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IN THE INDUSTRIAL COURT, MAHARASHTRA, BOMBAY.

COMPLAINT (ULP) NO. 1419 OF 1989.

Blue Star Workers' Union,
6, Neelkanth Apartments,
Gokuldas Pasta Rd., Dadar(E),
Bombay-400 014.

COMPLAINANT

V/s.

1. Blue Star Limited,
Kasturi Buildings,
Jamshedji Tata Rd.,
Churchgate, Bombay-400 020.

2. Mr. R.M.Nadkarni,
Manager - AC & RSales
Blue Star Limited,
Band Box House, Prabhadevi,
Bombay-400 025.

3. Shri S.S.Anand,
Vice President - Personnel,
Blue Star Limited,
Kasturi Buildings,
Jamshedji Tata Road,
Bombay-400 020.

In the matter of a Complaint u/i. No. 9 of Schedule IV and u/i. No. 4(a) of Schedule II of the MRTU & PULP Act. 1971.

PRESENT :- Shri G.S.Baj, Member.

APPEARANCES :- Shri K.P.V.Menon for the complainant.

Shri R.N.Shah for the respondents.

ORDER (14.6.1993)

The complainant union has filed the present Complaint against the respondents, complaining of unfair labour practice under Section 28(1) read with item No.9 of Schedule IV and item No. 4(a) of Schedule II of the Maharashtra Recognition of Trade Unions and Prevention

of Unfair Labour Practices Act, 1971. Brief material facts giving rise to the present Complaint, as can be gathered from pleadings of the parties and submissions made at the bar by both the learned Advocates, are as under :

It is alleged that respondent No.1 is a public limited company engaged in manufacturing refrigeration devices, airconditioning plants. The complainant union represent majority of workers employed at respondent's Thane factory and various offices, godowns, and service centres at Bombay apart from Pune. It is the only union existing in the respondent company since 1973. It is further alleged that the respondent company employs about 3,300 employees all over India, of which 900 are in Bombay Pune, and Thane establishments. The respondent company has entered into a settlement with complainant union on general demands on number of occasions including in the years 1972, 1974, 1978, 1981 and 1985. The entire responsibility of administering the union was taken over by the employees. Shri N.Vasudevan was the chief functionary of the union who was elected as the General Secretary. Shri N.Vasudevan is employed at the Band Box House establishment of the company. He is on the rolls of the respondent company since 1964 and was employed as a Stenographer in Airconditioning and Refrigeration sales. Most of the negotiations have been held between the Managers of the respondent company and Shri N.Vasudevan initially General Secretary of the complainant union and who subsequently became Vice President of the union in 1981 after he was elected as the General Secretary of the All India Blue Star Employees Federation.

It is alleged that besides presenting employees grievances to the management, Shri N. Vasudevan was allowed to meet workers, listen to their problems and take up the issues at the appropriate forums. Shri N.Vasudevan was given time off for pursuing union work and was not required to do any office work. Initially it was for two hours in the morning and two hours in the evening. This system worked from 1978 to 1983. Shri Vasudevan became the General Secretary of the All India Blue Star Employees' Federation, which was formed in the year 1975. The respondent company formally recognised the Federation under the settlement dt.30.10.198[illegible] though it was formed in 1975 and issues of all India nature were raised by the Federation from 1975 onwards and some of the major issues were resolved through direct talks. It is further alleged that the Federation did not have outsiders in the committee excepting the President who happens to be the President of Bombay union. Thus, virtually for all practical purposes the twelve constituent unions and the Federation became an organisation run by workers themselves. Shri Vasudevan, because of his pioneering role in organising the unions and subsequently the Federation, became the chief union functionary. Realising his [illegible] role and also taking into account the nature of departmental jobs handled by other office bearers of the union and the Federation, the respondent relieved Shri N.Vasudevan to do union work while on duty solely. He was not given any company work since 1983. It is alleged that the respondent company was aware that Shri N.Vasudevan was carrying out only union activities during working hours and this right was by mutual agreement. The respondent company has been

paying normal salary and annual increments to Shri Vasudevan till October 1989. He was eligible to get his leave and allowances and was enjoying them like other employees all these years.

By a memo dt. October 31, 1989, handed over to Shri N.Vasudevan on November 6, 1989, the respondent company has sought to belittle the agreement in respect of Shri Vasudevan doing union work while on duty. By this memo the respondent company has decided not to pay salary/wages to Shri Vasudevan from October 25, 1985 onwards because he was doing union activities. It is further alleged that the respondent company stopped to pay salary to Shri Vasudevan from October 25, 1989, and he has been threatened with punitive actions. All possible attempts have been made by Shri Vasudevan to convince the company to withdraw such steps against him, and continue to pay him salary/wages as in the past, and consequently permit him to do union's work for whole of the time in a day rather than insisting as a condition precedent to work in the company for being eligible to claim the salary and wages. All his such attempts have failed. Hence, the present Complaint has been filed for grant of various reliefs, including restraining the respondents from acting in contravention of the provisions of subsisting settlement dt. November, 1, 1985 in so far as it relates to grant of rights to Shri Vasudevan about payment of wages etc. for performing union work while on duty. It has also been prayed that the necessary directions shall be issued to the respondents to temporarily withdraw the letter dt. October 31, 1989, and allow Shri Vasudevan to continue to do the union work while on duty and to receive wages/salaries etc. at the rates stipulated under the agreement dt. November 1, 1985.

2. Application Ex. U-2 has been filed for grant of interim relief. The said application was heard on merits and has been decided by the then Member, Shri S.V.Vaze, on 29.1.1990.

The said application Ex. U-2 came to be rejected.

3. The ~~said application Ex.~~ respondents have resisted the Complaint interalia on the grounds mentioned in Ex.C-1, dt. 18.12.1989. It is the main bone of contention of the respondents that the respondents are not guilty of any unfair labour practice under item No. 9 of Schedule IV or under item No. 4(a) of Schedule II of the MRTU & PULP Act, as alleged in the Complaint. It is further contended that the complainant has miserably failed to show how the settlement by the 1st respondent company with the complainant union has been violated amounting to unfair labour practice under the Act. It is further contended that it is well settled law that the employees earn wages during the period they attend work unless they are on authorised leave with pay. It is contended that in absence of any evidence from the complainant showing that the employee concerned in the above Complaint has actually worked, he can not seek relief from this Court for wages which admittedly he has not earned. It is further contended that on the principle of 'no work no pay' the employee concerned is not entitled to any wages and that under its rules and regulations as well as its law, it is required to pay wages to employees only when they earn the same. It is contended that Shri Vasudevan was never allowed to meet the workers during working hours or to perform the union activities. If at all he was so doing it was without the knowledge of the management. He has never been directed by the

respondent company to do union's work during office hours. It is contended that Shri Vasudevan was severally warned by his superiors for not performing his work. It is contended that no employee can do union work at the cost of the company, and for earning his wages he has to perform his duty. At no time Shri Vasudevan was relieved by the company to do union's work while on duty. It has also been categorically denied that he was not given any work since 1983. It is also categorically denied that Shri Vasudevan was provided with the union office at Band X Box establishment of the company. Existence of any agreement between the respondent company and Shri Vasudevan, or union, is categorically denied. It is contended that since Shri Vasudevan has not earned wages from October 25, 1989, he was not paid salary. Allegations about the threat with punitive action have been categorically denied. It is lastly contended that Shri Vasudevan has been repeatedly warned for doing union activities during working hours without prior permission of his superior. It is also categorically denied that Shri Vasudevan was not given any stenographic work since 1983. According to the respondents, exclusively doing the union work while on duty is not at all a service condition or term of employment of Shri Vasudevan as whispered in the Complaint. After denying rest of all other adverse contents in the Complaint, the respondents have claimed the dismissal of the Complaint.

3. The complainant union has examined three witnesses including Shri Vasudevan. Their evidence is at Ex. U-9, U-10 and U-12.

In addition to oral evidence the union has also relied upon some documents. The company did not examine any witness in support of its case, but relied upon certain documents.

4. Consequent upon the pleadings of the parties and looking to the nature of the controversy involved in this case, the points which do arise for my consideration are as under :

i) Does complainant prove that the respondent has committed failure in implementing settlement, agreement or Award, and thereby committed an unfair labour practice as contemplated by item No. 9 of Schedule IV, as stated in the Complaint?

ii) Does complainant further prove that the respondent has encouraged or discouraged membership in any union by discriminating against any employee, that is to say discharging or punishing an employee because he urged other employees to join/organise a union, as contemplated by item No. 4(a) of Schedule II of the MRTU & PULP Act, 1971?

iii) What order?

My findings on the above points, for the reasons recorded thereon, are as under :

i) YES

ii) No.

iii) See final order.

5. Undisputedly there is no direct written agreement, settlement or award of which the non-implementation is complained of, by the union.

At the outset it is required to be stated that item No. 4 of Schedule II of the MRTU & PULP Act, 1971, has not been much argued at the bar by Shri Menon, the learned Advocate appearing for the complainant union. Much more time and energy is devoted by Shri Menon in convincing the Court at the bar about the applicability of the provisions of item No. 9 of Schedule IV. In nut-shell the grievances made by the complainant in this regard can be stated as under :

The complainant, Shri Vasudevan, is working solely for the union during all the time of the working hours since last more than a decade, and is receiving salary and wages regularly from the respondent. According to the complainant this has become an implied term and condition of his service, and any breach thereof amounts to unfair labour practice as contemplated by item No. 9 of Schedule IV of the Act. Many circumstances, past prabtice, authorities, etc. have been relied upon in support of this alleged right vested in the complainant to claim the wages without working for the company, but for working the whole time for the union during office hours.

6. Undisputedly Shri Menon could not lay his finger on any particular document reciting therein that Shri Vasudevan will be entitled for full wages and salary from the company as its employee, but for working for the union for whole time of the day. However, Shri Menon in his persuave tongue has drawn my attention to various attending circumstances, admissions on the part of the witnesses, and conduct on the part of the

management in support of his argument that the long standing practice and concession in this regard has been elevated to the status of an implied agreement in between the management and the union, and breach thereof amounts to an unfair labour practice. Shri Menon has also further taken me through each and every settlement that has taken place between the union and the management from time and again right from 1977, to 1985, in support of his argument that to work for the union for whole time by Shri Vasudevan has become part and parcel of terms and conditions of his service. According to Shri Menon many a times the management has putforward a demand that union activities shall not at all be done during office hours, but by the time it was withdrawn as settled. Shri Menon wants me to drawn an inference from all such steps on the part of the management that the previous practice or concession given to Shri Vasudevan for doing union work for all the time during office hours was continued and never interrupted. I will take necessary care of this line of argument, and the various settlements little later in the below part of this order as and when necessary.

7. As against all these submissions, the learned Advocate Shri Shah has strongly and streneously urged at the bar that question of paying earned wages to the workmen who is admittedly not working for the company does not arise. According to him the term 'earned wages' are defined in section 2(rr) of the Industrial Disputes Act, and for being eligible to earn wages one has to work for the company and earn wages. He has urged that assuming for the sake of argument that some time in the past a concession was given to Shri Vasudevan for working for the

union during office hours, and still treating him as eligible for receiving salary or wages, does not necessarily mean that any valuable right as such is vested once for all in Shri Vasudevan to claim salary or earned wages without working at any time for the company. According to him even if any such agreement had been followed in the past, the same can not be branded as legal agreement because such agreement for being valid must be based on legality. In other words, according to Shri Shah, the agreement based on breach of the statutory provisions becomes a void agreement, and breach thereof can not be said to be an unfair labour practice as contemplated under item No. 9 of Schedule IV of the Act.

8. He has further drawn my attention to the appointment letter and the terms and conditions of service of Shri Vasudevan. He has further drawn my attention to the undisputed plea taken by the complainant Shri Vasudevan of his not working for the management, and claiming to have become entitled for earned wages. In short, according to Shri Shah, the question of granting reliefs prayed for in the Complaint in view of the undisputed plea, and evidence led by the complainant does not arise.

9. Consequent upon the submissions made at the bar by both the learned Advocates, as discussed above, I am constrained to take all the points serially one after another for consideration.

10. So far as the oral evidence led by the union is concerned, it must be fairly stated to the credit of the union that it has succeeded in bringing on record that Shri Vasudevan has been working since last more than one

decade for the union during office hours. It must also be fairly stated to the credit of the union that it has succeeded in bringing on record, by way of oral evidence, that the respondent has been paying earned wages to Shri Vasudevan for working full time for the union during office hours. Cursory reference to the part of the oral evidence relied upon by the complainant union will fortify the observations made in this regard. Evidence of Shri Vasudevan is at Ex. U-9. He has filed his affidavit by way of examination-in-chief. He has categorically stated that there exists an agreement and settlement between the respondent company and the complainant union, about allowing him to perform the union work while on duty and to earn wages for doing union work while on duty. He has reiterated that the memo dt. 31.10.1989, issued to him by the respondent No. 2 is in violation of terms of settlement signed on 1.11.1985. More or less similar facts have been sworn by other two witnesses of the union. They are Shri Maheshwari - Ex. U-11, and Shri Shivdasani - Ex. U-12. All these witnesses have been searchingly cross-examined by the learned Advocate appearing for the company. But it must be stated that all these witnesses have virtually stood to the test of the cross-examination. They have throughout maintained that Shri Vasudevan was allowed by the company to perform union work while on duty, and to earn wages by doing union work while on duty.

11. It is significant to note and remember that even though the company has tried to deny this material fact, but has miserably failed to bring anything concrete on record indicating that Shri Vasudevan was at any time entrusted stenographic job for which he has been employed.

Had really Shri Vasudevan been entrusted any stenographic job, which is a term and condition of his service as per the appointment letter, the company could have very well produced number of stenographer notebooks, letters typed by Shri Vasudevan for and on behalf of the company as a Stenographer. The company could have examined some or the other officers to whom Shri Vasudevan was attached as a Stenographer. Nothing of this kind has been done by the company at its proper time, and therefore, now it can not lie in its mouth to contend that Shri Vasudevan was not working for the union for whole [illegible] years. It has come on record that as and when the stenographers are required to use any stationery for their job, they are required to furnish an indent, and call for such stationery. If really Shri Vasudevan had worked at any time as a Stenographer for the company, nobody has prevented the company from producing such indent by way of material documentary evidence. No reason whatsoever has been given by the company during the course of arguments as to why the best possible evidence in the custody of the management has not been produced. It is well settled principle of law that without any regard to the burden of proof, the party in possession and custody of best evidence must produce before the Court, else adverse inference is required to be drawn against the party who has suppressed or withheld such best evidence.

12. Once we come to the infallible and unmistakable conclusion that Shri Vasudevan though appointed as Stenographer was all the while working for union activities, and was being paid ~~as~~ earned wages by the company. Such a practice is not restricted for limited days, months or years. Such a practice

was going on uninterruptedly, without any objection peacefully, for number of years i.e. since 1985 onwards.

13. The learned Advocate Shri Shah has urged that Shri Vasudevan was not found at the place of his employment and therefore, no work could be entrusted to him. In this regard my attention has been drawn by him to the admission of Shri Vasudevan and other witnesses. It is significant to note and remember that the complainant has come with a very bold plea that Shri Vasudevan was devoted full time for union activities as per the implied consent given by the management, and he was always being paid earned wages. Therefore, the question of Shri Vasudevan remaining present at the place of his employment in the office for office work does not arise. In view of the long standing practice if he is devoted for union activities, and if such devotion is being tolerated by the management for number of years, the socalled objection taken by Shri Shah about the absence of Shri Vasudevan loses all its significance.

14. Number of settlements that have taken place in between the management and the union right from 1977 to 1985, and the role played by the management therein from time and again will speak volume about the valuable right vested in Shri Vasudevan for doing union activities while being in employment of the company. In this regard, the demands made by the company on the union during the years from 1977 to 1985 are very much material. In the

year 1977 the company had made the following set of demands :

Demand No. 7 reads as under :

"FIXED WORKING HOURS FOR UNION OFFICIALS FOR UNION WORK.

One Union official who is employed by the company in Thane and B&H establishments shall be nominated by the Union for doing Union work at the establishment of his posting, one hour every day. Besides such nominated officials, no other unionmember shall devote himself, in any manner whatsoever, to union work during office hours."

This demand came to be settled vide clause No. 27, on page No. 10 of conciliation settlement, dt. 12.4.1978, which is also part of Annexure III of list of documents, dt. 23.3.1993. Clause 27(d) reads as under :

"It is agreed that issues mentioned in the Charters of Demands of the Union and the Company which have not been specifically dealt with or pressed or withdrawn shall be deemed to be settled, and shall not be raised or agitated during the currency of this settlement."

15. I agree with Shri Menon x when he states that the company was aware, prior to submission of demand No.7, that union officials were doing all union work during office hours without any limitation and restriction. It is in this background that the company placed demand No.7 before the union. Had really the company any strong objection for following such practice, the company would have insisted for fulfillment of the said demand rather than settling it or leaving it undecided.

16. The next charter of demands came to be placed sometime in 1980. Clause No. 6 at the end of page No. 4 states as follows :-

"Union Committee members wishing to pursue Union activities during the normal working hours will do so only after getting their Manager's permission, and they will return to work immediately thereafter."

While signing the settlement, the company annexed the terms agreed between the union and the company as its charter of demands. This demand came to be settled by settlement dt. 14.8.1981, which is produced along with the list of documents, dt. 23.3.1993. It has been agreed by the union and the workmen, vide clause on page No. 17 of the settlement, that union meetings, and discussions will be held in the union office wherever it is provided. The said settlement, dt. 14.8.1981 referred supra, read with reference to the charter of demands, which came to be placed sometime in 1980 by the company, will show that the company did not insist that prior permission of the Manager for union activities should be taken. The management seems to have not insisted for a demand that after the union activities during normal working hours, union committee members will report to work immediately. In other words it can very well be said, as has been argued by Shri Menon in his persuasive tongue, that the union committee members were virtually permitted to deal with the union activities during office hours without prior permission and that too without returning to the work after the union activities are over. The withdrawal of the charter of demands for the second time by the company, and settling it by way of package deal will infallibly and unmistakably show that the company has recognised the devotion of Shri Vasudevan

as office bearer of the union and virtually exempted him from doing the stenographic work for which he has been employed. In other words it can be said that the full time devotion by Shri Vasudevan for union activities has been virtually recognised by the company as if it was an implied term and condition of his service.

17. Had there been no recurrence of the same strategy on the part of the company, the matter would have been totally different for consideration. But, unfortunately for the company even during the subsequent settlement the same strategy has been chalked out and accepted by the company, and virtually the charter of demands placed by the company has been again withdrawn and settled.

18. In this regard my attention has been rightly drawn to another charter of demands, which came to be placed on the management by the union in the year 1983. It is annexed at Annexure IX to the list of documents dt. 23.3.1993. Demand No. 10 states as follows :

'Union activities - Bombay and Thane establishments :-

1. The office premises and working hours should not be used as forums for discussing subjects not concerning the Organisations operations.
2. Normally, the Union shall not hold meetings during working hours. In case, of urgent need to hold a meeting, the Union committee members should ensure that they take prior permission of the Management.
3. Union committee members shall hold discussions with the workmen in the Union's office only, and the workmen should take permission of the supervisor for leaving the place of work.

This demand came to be settled vide settlement dt. 1.11.1985. This settlement is annexed at Annexure IX-A to list of documents, dt. 23.3.1993. On Internal page No. 16 of the settlement, clause 25 read with clause 33 on page No. 18 reads as under :-

"Demand No. 10 - Union activities at Thane :

(a) Normally, the Union shall not hold meetings during working hours. In case of urgent need to hold a meeting, the Union Committee Members shall ensure that they will inform the Management

(b) Workmen desirous of meeting the Committee Members in the Union Office shall take permission of their supervisors."

The language incorporated in the general clause No. 33 is very much material. It is stated therein that it is further agreed that the issues mentioned in the charter of demand of the union and the company, which are not specifically dealt with or are not pressed or have been withdrawan, shall be deemed to be settled and shall not be raised or agitated during the currency of the settlement.

19. Suffice to state that a plain reading of the management's charter of demands, commencing from 1977 onwards, would show that the company was aware that the workmen were doing union work during office hours. The company was interested in restricting these activities to certain persons and certain timing, as per management's charter terms of demands. By virtue of settlements all these demands were withdrawn as package deal.

20. Shri Menon has strongly and strenuously urged at the bar that as and when a settlement is has to be taken as a package deal, it operates as a package and therefore, the demand is given up by a party. It would mean that the existing term would continue.

In this regard he has rightly drawn my attention to the observations made by the Supreme Court in the case in between Herbertsons Limited v/s. Workmen reported in 1977-LIC-162. Supreme Court has observed that there may be several factors that may influence the parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is always a likelihood of further advance in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of settlement which Courts and tribunals should endeavour to encourage.

21. Thus the cumulative effect of all the discussion made above will infallibly and unmistakably indicate that the company by its own conduct stands stopped from changing the position or stand which it has taken at the time when the negotiations on charter of demands were going on. The company in that particular year of each settlement has represented that it is withdrawing its demand and settling it by way of package deal. Now it can not change its own stand to the detrimental interest of the union. There is every possibility that had the company insisted or pressed for its own demands at the time of signing of various settlements, something different would have come out of the negotiations other than the settlements which have taken place in the relevant years.

22. The history is again repeated the same way in the year 1984 when the management placed another charter of demands, on All India Blue Star Employees Federation.

The crucial controversy that arises for consideration is as to whether such an implied agreement is valid and legal in the eyes of law. According to Shri Shah even if any such agreement has been arrived at in between the parties, it being in contravention of the provisions of Section 2(rr) of the Industrial Disputes Act, it is a void agreement and can not be acted upon. Canvassing this line of argument further, he has urged that breach of any such void agreement can not attract the provisions of item No. 9 of Schedule IV of the Act.

23. In order to appreciate this line of argument it is very much essential to refer to the definition of the word 'earned wages' as given in Section 2(rr) of the Industrial Disputes Act. It reads as under :

> " 'Wages' means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment."

According to Shri Shah unless the workman concerned actually works in terms of his employment, the question of his earning wages will not arise at all. It is significant to note and remember that the definition of the word 'wages' for its proper appreciation has been devided in some parts. The first part of the

definition infallibly and unmistakably points out that the workman will be entitled for wages if terms of employment, expressed or implied, are fulfilled. The word 'implied' used by the legislature in the said definition is of utmost importance. If by virtue of evidence relied upon by the parties it is established that some other terms of employment can be implied other than what is mentioned in the appointment letter, then also the workman will be entitled to earn wages. In this case the detailed discussion of each and every fact, circumstance, contingency, practice and the intention of the parties will reveal that to work for the union for whole time during the office hours was treated as implied term and condition of the employment or service of Shri Vasudevan. Had it not been so, the million dollar question arises as to why such a clever management went on tolerating the union activities for full day by Shri Vasudevan during the course of his working hours. Another million dollar question that remains to be solved is as to why on every occasion the management went on withdrawing the charter of demands and was agreeing for the past practice to go on. Therefore, I do not find any substance in the argument advanced at the bar by Shri Shah that the said implied agreement becomes a void agreement. Consequently no substance lies in his argument that the breach of alleged void agreement will not attract the provisions of item No. 9 of Schedule IV of the Act.

24. Reliance is placed on a well celebarated decision in between the parties - Bank of India v/s. T.S.Kellawalla and others, reported in 1990-II-LLJ-339, and the case in between Secretary of Tamilnadu Electricity Board Accounts Subordinate Union and Tamilnadu Electricity Board and others

reported in 1984-II-LLJ-478. It has been held by the Supreme Court in the first case referred supra that the employer held entitled to deduct the wages proportionately for the period of the absence or for the whole day on the facts of each case. It has been observed by the Supreme Court that it is not enough that the employees attend the place of work. They must put in the work allotted to them. It is for the work and not for their mere attendance that the wages/salaries are paid. According to Shri Shah when Shri Vasudevan was not attending the place of his work to and was all the time undisputedly devoting his time for union activities, the question of directing the company, want by taking a charitable view, to pay his earned wages does not arise. Had the facts of the case in hand and the facts which were before their Lordships of the Supreme Court, and Madras High Court, been similar, I would not have hesitated to keep reliance on the said authorities. In this case, at the cost of repetition it is required to be stated that for decades together the management has virtually recognised the right of Shri Vasudevan to work for union activities for whole time during the office hours, and objection was never taken for he being receiving the earned wages as per various settlements. It was not that Shri Vasudevan was raising his such right for the first time when the Complaint has been filed or immediately therebefore. He has come with a specific case that the long standing practice and custom followed by the management and the union has been elevated to the status of the agreement, and has matured into a right. Breach thereof will thus definitely amount to an unfair labour practice under item No. 9 of Schedule IV of the Act. It is well settled principle of

law that the long standing practice and custom becomes an agreement in between the parties.

25. Suffice to state that both the authorities relied upon by Shri Shah can very well be distinguished on the facts of the present case on the solitary ground that in this case the long-standing practice for decades has been established, whereby the management has recognised and/or permitted Shri Vasudevan to work for union for whole time during office hours.

26. My attention has been further drawn by Shri Shah to a case reported in 1969-I-LLJ-235 - Indian Oxygen, Ltd. and Their Workmen. The controversy in that case was whether the workmen should be treated on duty when they are attending the executive committee meetings. The controversy which was before the Supreme Court of India for consideration in the case referred supra, related to the nature of absence of the committee members of the union as and when they were required to attend the committee meetings, conference, etc. In this case we are not concerned with that type of controversy at all. In my view and judgment the controversy relating to this case is exceptional and novel of its own kind. At the cost of repetition it is required to be stated that in this case Shri Vasudevan has been working full time for union activities for decades, and he was alwasy being paid his salary as usual as per the settlements from time to time. He has never been prevented from doing the union activities during the office hours. No memo of any kind has ever been issued in writing to him for refusing to work as a Stenographer as per his appointment letter. No action of any kind has been taken against him. No charge sheet has been served on him. No explanation of any kind has been sought from him. His salary

has also never been deducted prior to the disputed memo, dt. October 31, 1989. No explanation, much less reasonable, has ever been tried to be offered by thecompany for its inaction in that regard.

27. More the more we consider the controversy from various angles, we can not avoid landing upon the conclusion that the present Complaint is consisting of various merits and therefore, the reliefs prayed for need to be granted.

28. Before parting with this order, it is necessary to observe that even otherwise on socialistic approach and humanitarian ground, the relief prayed for by the complainant union requires to be granted. Undisputedly the company has engaged number of officials for looking into labour problems. The complainant Shri Vasudevan is also looking after the labour problems and resolving the controversies in between the management and the workmen. He is in one way or the other assisting the good and smooth administration of the management. Therefore, the management ought not to have taken any vindictive approach by discontinuing the long standing practice and custom of paying him full salary as per settlement while he was working for union activities, that too abruptly discontinuing the said practice with effect from 31.10.1989. Suffice to state that the long-standing practice and custom having been proved by the union, the union is entitled to the reliefs prayed for. Hence, I pass the following order which in my view and judgment would meet the ends of justice.

O R D E R

It is hereby declared that the respondents have committed unfair labour practice under item No. 9 of Schedule IV of the MRTU & PULP Act, 1971. By way of affirmative action the respondents are directed to cease and desist from continuing to engage in the said unfair labour practice forthwith.

The respondents are hereby directed to withdraw the letter dt. October 31, 1989 and to allow Shri N. Vasudevan to continue to do the union work while on duty and to receive wages/salaries etc. as the [illegible] stipulated under the agreement [illegible] 1, [illegible].

The respondents are directed to pay the arrears of salary to the complainant accordingly, uptodate, within the period of one month from the date of receipt of the certified copy of this order, and in any case within 3 months from the date of this order whichever is earlier.

The respondents are hereby directed to pay future earned wages regularly as usual as in the past, unless otherwise this order is stayed by the Suprior Courts.

On oral request operation of this order is stayed for a period of 4 weeks from the date of receipt of copy of this order and/or for the period of two months from the date of this order whichever is earlier.

(G.S.BAJ)
Member,
Industrial Court, Bombay.

s/d-
(K.G. Sathe)
Registrar,
Bombay 6th July 1993.