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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8691 OF 2014

Municipal Corporation of Greater Mumbai
and others

.. Petitioners

Vs.

Shri Santosh Sadashiv Pawar

.. Respondent

Mr.S.S.Pakale i/b Ms.U.H.Deshpande a/w Ms.Pallavi Thakar, Advocate
for the Petitioners.

Mr.Prakash Devdas i/b Ms.Vidula S.Patil, Advocate for Respondent.

CORAM : R.G.KETKAR, J.

DATE : 23rd JANUARY, 2015

P.C. :

. Heard Mr.S.S.Pakale, learned Counsel for the petitioners
and Mr.Prakash Devdas, learned Counsel for the respondent at length.

2. By this petition under Articles 226 & 227 of the
Constitution of India, the petitioners have challenged the judgment
and order dated 31/07/2014 passed by the learned President,
Industrial Court, Maharashtra, Mumbai below Exhibit U-2 in
Complaint (ULP) No. 151 of 2014. By that order, the Industrial Court
allowed the Interim Relief Application at Exhibit U-2. The Industrial
Court, prima facie, held and declared that the petitioners have
engaged in and are continuing to engage in unfair labour practice

under Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act') and they are temporarily directed to cease and desist therefrom. The petitioners are directed to prepare the seniority list of SWM Department as per the Circular dated 29/08/2000 within one month from the date of the order. The Industrial Court further held that considering the date of appointment on regular basis, if the respondent stands senior to S/Shri Yashwant Pawar and Ganesh Sawant and fulfill the required criteria for the post of “Junior Overseer”, the selection committee should consider his name for the promotional post based upon the principle of “seniority-cum-merit’.

3. By order dated 22/12/2014, the petition was admitted and interim relief in terms of prayer clauses (c) & (d) were granted. The hearing of the petition was expedited.

4. In support of this petition, Mr.Pakale submitted that the Industrial Court did not decide whether the complaint under Items 5 & 9 of Schedule IV of Act is maintainable or not as it is the case of the petitioners that respondent is not a workman. He further submitted that the Industrial Court also did not consider whether at an interlocutory stage, relief in the nature of final relief could be granted.

5. Mr.Devdas submits that the impugned order may be set aside and the Interim Relief Application at Exhibit U-2 may be restored to the file of the Industrial Court. He states that respondent will lead

evidence for deciding the preliminary issue about maintainability of the complaint. Mr.Pakale states that even petitioners will adduce evidence to substantiate their case that respondent is not a workman.

6. In view thereof, the Writ Petition is disposed of in the following terms.

- i) The impugned order dated 31/07/2014 is quashed and set aside and Interim Relief Application at Exhibit U-2 is restored to the file of the Industrial Court.
- ii) The parties are at liberty to lead evidence on the preliminary issues namely, whether the complaint filed by the respondent is maintainable or not as also whether the respondent is a workman or not.
- iii) The parties agree that they will appear before the Industrial Court on 02/02/2015 and for that fresh notice need not be issued to them.
- iv) The Industrial Court is requested to decide the Interim Relief Application as expeditiously as possible, in any case, within a period of 3 months from the date of the appearance of the parties.
- v) The Industrial Court will decide the preliminary issues as to whether the respondent is a workman or not as also will decide the contention of the petitioners as to whether relief in the nature of final relief can be granted at an interlocutory stage.

7. All the contentions of the parties on merits are expressly kept open.

8. Rule is made absolute in the aforesaid terms. In the circumstances of the case, there shall be no order as to costs.

(R.G.KETKAR, J.)