed by this Court in Complaint (ULP) Nos. 253/2007, 268/2007, 273/52007 and 280/2007; through its xerox copies got filed on record on 9.11.2010 in this matter.

58. In order to prove this Issue No.1, of course, both on facts and in the eyes of law; the initial but a heavy burden of proof lies on the shoulder of the complainant in this matter, of course, through the cogent evidence before the Court. To that effect, the complainant has filed his affidavited-testimony in-lieu-of examination-in-chief below Exh.U-11 dated 4.9.2009; thereby reiterating the whole of the contentions, as he has pleaded in the main complaint and nothing more. Vide Para 3 he has mentioned that, the respondents have illegally deducted from subsistence allowance; employee's share of provident-fund, professional tax, deduction towards housing loan etc., without authority. However, in his

cross below Exh.U-11, the said complainant has admitted on oath before the Court that, he was defending the chargesheeted-workmen in enquiries, but after 2005. In some enquiries, he has cross examined the management-witnesses. However, in the same breathing, the complainant in this matter in his cross below Exh.U-11 has fairly admitted that, after the interim-order of this Court, the management was not represented by advocate. It is further admitted by these complainants in his cross below Exh.U-11, that the subsistence allowance actually paid is given on record. For other suggestions given on behalf of the respondents, he has denied the said in his cross.

59. On the other hand, in order to disprove the case of the complainant, the respondents through its single solitary witness below Exh.C-10 has filed his affidavited-testimony of his General Manager – HR dated 14.1.2010; wherein in his cross before the Court he has admitted on oath that, though one Mr. V.B. Kamat, is the M.R. Who was appointed as a 'Management-Representative', but he was not 'employee' of the company.

60. In respect of payment of subsistence allowance and the deductions so made therein; the said witness for the respondents in his cross below Exh.C-10 on oath has admitted that, while deducting Housing Loan, P.F. and Professional Tax from the subsistence-allowance; treating it as 'wages'. But to that effect, has undertaken to produce the relevant documents on record, it is seen that no documents has been produced by the respondent company. Further, he has admitted in his

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cross vide Para 7 below Exh.C-10 that, his establishment of the company has been covered under the Payment of Wages Act; including these complainants also. Exh.C-12 and C-13 are the company's internal documents. And lastly; he has admitted in his cross on Page No.7 vide para 8 below Exh.C-10 on oath before the Court that, the company has not filed any such service-conditions on record. No doubt, the complainants in this matter below Exh.U-1 has pleaded vide Para 3(f) on Page No.6 stating that, the subsistence-allowance is not 'wages' and no such deduction can be made towards provident fund; but in spite of the same, it was deducted and thereby the management of the respondents have indulged into an unfair labour practice as per Item 9 of Schedule IV of the Act. However, in the Prayer-Clause 11 on Page No.9 below Exh.U-1, the complainant has prayed that, the respondents be directed to pay subsistence allowance to these complainant at the rate of 50% for first 90 days of suspension, 75% for the subsequent 90 days of suspension and thereafter; at the full rate, without deduction other than one permissible in law; i.e. what is permissible in law is nothing but towards provident fund, professional tax as well as income-tax that have been deducted admittedly by the respondents from the payment of subsistence allowance so made to these complainants. No doubt, the subsistence allowance was paid as per the provisions of the Industrial Employment (Standing Orders) Act, 1946; on the basis of interim-order so passed on 9.7.2007 in this complaint; as well as additional-interim-order so passed on 27.9.2007 in this complaint; as well as other companion-complaints by the Learned Predecessor of this Court got duly complied with. In addition to the very order dated 11.8.2008 so passed by the Learned

Predecessor of this Court; has also been complied with.

61. Now, the only issue that arises for the determination of this Court as to whether the deduction on account of home loan whether it is permissible under the provisions of the law. No doubt, payment of subsistence allowance was aimed and for the purpose of paying the subsistence allowance during the suspension-period of the delinquent; pending enquiry as per the provisions of the 'Industrial Employment (Standing Orders) Act, 1946'; in order to allow the delinquent to live his life, alongwith his dependants/Family-Members; though the contract of employment got subsists, but the work was not provided to the delinquent during the course of the said suspension period. Hence, it is not allowance, nor remuneration in the strict sense of the term; but it is a part of wages. The law propounded by our Hon'ble Bombay High Court in the matter between *Motor Industries Co. Ltd., Nasik V/s. Popat Murlidhar Patil & Anr., reported in 1997(2)-Mh.L.J.-178;* with due respect, does not lend any aid and assistance in favour of the complainants in these matters for the simple reason that, the ratio laid down therein was in respect of entitlement of the payment of bonus during the course of suspension period. Hence, in these matters, the facts and circumstances are quite different one.

62. If there is a deduction from the payment of subsistence allowance on account of housing-loan, then the complainants would be receiving their merger-payment towards subsistence allowance; which could not enable him to survive, alongwith his family-members so

dependent upon his income. In this case, on the basis of the material on record, it is seen and revealed that, the deductions so made by the respondents from the payment of subsistence-allowance of the complainants in this matters; on account of housing loan is not permissible, but it is in breach of the contract of employment with the respondents; thereby it could be treated as an unfair labour practice within the meaning of Item 9 of Schedule IV of the Act, 1971.

63. With regard to grant of annual increment, the circular so produced on record by the respondents below Exh.C-13 clause 2.5 does not allow the complainants to ask for the annual increments in his favour; since the increments to be granted in favour of the employee are not automatically; but it is based on the individual performance of the employee concerned and the employees were made aware through internal-communication for entitlement of graded-increments, some criteria were required to be fulfilled by the concerned individual employee in these matters under-consideration. Since that has not been done, as these chargesheeted workmen who have not complied required attendance during the said suspension period. Hence, he is not entitled for annual increment and this finding of this Court, is in the light of law so laid down by the Hon'ble Bombay High Court, in the matter reported in 2005-II-CLR-1025 (cited supra); as well as of the Hon'ble Rajasthan High Court in the matter reported in 1995-LLR-854 (cited supra). Similarly, as per the law laid down in the matter reported in 1959-II-LLJ-SC-450 (cited supra). On this count, it is held that, the management has disproved the case of the complainant on the count of granting of annual-

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increments in favour of the delinquents for the relevant period of his suspension. Therefore, it is lastly held that, the complainant is not entitled to for grant of annual increments during the period of his suspension.

64. However, in the light of law so propounded by the Hon'ble Karnataka High Court, in the matter between *K. Varadaraja Pai V/s. Corporation Bank, Manglore & Anr., reported in 2004-III-CLR-623*; the deductions on account of provident-fund, professional tax and income tax, which are permissible and so got done on behalf of the respondents in this matter from the payment of subsistence allowance so made in favour of the complainants in this matters; cannot be dubbed as illegal deductions; but permissible deductions from the payment of subsistence allowance. However, on the other hand, the deductions on account of housing loan from the payment of subsistence allowance in favour of the complainants so made by the respondents; can be dubbed as 'illegal deductions, amounting to an unfair labour practice within the meaning of Item 9 of Schedule IV of the Act 1971. And this observation of this Court and declaration has found a sufficient place in the law laid down by the Hon'ble Karnataka High Court, in the matter reported in *2004-III-CLR-623 (cited supra)*; since deductions on account of housing loan from the payment of subsistence allowance in favour of the complainants in this matters is amounted to breach of agreement/settlement and which is not permissible both on facts and in the eyes of law. Hence, it is held that it is nothing but an unfair labour practices within the meaning of Item 9 of Schedule IV of the Act, 1971. Thus, Issue No.1 stands

answered in the affirmative, of course, in part, in the words and for the reasons as discussed above.

65. **Issue Nos.3 and 4 :-**

With regard to these issues; precisely and on the basis of the material on record; as well as on the plethora of the affirmative findings, of course, in part so given by this Court to the Issue No.1 as above in the forgoing paragraphs of this judgment; it is held that, the complainant is entitled to have refund of the housing loan-amount so deducted from the payment of his subsistence-allowance already made by the respondents. In other words, the respondents shall pay the said arrears of housing-loan amount so deducted already by it; in favour of the complainant within a period of a month from today and no other relief is required to be granted so prayed by the complainant; except the above as categorically held to be entitled in his favour.

66. Since other reliefs so prayed by the complainant vide Para 11 on Page No.9 below Exh.U-1 have been already complied with on behalf of the respondents; by obeying and complying with the interim-relief order/additional-interim-relief order so passed by the Learned Predecessor of this Court in favour of the complainants at the hands of the respondents. Similarly, the respondents have not challenged those interim-relief orders with the Higher Court of Appeal/Writ Court; till the date. Hence, they have been deemed to have been treated as complied with and by way of oral submissions that have been conceded by the learned advocate for the complainants only. Accordingly, these Issue Nos.

3 and 4 stand answered in the affirmative to the extent as discussed above; for the reasons as supported therewith by this Court.

67. In respect of the Complaint (ULP) No.330/2007; which has been filed by the complainant-union by name 'Associated Cement Staff Union below Exh.U-1 as against these common respondents on 10.8.2007, for unfair labour practice as per Item 9 of Schedule IV of the Act, 1971; similarly as per the joint pursis below Exh.CU-7 so filed today in the morning session on behalf of the complainant, through his learned advocate on record stating that, the complainant does not wish to lead oral evidence in this matter; so is the case with the respondents. Hence, the Complaint (ULP) No.330/2007 for want of prosecution and not proving the case of the complainant-union; by adducing oral evidence on record till the date, it is required to be dismissed and no relief so prayed by it, is deserved to be granted in its favour, accordingly.

68. With regard to Complaint (ULP) No.280/2007 so filed by the complainant by name: Mr. M.N. Kamath for unfair labour practice as per Item 9 of Schedule IV of the Act, 1971 on 2.2.2007.

69. In this matter i.e. Complaint (ULP) No.280/2007 below Exh.U-7; as well as below Exh.C-5, both the parties to the litigation have stated that, as the complainant does not wish to lead oral evidence in support of his case and same is the case with that of the respondents, through its pursis below Exh.CU-5 dated 27.9.2009 and 8.1.2010 respectively; this Complaint (ULP) No.280/2007 below Exh.U-1 is also

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required to be dismissed for want of its prosecution and no relief so claimed by the complainant is deserved to be granted in his favour.

70. With regard to another Complaint (ULP) No.268/2007 so filed on behalf of one Mr. V.R. Prabhu below Exh.U-1 as against the common respondents for unfair labour practice as per Item 9 of Schedule IV of the Act, 1971 on 3.7.2007 with this Court. Here also; below Exh.U-7 the complainant has stated therein that, he does not wish to lead oral evidence in support of his case filed in this Court on 27.9.2007. Same is the case with that of the respondents, through its pursis Exh.C-9 filed it on record on 8.1.2010. Hence, in this matter also, the complainant is not deserved to be granted with any relief; but the said complaint is required to be dismissed for want of its prosecution.

71. Accordingly, this group of Complaint (ULP) matter 4 in number got disposed off, through this common judgment; respectively.

72. Thus, after answering these issues in Complaint (ULP) No. 253/2007 finally, the Court proceeds to pass the following common-order; which would meet the ends of justice, equity and good conscience.

- : COMMON ORDER : -

- 1. Complaint (ULP) No.253/2007 below Exh.U-1 filed by the complainant for unfair labour practice as per Item 9 of Schedule IV of the Act, 1971 stands allowed in part, of course with no order as to costs.*
- 2. It is hereby declared that, the respondents have engaged into an unfair labour practice as per Item 9 of Schedule IV of the Act, 1971, of course, to that extent as held above.*

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3. *The respondents are directed to refund the housing loan amount so deducted from the payment of subsistence allowance so made to the complainant already and pay alongwith the arrears of the same in favour of the complainant; within a period of a month from today.*
4. *The complainant is not entitled to any other relief as prayed for below Exh.U-1.*
5. *Similarly Complaint (ULP) Nos.268/2007, 280/2007 and 330/2007 stand disposed off as dismissed; for want of its prosecution, accordingly.*

Date : 15 & 16.11.2010

Place : Mumbai

Sd/-
(S. K. Shalgaonkar)
Member,
Industrial Court, Mumbai

Sd/-
(K.N. Dharmadhikari)
I/c. Registrar,
Industrial Court, Mumbai.
(Date : - / /2010)

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