

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8728 OF 2014

M/S AHMEDNAGAR FORGING LIMITED AND ORS
VERSUS
DASHRATH RAMLAL GARANDWAL AND OTHERS

...

Advocate for Petitioners : Shri Malte Uday S.
Advocate for Respondents 1 to 19 : Shri Kawre B.R.

...

CORAM : RAVINDRA V. GHUGE, J.

Dated: August 27, 2015

...

PER COURT :-

1. I have heard the learned Advocates for the respective sides.
2. Shri Malte has specifically raised two grounds, *inter-alia* amongst others. Firstly, that the transfer of the employees to the establishment mentioned in the transfer order has not been questioned on the ground that the employees have been transferred to an unconnected establishment. Secondly, transfer of the employees is at a place, which is a machining hub for the petitioner company, since it is a large scale industry, manufacturing various components and having an integrated machining facility at Sanaswadi Pune and the shifting of machines, which has taken place long ago has also not been challenged by the original complainant.
3. The petitioners rely upon the judgment of this Court in the case of Ramesh Raghobaji Kirtane and others Vs. Chandrapur District Central Cooperative Bank Ltd. [2013 (1) BCR 383], to support their contention that pleadings are of paramount importance and those aspects, which are not

pleaded, cannot be considered by the Court under the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act ”).

4. Shri Kaware, learned Advocate for the respondents supports the order dated 2.9.2014, passed by the Industrial Court, by which, the application for interim relief, under Section 30(2) of said Act has been allowed and the transfer orders dated 8.2.2014 have been stayed.

5. He submits that merely because the respondents joined a Union by name Bhartiya Kamgar Union and demanded better service conditions, the petitioners have transferred the respondents to Sanaswadi with the dual intention of alienating the respondents from the Union and for weakening the strength of the Union.

6. He, however, concedes that Clause 6 of the appointment orders issued to the respondents contains the transferability clause. At the same time, he is unable to point out from the complaint as to whether the complainants had specifically challenged the transfer on the ground that they have been directed to work in a different company, wherein, there is no employer - employee relationship with the respondents.

7. Having considered the submissions of the learned Advocates, with due circumspection, I am of the view that in dealing with the rival contentions in relation to an interlocutory order, this Court would have to

conclude as to whether, *prima facie*, the transfer was justified or not ? In the event, the impugned order is sustained, the respondents would be entitled for wages from their date of transfer i.e. 8.2.2014 onwards. However, if the complaint is finally dismissed by the Industrial Court, issue of recovery of wages would arise. Similarly, there is a likelihood that the observations drawn by this Court would affect the complaint which is still pending before the Industrial Court.

8. In the light of the above, I find it practical and reasonable to direct the litigating sides to cooperate the Industrial Court in deciding the complaint expeditiously and preferably on/or before the 2.1.2016. The petitioners could be directed to deposit wages in the Industrial Court till such decision and the rigours of litigation in relation to the respondents could be softened by permitting them to withdrawn two months' wages. I find that in doing so, the equities would be balanced till the complaint is decided on its merits.

9. As such, this petition is disposed off with the following directions:-

(A) The litigating sides shall submit draft issues to the Industrial Court on/or before 16.9.2015 for its assistance, in the event the issues are not yet cast.

(B) The Industrial Court shall consider the draft issues and shall frame the issues on/or before 23.12.2015.

(C) Both the litigating sides shall abide by the dates of hearing

posted by the Industrial Court and shall not seek adjournments on unreasonable / trivial grounds.

(D) In the event, the Industrial Court is not convinced with the reasons stated in the any adjournment application, it shall be at liberty to reject the said application.

(E) The Industrial Court shall decide Complaint (ULP) No. 35 of 2014, on/or before 2.1.2016.

(F) The petitioners shall deposit the monthly wages before the Industrial Court w.e.f. 1.9.2015 on/or before the 10th day of each month, which is the pay day.

(G) The respondents shall withdraw two month's salary from the Industrial Court and the rest of the amount shall be retained by the Industrial Court and which shall be subject to the result of the complaint.

(H) Issue as regards payment of salary from the date of transfer, till the decision in the complaint, shall be a matter of pleadings and subject to the decision which the Industrial Court shall arrive at on the Complaint.

(I) Needless to state, the Industrial Court shall decide the complaint on the basis of the oral and documentary evidence and shall not be influenced by the impugned interim order dated 2.9.2014.

(RAVINDRA V. GHUGE, J.)

...