

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

WRIT PETITION NO. 4459 OF 2013

Kantilal Chaganlal Securities Pvt.
Ltd

Petitioner

Vs

Rachana Rangarajan and Ors

.. Respondents

Mr. Rahul L. Nerlekar, Advocate for Petitioner.

Mr. S. N. Deshpande a/w Ms. S.P.Munshi and Ms N. S. Deshpande, Advocates for Respondent no.1

Mr. Deepak Lad i/b Advani & Co. Advocate for Respondent no.4.

CORAM : R.G.KETKAR, J.
RESERVED ON : 05/03/2015
PRONOUNCED ON: 13/03/2015

PC:

1. Heard Mr. Rahul Nerlekar, learned counsel for the petitioner, Mr. S.N.Deshpande, learned counsel for respondent no.1 and Mr. Deepak Lad, learned counsel for respondent no.4 at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 16.3.2013 passed by the learned Member, Industrial Tribunal, Mumbai (for short, "Tribunal") below Exhibit-U-2 in Complaint (ULP) No.497 of 2012. By that order, the Tribunal partly allowed the application made by respondent no.1 herein and held that by not making payment of unpaid wages to her, the petitioner and respondent no.2 herein

have committed, prima facie, unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "Act"). The petitioner and respondent no.2 were directed to deposit 10 months unpaid wages of the first respondent within 15 days from the date of receipt of the order; out of that 5 months unpaid wages to be deposited by the petitioner and 5 months unpaid wages to be deposited by the second respondent in the Court. The amount was ordered to be invested in a nationalised Bank for a period of one year.

3. By order dated 25.6.2013, the Petition was admitted by issuing Rule and in the meantime, the impugned order was stayed qua the petitioner only. The parties shall, hereinafter, be referred to as per their status before the Tribunal. The facts and circumstances, giving rise to filing of the present Petition, briefly stated, are as follows.

4. Respondent no.1- complainant instituted complaint under section 28 read with Items 9 and 10 of Schedule IV of the Act before the Tribunal, inter alia, contending that she is an employee of the petitioner-respondent no.1 and respondent no.2. She has claimed her earned wages for the period from January 2011 to Jan.2012 and full wages from February 2012 to September 2012 and from October 2012 till she resumed on duties. During the pendency of that complaint, she filed

application under section 30 (2) for directing the respondents to pay the complainant her earned wages for the period January 2011 till January 2012 or to deposit the same in the Court and to invest the same in any nationalised Bank.

5. The application was opposed by respondent no.1 and respondent no.4 by filing replies. After considering the material on record, the Tribunal directed respondents 1 and 2 to deposit 10 months unpaid wages in the Court within 15 days from the date of the order and for investing that amount after deposit. It is against this order, respondent no.1 has instituted the present petition.

6. In support of this Petition, Mr. Nerlekar submitted that the complainant is having qualifications of B.Com., MBA, MS Finance, ICFAI and CFA. She was employed as a Manager by respondent no.2-company. He submitted that she was to be paid salary of Rs. 14 lacs per annum. In paragraph 3(D) of the complaint, she contended that respondent no.1 is the holding company of respondent no.2. She also set out her qualifications in paragraph 3(E) of the complaint. It was further set out therein that she was interviewed by Ms Sonali Sinha and Mr. Udayan Bose-Office bearers of respondent no.2. After the interviews, respondent no.1 issued letter dated 4.2.2012 signed by Shri Savio D'Souza (Vice President - Human Resources) of respondent no.1. At the time of issuing that letter, respondent

no.1 made it clear that she would be appointed as Manager in respondent no.2. It is further contended therein that respondent no.1 was and is the holding company of respondent no.2 which is 100% subsidiary company of respondent no.1.

7. Mr.Nerlekar submitted that though on 4.2.2010 respondent no.1 had issued appointment letter, the said appointment letter was superseded by subsequent offer letter dated 1.3.2010 issued by respondent no.2. In other words, the complainant is not an employee of respondent no.1. There is no employer-employee relationship between respondent no.1 and the complainant. He submitted that in any case, the complainant is not a workman. Mr Nerlekar submitted that in the affidavit in reply filed on behalf of respondent no.1, it was specifically contended that the complainant was an employee of respondent no.2 which was completely controlled and managed by respondent no.4. There is no functional integrity between respondent no.1 and respondent no.2. The complainant was employed in managerial/supervisory capacity in respondent no.2 and was drawing wages exceeding Rs. 1,00,000/-. Her appointment letter itself indicated that she was appointed as Manager and there were other employees working under her in the lower posts. He submitted that these objections go to the root of the matter and affect the very maintainability of the complaint itself.

8. Mr.Nerlekar further submitted that Memorandum of Understanding was entered into by and between respondent no.1 and respondent no.4 whereunder respondent no.4 undertook to pay all costs relating to respondent no.2 including salaries, rent etc from 1.1.2011 and keep respondent no.1 indemnified of such costs. Mr. Nerlekar invited my attention to the issues framed by the Tribunal while deciding Exhibit U-2. He submitted that no issue about employer-employee relationship and whether the complainant is a workman or not, was framed. The wage slip at page 107 of the Writ Petition was issued by respondent no.2. In short, he submitted that there is no employer-employee relationship between respondent no.1 and the complainant and at any rate the complainant is not a workman. He, therefore, submitted that the Tribunal was not justified in passing any interim order without first deciding preliminary issues. In support of his submissions, he relied upon following decisions:

(i) Regional Provident Fund Commissioner, Vs. ABS Spinning Orissa Ltd, 2009 (1) LLJ 558 to contend that the holding company cannot be held liable for the recovery of provident fund dues of its subsidiary company. The subsidiary company has an independent existence as against the holding company and, therefore, respondent no.1 is not liable to clear the dues of respondent no.2.

(ii) Cipla Ltd Vs. Maharashtra General Kamgar Union (2001) 3 SCC 101 and (iii) Vividh Kamgar Sabha Vs. Kalyani Steels Ltd, (2001) 2 SCC 381 to contend that if employer - employee relationship is disputed, the complaint is not maintainable.

(iv) Vimalkumar Ravji Shah Vs. Employees' P.F. Organization, Solapur, 2009 II CLR 577, to contend that Director of the company is not individually liable to pay dues of limited company.

(v) Standard Chartered Bank Vs. Vandana Joshi, 2010 I CLR 163 to contend that Court has to examine the nature of duties assigned to an employee.

(vi) Meher Singh Vs. Deepak Sawhny, 1999 (1) Bom C.R. 107,

(vi) Hira Sugar Employees Cooperative Consumers Stores Ltd Vs. P.P. Korvekar, (1995) 1 LLJ 1158 (Kant),

(vii) Municipal Corporation of City of Amravati Vs. Ashok Ramkrishna Kamble, 1994 (1) Mh.L.J. 1004; and Zilla Parishad, Yawatmal Vs. Avinash Devidas Deshmukh, 1994 I CLR 879 and Seraikella Glass Works Ltd Vs. 2nd Industrial Tribunals, (1993) I LLJ 1158 (Calcutta), to contend that no interim relief can be granted unless the issue whether the complainant is a workman or not, is decided.

9. On the other hand, Mr. Deshpande supported the impugned order. He submitted that in the complaint paragraph 3(A), it is specifically asserted that she is an employee of

respondent no.1 and respondent no.2 He submitted that relationship as regards employer-employee has to be decided on the basis of the assertions made in the complaint and not on the basis of defence raised by the respondents. In paragraph 3(E), the complainant also asserted that she came to know that there was vacancy for the post of Manager in respondent no.1. She was interviewed by Ms Sonali Sinha and Mr. Udayan Bose. Appointment letter dated 4.2.2012 was issued by respondent no.1. The said appointment letter was signed by Shri Savio D'Souza (Vice President - Human Resources) of respondent no.1. He submitted that respondent no.1 had issued pay slip in the name of respondent no.2. There is functional integrity between respondent no.1 and respondent no.2. He invited my attention to (i) E-mail dated 11.5.2010 sent by Shri Vishal Kedar, Human Resources of respondent no.1 to the complainant, (ii) E-mail dated 11.6.2010 sent by Shri Vichal Kedar, Human Resources of respondent no.1 to the complainant, (iii) E-mail dated 3.8.2010 sent by Diana George, Human Resources of respondent no.1 to the complainant, (iv) appointment letter dated 1.3.2010 issued by respondent no.2 which was signed by Mr Savio D'Souza, Vice President- Human Resources, as also Annexure A showing name of respondent no.1, (v) Annexure B at page 120, (vi) Annexure D which is in the name of respondent no.1. He submitted that these documents clearly show that there is functional integrity

between respondent no.1 and respondent no.2. Mr. Deshpande submitted that till entering into M.O.U. dated 24.2.2012 respondent no.1 was paying wages to the complainant. The complainant is not concerned with internal dispute between respondent no.1 and respondent no.4.

10. Mr.Deshpande further submitted that the Industrial Tribunal is constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeying up and down. In support of this submission, he relied upon (1) D.P Moheshwari Vs. Delhi Administration, AIR 1984 SC 153, (2) Rashtriya Mill Mazdoor Sangh Vs. K.B.Wagh, 1993 II CLR 1059, (3) Akhil Bhartiya Shramik Kamgar Union Vs. Buildtech Constructions, 2004 II CLR 179 and (4) Tayabbhai M. Bagasarwalla Vs Hind Rubber Industries Pvt Ltd, 1997 (3) SCC 443. He submitted that by the impugned order, the Tribunal has merely directed respondent no.1 and respondent no.2 to deposit 10 months unpaid wages in the Court and after depositing, the said amount is ordered to be invested in the nationalised Bank. He submitted that having regard to the fact that the complainant is not paid 10 months wages, the Tribunal rightly passed interim order. He, therefore, submitted that no interference is called for in exercise of powers under Articles 226 and 227 of the Constitution of India.

11. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the complainant has instituted complaint under section 28 read with Items 9 and 10 of Schedule IV of the Act. In paragraph 3(A), she asserted that she is an employee of respondent no.1 and respondent no.2. In paragraph 3 (E) it is asserted that she came to know that there was vacancy for the post of Manager in respondent no.1. She was interviewed by Ms Sonali Sinha and Mr. Udayan Bose. On 4.2.2012, appointment letter was issued by Mr Savio D'Souza, Vide President-Human Resources of respondent no.1. Perusal of this letter shows that respondent no.1 was pleased to offer complainant an appointment in their organization as Manager. E-mails dated 11.5.2010, 11.6.2010, 3.8.2010 were sent by respondent no. 1 enclosing salary slip of respondent no.2. It is no doubt true that appointment letter dated 4.2.2010 was superseded by subsequent appointment letter dated 1.3.2010 of respondent no.2. It is material to note that the said letter is also signed by Mr. Savio D'Souza, Vice President- Human Resources. Mr Nerlekar submitted that the issues, viz. whether the complainant is a workman or not, and whether there is employer-employee relationship between respondent no.1 and the complainant, go to the root of the matter and also affect the maintainability of the complaint.

12. The Tribunal has considered these submissions in paragraphs 27 and 28. In paragraph 27, the Tribunal observed that respondents no.1,3,5, and 6 are not accepting liability of wages of the complainant on the ground that she was the employee of respondent no.2 which was wholly managed by respondent no.4. At the same time, respondent no.4 is avoiding liability on the ground that it is the liability of respondent no.1 to make the payment since he himself was an employee of respondent no.2 and he resigned the Directorship of respondent no.2 long back. In paragraph 28, the Tribunal observed that the respondents are avoiding their liability but at the same time they are not disputing that the complainant has to receive her unpaid wages. It was further observed that she requested respondent no.4 to pay her unpaid wages for 10 months as on 13.2.2012. In paragraph 29 the Tribunal observed that admittedly the complainant is entitled to receive at least 10 months unpaid wages. Though respondents 1,3 , 5 and 6 have disputed the status of the complainant as a workman as also disputed employer-employee relationship, respondents 1 and 2 are responsible to deposit the earned wages/unpaid earned wages of 10 months in the court within 15 days from the date of receipt of the order.

13. In the case of D.P.Maheshwari (supra), the Apex Court observed thus :

"It was just the other day that we were he-moaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the mean-while. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must, therefore, ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeying up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too

astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues".

14. Perusal of the above extract clearly shows that Article 226 is not meant to be used to break the resistance of workmen. The Tribunals and the Courts who are requested to decide preliminary questions must, therefore, ask themselves whether such threshold part adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeying; up and down. The nature of the jurisdiction under Article 226 is supervisory and not appellate. In exercise of such jurisdiction, the High Court is not required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues. In view of the decision of the Apex Court in the case of D.P.Maheshwari (supra) and the decision of this Court in the case of Rashtriya Mill Mazdoor Sangh (supra), the reliance placed by Mr. Nerlekar on the decisions referred earlier does not advance his case. It has come on record that respondent no.2 has already deposited 5 months unpaid wages in the Tribunal. It is also relevant to note that the Tribunal has further directed to invest that amount in any nationalised Bank. In other words, interest of respondent

no.1 is fully protected.

15. In view thereof, I do not find that any case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India, more so when the Tribunal has merely directed respondent no.1 to deposit 5 months unpaid wages. The Petition fails and the same is dismissed. Rule is discharged. In the circumstances of the case, there shall be no order as to costs.

(R.G.KETKAR, J.)