IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10150 OF 2014

Yashvantrao Mohite Krishna Sahakari Sakhar Kharkhana Ltd .. Petitioner

Vs

Dhananjay Anant Kulkarni .. Respondent

Mr. Saurab Pakale i/b Avinash R.Belge, Advocate for Petitioner.
Mr. Vaibhav R. Gaikwad, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 11/03/2015

PC:

1. Heard Mr. Saurabh Pakale, learned counsel for the petitioner and Mr.Vaibhav Gaikwad, learned counsel for the respondent at length.

2. Rule. Mr. Gaikwad waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 9.10.2014 passed by the learned In-charge Member, Industrial Court, Satara (for short, “Tribunal”), below application -Exh.U-2 in Complaint (ULP) No.7 of 2014. By that order, the Tribunal directed the petitioner to deposit in Court the wages payable to the respondent, hereinafter referred to as 'Complainant', from 20.11.2013 till the date of the order and to

continue to deposit the future wages in the Tribunal till the complaint is not finally disposed of.

4. In support of this Petition, Mr. Pakale submitted that the complainant instituted complaint under section 28 read with Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, “Act”). During the pendency of the complaint, he took out application – Exhibit U-2 for interim relief under section 30(2). By the impugned order, the Tribunal directed the petitioner to deposit the wages payable to the complainant from 20.11.2013 till the complaint is not finally disposed of. He submitted that without recording the finding as regards prima facie engaging in unfair labour practice, the Tribunal has disposed of the application-Exhibit U-2. He, therefore, submitted that the impugned order is liable to be set side on this short count alone.

5. On the other hand, Mr. Gaikwad supported the impugned order. He submitted that during the pendency of the complaint, application–U-2 under section 30(2) was taken out on 19.3.2014. On the same day, the Tribunal passed order and had issued show cause notice to the petitioner. The Tribunal observed that it appeared from the record that for no reason the complainant was not paid wages of Rs.17,421/- from 20.11.2013. The said action on the part of the respondent (petitioner) herein, prima facie, amounted to unfair labour practice under Items 9 and 10 of

Schedule IV of the Act. In short, he submitted that while passing the ad-interim order, the Tribunal had recorded prima facie finding as regards commission of unfair labour practice under Items 9 and 10 of Schedule IV of the Act. He further submitted that by the impugned order the Tribunal has merely directed the petitioner to deposit the wages of the complainant from 20.11.2013 till the disposal of the complaint. In other words, the Tribunal did not direct the petitioner to pay wages to the complainant from 20.11.2013 and merely directed the petitioner to deposit the amount in the Tribunal. He submitted that the impugned order protects interest of both the parties and, therefore, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India.

6. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. It is no doubt true that the complainant took out application Exhibit-U-2 under section 30(2) of the Act on 19.3.2014. It is equally true that on the same day, the Tribunal issued show cause notice to the petitioner herein. The Tribunal further directed the petitioner to maintain status-quo in respect of employment of the complainant to pay all wages of the complainant from 20.11.2013 till next date, i.e. 3.4.2014 and continued the ad-interim order till then. While passing that order, undoubtedly, the Tribunal recorded that for no reason the

complainant was not paid monthly wages of Rs.17,421/- from 20.11.2013. The said action on the part of the petitioner, prima facie amounted to unfair labour practice under Items 9 and 10 of Schedule IV of the Act. In the first place, the petitioners were not heard while issuing the show cause notice. Secondly the petitioners have challenged the order dated 9.10.2014 by which Exhibit U-2 was finally disposed of. Perusal of the impugned order shows that the Tribunal did not record the finding as regards prima facie engaging in unfair labour practice. Mr Pakale relied upon the decision of this Court in the case of BSES Limited Vs. Bombay Electric Workers Union, 2004 Vol. III CLR 470. In that case, after considering the provisions of Section 30, the Division Bench of this Court observed in paragraph 14 as under.

> "14. Sub-section (2) thereof enables the Industrial Court and the Labour Courts as the case may be to pass such interim order as it deems just and proper pending final decision in the complaint. The interim order contemplated under Sub-section (2) of Section 30 inter alia is temporary relief to the complainant or a restraint order or direction to the party having been engaged in unfair labour practices to withdraw temporarily the unfair labour practices complained of, which is an issue in the complaint. Grant of such interim order under Sub-section (2) has to be founded on prima facie consideration of the matter about the unfair labour practices having been engaged in by the party against whom the complaint is made. Sans prima facie finding of unfair labour practice having been engaged in by the party against whom the complaint is made, we are afraid, the interim order contemplated under Sub-section (2) of Section 30 cannot be justified. It is true that in the present case, the Industrial Court found prima facie case that the employer had engaged in unfair labour practices and on that basis

> granted interim relief to the extent it is ordered in the impugned order dated November 7, 2003. However, when the said order was challenged by the employer before the learned single Judge, the parties particularly the complainants and the employer through their advocates consented that the prima facie finding of unfair labour practices recorded by the Industrial Court be set aside. Once that finding was consented to be set aside, it was not permissible in law to maintain the interim order granted by the Industrial Court and that is where the learned single Judge erred when he observed that there would be no alteration in respect of the interim direction issued in the order dated November 7, 2003 passed by the Industrial Court and that shall remain in force during the pendency of the complaint before the Industrial Court."

7. Perusal of the above paragraph shows that the Division Bench observed that in absence of prima facie finding of the unfair labour practices having been engaged in by the party against whom the complaint is made, the interim order contemplated under sub section (2) of Section 30 cannot be justified. In view of this, on this short count alone, the impugned order cannot be sustained and is liable to be set aside. Mr. Gaikwad submitted that the Tribunal may be directed to decide the application - Exh.U-2 afresh in a time bound manner.

8. In view thereof, the Petition is disposed of in the following terms:

(i) The impugned order dated 9.10.2014 is quashed and set aside and the application Exh.U-2 is restored to the file of the Tribunal;

(ii) The parties agree that they will appear before the Tribunal on 24.3.2014 and for that purpose, fresh notice need not be issued to them.

(iii) The Tribunal is requested to decide the interim application within 15 days from the date of appearance of the parties. All contentions of the parties on merits are expressly kept open.

(iv) R & P shall be sent forthwith to Industrial Court, Satara. Writ to go down immediately.

(v) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)