

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1058 OF 2015

Shri Siddheshwar Textile Mills

Petitioner

Vs

Shri Anil Dhanisingh Songewala
and Ors

.. Respondents

Mr. P.D.Pise, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.

DATE : 09/02/2015

PC:

1. Heard Mr.P.D.Pise, learned counsel for the petitioner.
2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 3.11.2012 passed by the learned Member, Industrial Court, Solapur, in Complaint (ULP) No.19 of 2006. By that order, the Industrial Court partly allowed the complaint and declared that the petitioner herein, has engaged in unfair labour practices under Item 5 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "Act"). The respondents filed complaint under section 28 read with Items 5 and 9 of Schedule IV of the Act alleging that the petitioner herein had failed to implement settlement or agreement and, thus, had committed unfair labour practices under Item 9 of Schedule IV of the Act. The respondents further alleged that the petitioner herein paid

all legal dues to its all employees. The petitioner had paid some amount as ex-gratia amount to employees who were on the Muster Roll lastly before closure of the factory. However, they were not paid any ex-gratia amount, thereby, petitioner committed unfair labour practice under Item 5 of Schedule IV of the Act.

3. In support of this Petition, Mr. Pise submitted that after considering the evidence on record, the Industrial Court held that the respondents failed to prove that there was any settlement or agreement between employer and employee regarding payment of ex-gratia amount at the time of closure of the factory. Accordingly, the Industrial Court held that the respondents failed to establish that the petitioner herein committed any unfair labour practice under Item 9 Schedule IV of the Act. However, the Industrial Court held that some of the employees who worked on the last Muster Roll were given ex-gratia payment. He submitted that no evidence was adduced to substantiate this claim. He further submitted that even no evidence was adduced as to how much ex-gratia amount was paid to those employees. He, therefore, submitted that the impugned order deserves to be quashed and set aside.

4. I have considered the submissions advanced by Mr Pise. I have also perused the material on record. After scrutiny of the evidence adduced by both the parties, the Industrial Court

recorded a finding that the respondents failed to establish their case that there was any settlement or agreement between employer and employee regarding payment of ex-gratia amount at the time of closure of the factory. The Industrial Court accordingly held that the respondents failed to establish that the petitioner committed any unfair labour practices under Item 9 of Schedule IV of the Act.

5. At the same time, after considering the evidence on record, the Industrial Court from paragraphs 15 to 18 held that the petitioner had paid some amount as ex-gratia to employees who were on the Muster Roll lastly before closure of the factory. The petitioner did not pay any ex-gratia amount to the respondents in paragraph 16, the defence of the petitioner that they paid some amount as ex-gratia amount to some employees who were on the last Muster Roll, was not accepted as all employees working with the petitioner resigned voluntarily as per request of the employer as the factory was running in loss and the employer was intending to close it. The Industrial Court, held that the petitioner had to treat all employees equally and pay ex-gratia amount to all. Since the petitioner did not pay ex-gratia amount to the respondents and paid that amount to 64 employees who were on the last Muster Roll, the petitioner herein had shown favoritism partiality to one set of workers regardless of merits and, thereby committed unfair labour

practices under Item 5 of Schedule IV of the Act. In paragraph 18 after considering the material on record the Industrial Court awarded ex-gratia amount of Rs.15000/- each to the respondents.

6. In my opinion, the findings recorded by the Industrial Court are based on evidence on record and it cannot be said to be perverse. It also cannot be said that they are contrary to the evidence on record. In view thereof, no case is made out for invocation of the powers under Articles 226 and 227 of the Constitution of India. Hence, the Petition fails and is, therefore, dismissed.

(R.G.KETKAR, J.)