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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1558 OF 2015

M/s Saklecha Steel Industries Pvt.Ltd.,
Plot No.C-2/1, Additional MIDC area,
Jalna, at post Jalna,
Taluka and District Jalna.

...PETITIONER

-VERSUS-

1 Jalna Labour Union.
Through it's General Secretary,
Mr.Madhukar Ramji Mokale,
Aged Major, Occ : Social Work and
General Secretary of the Union,
R/o CITU Bhawan, Sanjay Nagar,
Old Jalna, District Jalna.

2 M/s Zalani Tools India Limited.
Through it's GPA Holder,
Vitthal Kondibaseth Akkar,
Aged : 48 years, Occ : Business,
R/o Sabhaji Nagar, Jalna.

...RESPONDENTS

**WITH
WRIT PETITION NO.1626 OF 2015**

M/s Sudesh Steel Industries Pvt.Ltd.,
Plot No.C-2/3, Additional MIDC Area,
Jalna, At.Post. Jalna,
Taluka and District Jalna.

...PETITIONER

-VERSUS-

Jalna Labour Union.
Through it's President
Mr.Anna Vitthal Sawant,
Aged : Major, Occ : Social Work and

President of the Union,
R/o CITU Bhawan, Sanjay Nagar,
Old Jalna, District Jalna.

...RESPONDENT

**WITH
WRIT PETITION NO.1630 OF 2015**

M/s C.M. Re-Rolling Industries Pvt.Ltd.,
Plot No.C-2/4, additional MIDC Area,
Jalna, At Post Jalna,
Taluka and District Jalna.

...PETITIONER

-VERSUS-

- 1 Jalna Labour Union.
Through it's General Secretary
Mr.Madhukar Ramji Mokale,
Aged Major, Occ : Social Work and
General Secretary of the Union,
R/o CITU Bhawan, Sanjay Nagar,
Old Jalna, District Jalna.
- 2 The Regional Officer,
Maharashtra Industrial Development
Corporation (MIDC), Industrial Area,
Station Road, Aurangabad.

...RESPONDENTS

**WITH
WRIT PETITION NO.1631 OF 2015**

M/s C.M.Metal Industries Pvt.Ltd.,
Plot No.C-2/1, Additional MIDC Area,
Jalna, At. Post. Jalna,
Taluka and District Jalna.

...PETITIONER

-VERSUS-

Jalna Labour Union.
Through it's President
Mr.Anna Vitthal Sawant,

Aged : Major, Occ : Social Work and
President of the Union,
R/o CITU Bhawan, Sanjay Nagar,
Old Jalna, District Jalna.

...RESPONDENT

...

Shri Thole Yatin I., Advocate for Petitioners.

Shri Kulkarni Shailendra S., Advocate for Respondent No.1 in all
petitions .

Shri Vaibhav Deshmukh, Advocate for Respondent No.2 in Writ Petition
No.1558/2015.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th October, 2015

Oral Judgment:

1 The learned Advocates for all the sides submit that they have
no objection if this Court hears these petitions. Respondent No.2/ MIDC in
Writ Petition No.1630/2015 is a formal party.

2 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

3 These four petitions arise out of the following impugned
orders passed by the Industrial Court:-

Sr. No.	Writ Petition No.	Complaint (ULP) No.	Exhibit and Order date	Exhibit and Order date	Exhibit and Order date
1	1558/2015	81/2007	U/26, 14.11.2014	U/37, 14.11.2014	C/37, 20.12.2014
2	1626/2015	247/2009	U/16, 20.11.2014	–	C/14, 20.12.2014
3	1630/2015	103/2007	U/25, 14.11.2014	U/37, 14.11.2014	C/24, 20.12.2014
4	1631/2015	246/2009	U/17, 20.11.2014	–	C/13, 20.12.2014

4 The Respondent/ Union espousing the cause of the workers mentioned in Annexure-A to the respective complaints is the same. All these Petitioners are party to the settlement dated 22.05.1990 signed between these Petitioners and the Respondent/ Union. Considering the fact that the settlement is common and the issue in law involved is identical, all these petitions have been taken up together for hearing.

5 Shri Thole, learned Advocate for the Petitioners and Shri Kulkarni, learned Advocate for the Respondent/ Union, have canvassed their contentions in extenso. So also, Shri Deshmukh has made his submissions on behalf of Respondent No.2 in the first petition.

6 Shri Vaibhav Deshmukh, learned Advocate has filed the caveat on behalf of Respondent No.2/ Company in the first petition. In the remaining three petitions, the Union is the sole Respondent. Shri

Deshmukh reiterates the contentions raised by Respondent No.2 in it's Written Statement filed before the Industrial Court.

7 In Complaint (ULP) No.81/2007, the issues cast by the Industrial Court on 06.09.2012 are as under:-

- “1. Whether, this Court has jurisdiction to try and entertain the present complaint?
2. Whether, there is a relationship of employer and employee between the complainant and respondents?
3. Does the Complainant prove that the Respondents have engaged in and engaging in Unfair Labour Practice under Section 28 r/w Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971?
4. Whether, the Complainant is entitled for the relief/s as prayed for?
5. What order?”

8 Similarly, the issues cast in Complaint (ULP) No.246/2009 on 06.09.2012 are as under:-

- “1. Whether, the respondents suffer from non-joinder of necessary parties?
2. Whether, there is a relationship of employer and employee between the complainant and respondents?
3. Does the Complainant prove that the Respondents have engaged in and engaging in Unfair Labour Practice under Section 28 r/w Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971?
4. Whether, the Complainant is entitled for the relief/s as prayed for?
5. What order?”

9 The issues cast in Complaint (ULP) No.103/2007 on 06.09.2012 are as under:-

- “1. *Whether, the respondents suffer from non-joinder and mis-joinder of necessary parties?*
2. *Whether, there is a relationship of employer and employee between the complainant and respondents?*
3. *Does the Complainant prove that the Respondents have engaged in and engaging in Unfair Labour Practice under Section 28 r/w Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971?*
4. *Whether, the Complainant is entitled for the relief/s as prayed for?*
5. *What order?”*

10 The issues cast in Complaint (ULP) No.246/2009 on 06.09.2012 are as under:-

- “1. *Whether, the respondents suffer from non-joinder of necessary parties?*
2. *Whether, there is a relationship of employer and employee between the complainant and respondents?*
3. *Does the Complainant prove that the Respondents have engaged in and engaging in Unfair Labour Practice under Section 28 r/w Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971?*
4. *Whether, the Complainant is entitled for the relief/s as prayed for?*
5. *What order?”*

11 In all these four complaints as is evident from the issues cast, the dispute as regards Employer-Employee relationship is being gone into, by the Industrial Court. All these issues were cast on 06.09.2012. The

framing of issues has not been challenged by these Petitioners in these four petitions filed on 20.01.2015 or any time before.

12 The question raised before the Industrial Court in all these matters is as to whether, the Petitioners/ Establishments have closed down their operations from December, 2007 and discharge/ retrenchment compensation is not paid. The Petitioners have raised the issue that there is no Employer-Employee relationship between the Petitioners and the Employees mentioned in Annexure-A to all these four complaints.

13 The Petitioners have canvassed that the complaints are vague and ambiguous. The details of employment are not stated. The exact date of closure is not mentioned. The purported closure is not challenged. Only retrenchment compensation is prayed for. There is no specific averment in the complaints that the workers were working with a particular Employer till a particular date, post which there has been a closure effected by the Employer.

14 In the first petition, the Petitioner has challenged the order dated 14.11.2014 directing the Petitioner to produce the documents from 1985 till December, 2007. The Petitioner has also challenged the order dated 20.12.2014 by which the application seeking dismissal of the

complaint on the ground of no Employer-Employee relationship, has been rejected.

15 This order has been passed in the light of the admission of the Petitioner that the Employees at issue in the complaint were ex-employees of the Petitioner. Similarly, the settlement dated 22.05.1990 has been considered by the Industrial Court to conclude that there was Employer-Employee relationship between these four Petitioners and the workers mentioned in Annexure-A in these four complaints.

16 Similar/ identical orders as recorded above are challenged by the Petitioners in other three petitions as well.

17 Shri Thole, therefore, strenuously contends that though the settlement between the Petitioners and the Union indicates that, at some point in time these Employees were on the rolls of the Petitioners, they have ceased to be their employees from 22.05.1990 in the light of the various terms set out in the settlement.

18 He further submits that in the absence of specific pleadings as regards duration of employment and in the light of vague and ambiguous complaints, the Industrial Court could not have directed the Petitioners to

produce the documents right from 1985 when in fact each of these Petitioners have closed down their activities from the date of the settlement and handed over the premises on lease to another company.

19 He reiterates that though the lease agreement is for five years, after the completion of the tenure of the settlement, none of these Employees were on the rolls of the Petitioners and these Petitioner Establishments were not functional after May, 1990. He, therefore, raises an issue as regards the limitation period.

20 Shri Thole, therefore, submits that these complaints deserve to be dismissed as the disputed issue of Employer-Employee relationship cannot be gone into by the Industrial Court in these four complaints.

21 Shri Kulkarni, learned Advocate for the Union, submits that they were erstwhile employees of these Petitioners. After the Petitioners handed over these Establishments to another company, namely, M/s Jhalani Tools India Limited, 51-52, Nehru Place, New Delhi, they worked in the same Establishment for five years. After the tenure of settlement concluded, they again started working with these Petitioners and are without work from December, 2007 owing to the closure.

22 He further submits that the actual tenure of employment of these Employees represented by the Union would be evident from the documents which are in the custody of the Petitioners. Based on these documents, the Employees can establish their total duration of employment for calculating their legal dues payable under Section 25F of the Industrial Disputes Act, 1947 on account of the closure. He, therefore, justifies the order of the Industrial Court directing the Petitioners to produce the documents.

23 He further defends the second impugned order in these petitions on the ground that the Petitioners have not come forward with a case that they did not know these Employees. The Petitioners have come forward stating that at some point in time, these workers were their permanent employees. By virtue of the settlement dated 22.05.1990, it is established that they were the Employees of these Petitioners prior to M/s Jhalani Tools India Limited taking over the Petitioner Establishments on lease basis for five years.

24 He, therefore, submits that in fact the issue of Employer Employee relationship is not at all in question before the Industrial Court. According to him, the issue is whether, the Employees are entitled for closure compensation and who is to pay such compensation. He,

therefore, prays for the dismissal of the petitions.

25 Having considered the submissions of the learned Advocates for the respective sides, I have gone through the petition paper books and records as are available, with their assistance.

26 I have gone through the settlement which has been placed on record by Shri Thole and marked as Exhibit X (09 pages) for identification. Reference to certain contents of the said settlement is necessary for deciding the controversy at issue. It would be apposite to reproduce the relevant portions of the said settlement herein below:-

“Whereas, the management of M/s Jhalani Tools (India) Limited, Reg.Office : 51-52, Nehru Place, New Delhi has offered to run M/s Saklecha Steel Industries Pvt.Ltd., M/s C.M.Re-Rolls Industries Pvt.Ltd., M/s C.M.Metal Industries and M/s Sudesh Steel Industries Pvt.Ltd., situated at C-2/1-4, additional MIDC area, Jalna on lease for a period of five years and the management of M/s Saklecha Steel Industries Pvt.Ltd., M/s C.M. Re-Rolls Ind. Pvt. Ltd., M/s C.M.Metal Industries and M/s Sudesh Steel Industries Pvt. Ltd., (herein after called lessor) have accepted the offer. The management of M/s Jhalani Tools (India) Limited (herein after called the Lessee) and the workmen of the Saklecha Steel Industries Pvt.Ltd., M/s C.M. Re-Rolls Ind. Pvt. Ltd., M/s C.M.Metal Industries and M/s Sudesh Steel Industries Pvt. Ltd., represented by Jalna Labour Union (Regn.No.AWB/597) Jalna have reached an amicable settlement, the terms and conditions of which are as under:-

- (1) *This settlement shall apply to all permanent employees whose names are borne in the muster rolls of M/s Saklecha Steel Industries Pvt.Ltd., M/s C.M. Re-Rolls Ind. Pvt. Ltd., M/s C.M.Metal Industries and M/s Sudesh Steel Industries Pvt. Ltd., which were independent units as on 30.04.1990.*
- (2) *The Lessee agrees to employ all employees of the Lessor who are on the muster roll of the Lessor as on 30.04.1990 along with continuity of service and with wages and benefits as stipulated in their settlements dated 24.04.1989 provided they signify their acceptance of the terms and conditions of this agreement by affixing their signatures on this settlement.*
- (3) *The Lessee agrees to induct the above workmen in a phased manner starting from the date of their signing this agreement and completing within a period of two months. The Lessee shall be liable for the payment of these workmen from the date they are inducted in to service of the Lessee.*
- (4) *.....*
- (5) *The workmen agree that all their legal dues as on date have received by them from the Lessor and they will not raise any dispute in the matter against the Lessee.*
- (6) *The workmen agree that their date of joining with the Lessor is as mentioned in annexure "B" of this settlement.*
- (7) *The Lessee shall contribute towards EFF and FPF @ 8.33% of the basic wages and Dearness allowance of the workmen as the Lessee is declared a sick company under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985.*
- (8) *.....*
- (9) *.....*
- (10) *The workmen agree that during the tenure of their settlement with the Lessor date 24-4-89, they shall not raise any demands involving any additional financial burden on the Lessee.*
- (11) *This settlement shall remain in force and shall be binding on the parties during the entire period of the lease and will also be applicable to all future*

employees.”

27 Prima facie, it is, therefore, evident from the above settlement that these four Petitioners have agreed with the Respondent/ Union and the Lessee M/s Jhalani Tools India Limited that these establishments would be leased out for a period of five years to the Lessee for conducting the manufacturing activities in the said establishments.

28 The permanent employees whose names are borne on the muster rolls of these Petitioners as on 30.04.1990 were agreed to be covered by the said settlement. The workers, who were covered by the settlement, have also signed below the settlement and their names and dates of joining are also mentioned in the Annexures to the settlement. These workers are now mentioned in Annexure A to the ULP complaints before the Industrial Court.

29 The Lessee had agreed to employ all these employees who were earlier on the muster rolls of the Petitioners along with their continuity of service and wages and benefits flowing through the settlement dated 22.05.1990 signed by these Employees with the Petitioners. The workmen agreed that all their legal dues as on the date of settlement had been received by them from these Petitioner

Establishments.

30 It is, therefore, prima facie clear that these Petitioners had de-linked themselves with these workmen from the date of the settlement. Since their dates of initial joining these Petitioners and the names of the persons covered by the settlement are already mentioned in the annexures to the settlement, the impugned orders 14.11.2014 directing the Petitioners to produce the documents, would be a fruitless exercise. The purpose for production of the said documents was to find out the dates when these employees joined the Petitioners and worked with it.

31 In the light of the admitted position in the settlement, the direction to produce the documents by the Industrial Court in the impugned orders is rendered unsustainable. To the said extent, these petitions are being partly allowed and the directions to produce the documents in order dated 14.11.2014 in the first petition, order dated 20.11.2014 in the second petition, order dated 14.11.2014 below Exhibit U-25 and order dated 14.11.2014 below Exhibit U-37 in the third petition and order dated 20.11.2014 in the fourth petition, are quashed and set aside.

32 The second grievance of the Petitioners is regarding the

Employer-Employee relationship. It appears that the Industrial Court has lost sight of the fact that existence of Employer-Employee relationship is conceptually different than severing of Employer-Employee relationship. In all these cases, on the basis of the settlement dated 22.05.1990 the Employer-Employee relationship between these Petitioners and the workmen mentioned in the annexures to the settlement, has been admitted at a given point in time and such relationship is alleged to have been severed on 22.05.1990 owing to the effect of the settlement.

33 The Lessee had agreed to employ all these employees on its muster rolls as is set out in clause (2) of the terms of the settlement. In clause (3), it was agreed by the Lessee that the concerned Employees/ Workmen would be inducted by the Lessee from the date of their signing the agreement. Since then the Lessee would be liable for payment of wages to these workmen from the date they are inducted in service of the Lessee.

34 Prima facie, I, therefore, find that the submissions of Shri Thole on this count are partly correct in saying that these Petitioners have severed their relationship with the concerned Employees. As a natural corollary and the effect of severing of relationship, the second limb of his submissions cannot be accepted that the Industrial Court would have no

jurisdiction to deal with the complaints as the Employer-Employee relationship is disputed. I arrive at this conclusion since denial of relationship and severing of relationship are two distinct issues. In the instant case, the Petitioners claim to have severed their relationship with the Employees.

35 In the light of the above, the issues that beg adjudication of the Industrial Court are as follows:-

- (a) Whether, the complaints filed by the Respondent/ Union are vague and ambiguous and lacking in material details?
- (b) Whether, the closure of the Petitioner/ Establishments on account of the settlement with the Lessee having come to an end, would be from the date of the expiration of the settlement?
- (c) Whether, the Respondent/ Union proves that these Petitioners had again taken over the Establishments from the Lessee Company after May, 1995 and continued with the production activities and by re-deploying these workmen?
- (d) Whether, the claim of the Respondent/ Union towards retrenchment compensation under Section 25F of the Industrial Disputes Act, 1947 could be said to be a stale claim and barred by limitation as prescribed under the MRTU &

PULP Act, 1971?

36 In the light of the above, these petitions are partly allowed. There shall be no interference in the order dated 20.12.2014 below Exhibit C-37 in the first petition, order dated 20.12.2014 below Exhibit C-14 in the second petition, order dated 20.12.2014 below Exhibit C-24 in the third petition and order dated 20.12.2014 below Exhibit C-13 in the fourth petition.

37 The Industrial Court shall deal with these complaints in the light of the issues cast. So also, the issues as noted above, which emerge from the pleadings of the parties, shall also be cast by the Industrial Court as additional issues and the litigating sides shall be at liberty to lead additional oral and documentary evidence.

38 Since these complaints are instituted in 2007 and 2009, the Industrial Court shall endeavour to decide them as expeditiously as possible and preferably on or before 31.12.2016.

39 At this stage, Shri Thole frankly submits that the Petitioners as on date are not sure as to whether, the settlement dated 22.05.1990 was extended beyond the earlier tenure of five years. In the event of such

extension, the Petitioners shall cooperate with the Industrial Court in bringing the factual details before it to the extent of the period of applicability of the settlement dated 22.05.1990.

40 Notwithstanding the above order, the offer of the Petitioners that these matters would be amicably resolved between the litigating sides, shall remain open and the parties shall be at liberty to explore the possibility of a settlement.

41 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)