

JPP

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

WRIT PETITION NO. 4992 OF 2015

Mumbai Labour Union.

... Petitioner.

V/s.

M/s. Automotive Manufacturers Pvt.Ltd. & Ors. ... Respondents.

Ms. Neeta Karnik for the Petitioner.

Mr. S.C. Naidu a/w. Aniketh Poojary and T.R. Yadav i/b. C.R. Naidu
& Co. for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : 24 NOVEMBER, 2015.

ORAL ORDER. :-

Rule. Rule made returnable forthwith. Respondents waive service. Take up for final disposal by consent.

2. The Petitioner – Union challenges the order passed by the Industrial Court, Nashik dated 18 February 2015 in Complaint (ULP) No. 13 of 2014. The Petitioner filed a Complaint (ULP) No. 13 of 2014 in the Industrial Court, Nashik inter-alia praying that it may be declared that the Respondents have committed unfair labour practice, the Respondents be directed to withdraw the transfer order dated 3 February 2014 issued to two of the

employees and that the Respondents should be restrained from introducing full day working on Saturday. In this complaint an application for interim relief was taken out under Section 30(2) of the M.R.T.U & P.U.L.P. Act. The Respondents opposed the application for interim relief. The Industrial Court by impugned order rejected the application for interim relief. As far as the order of transfer, the Industrial Court held that there is no transfer but only deputation and there is no mala-fide intention. As regard the changing of working hours on Saturday, the Industrial Court held that notice of change was given in the year 2008 and the dispute has been referred to the Conciliation Officer under Section 2(k) of the Industrial Disputes Act and the case needs to be decided on merits.

3. As regard the transfer, the same has already taken effect and the concerned employees have joined their transferred/deputation post. As regard the change of working hours on Saturday, the learned Counsel for the Petitioner submitted that the change in working hours has been effected when the conciliation proceedings were pending before the Conciliation Officer which is in breach of Section 33 of the Industrial Disputes Act. The learned Counsel for the Respondents on the other hand submitted that the conciliation proceedings expired by efflux of time and there is no proceedings. In view of the contention advanced by the learned Counsel, a report was called from the Deputy Commissioner of Labour, Nashik as regard

the status of the conciliation proceedings. The Deputy Commissioner of Labour in respect of the concerned conciliation proceedings has submitted a report on 1 October 2015 which reads as under :-

“ It is most respectfully submitted that the matter is quite old and we have searched office records and registers and it is found from the register of conciliation proceedings that this matter was admitted in conciliation by the then Asstt. Commissioner of Labour and conciliation officer on dt. 7/08/2009. However, even after lot of efforts the respective file is not being traced out.

Also it is humbly submitted that this matter is found not referred to the Industrial Tribunal for adjudication.

Also one of the either parties had approached this office regarding pending matter, however, we are again putting lot of efforts to search the respective file from our office record.

You are requested to bring this fact to the kind notice of Hon'ble High Court in this matter.”

4. The learned Counsel for the parties have advanced their submissions as to the legal effect of the position stated by the Commissioner of Labour. According to the learned Counsel for the Petitioner, the matter was admitted in conciliation and it does not matter thereafter that the files are missing as that will not take away the legal effect of Section 33 of the I.D. Act and proceedings

are still deemed to be pending. The learned Counsel for the Respondents submitted that if this argument is accepted, then no change can be brought about in perpetually since the files have been missing.

5. The matter arises from an interim order. The Industrial Court has referred to the conciliation proceedings, however, the Industrial Court, as it appears from the impugned order, was not aware of the position of the conciliation proceedings as has been placed on record by the Commissioner of Labour. Therefore, the parties are advancing their arguments for the first time on this factual premise in this Court.

6. In the circumstances, since the Petition challenges an interim order, it will be appropriate if this issue is considered by the Industrial Court at the first instance. It will be open to the Petitioner to file an application for interim relief as regard the change in working hours on Saturday on the basis of the report now received from the Commissioner of Labour and Section 33 of the I.D. Act. It will be also open to the Respondents to put-forth its contentions including the one that the matter requires evidence.

7. Accordingly, the Writ Petition is disposed off by giving liberty to the Petitioner to file an application for interim relief on the position narrated as above, keeping all the contentions of the parties on merits of the new factual position and law open. The

Petitioner will file an application within period of two weeks, considering the fact that the concerned employees have already been transferred and that the application is only for interim relief, the Industrial Court will consider disposing off the same within period of three months from the date writ of this Court reaches the Industrial Court. If the Industrial Court feels that it can dispose off the entire complaint within period of four to five months, then it is open for the Industrial Court to do so instead of deciding the interim relief application, but if that is not possible, it will decide the application for interim relief as above. It is obvious that the Industrial Court will decide the same on its own merits independently of the earlier order.

8. Writ Petition is disposed of accordingly. No costs.

(N.M. JAMDAR, J.)