

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1512 OF 2015

Shri. Pradeep Shankar Tilekar

.....Petitioner
(Orig. Complainant)

: V/S :

M/s. Eagle Flask Industries Ltd.
And Ors.

.....Respondents
(Orig. Respondents no.1 to 3)

ALONGWITH

WRIT PETITION NO. 750 OF 2015

Shri. Ramesh Haribhau Labade

.....Petitioner
(Orig. Complainant)

: V/S :

M/s. Eagle Flask Industries Ltd.
And Ors.

.....Respondents
(Orig. Respondents no.1 to 3)

ALONGWITH

WRIT PETITION NO. 751 OF 2015

Shri. Pandurang Genbhau Bhojane

.....Petitioner
(Orig. Complainant)

: V/S :

M/s. Eagle Flask Industries Ltd.
And Ors.

.....Respondents
(Orig. Respondents no.1 to 3)

ALONGWITH

WRIT PETITION NO. 752 OF 2015

Shri. Dnyandeo Sopan Kale

.....Petitioner

Rane

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WP-1512-2015-GROUP
7.8.2015

(Orig. Complainant)

: V/S :
M/s. Eagle Flask Industries Ltd.
And Ors.

.....Respondents
(Orig. Respondents no.1 to 3)

ALONGWITH
WRIT PETITION NO. 753 OF 2015

Shri. Chandrakant Haribhau Labade

.....Petitioner
(Orig. Complainant)

: V/S :
M/s. Eagle Flask Industries Ltd.
And Ors.

.....Respondents
(Orig. Respondents no.1 to 3)

ALONGWITH
WRIT PETITION NO. 1510 OF 2015

Shri. Babu/Balasaheb Bhausaheb
Vanjare and Ors.

.....Petitioners
(Orig. Complainant)

: V/S :
M/s. Eagle Flask Industries Ltd.
And Ors.

.....Respondents
(Orig. Respondents no.1 to 3)

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Mr. Girish B. Badigar, Advocate for the petitioner.
Mr. D.J. Bhanage, Advocate for respondent no.1.

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Coram :- Smt. R.P. SondurBaldota, J.

7th August, 2015.

P.C. :-

1). This is a common order on the above petitions which arise out of identical orders passed by the Industrial Court, Pune in the separate complaints filed by the petitioners alleging unfair labour practice under Item-9 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The petitioners belonged neither to the representative union in the industry of the respondents nor to any other Union. They had, however, been given the benefits of the settlements arrived at between the representative union, Eagle Karmachari Swayamvikas Sanghatana and were receiving wages as per the settlements.

2). In their complaints, the petitioners alleged that they had received wages as per the settlements until 31st March, 2003. From 1st April, 2003 though the petitioners were daily going for work and punching their attendance card, they were not paid the monthly wages. From 1st May, 2004 the respondents stopped even recording the attendance of the petitioners. The entire production in the Company had come to a standstill from 1st April, 2003. According to the petitioners, however, the respondents have continued with the work under different names. With these allegations, they prayed for direction to the respondents to pay arrears of wages from 1st April, 2003 to 31st January, 2008 alongwith

interest thereon at the rate of 12% p.a., compensation in the sum of Rs.1,00,000/- and reinstatement in service.

3). The respondents filed their written statement denying all the allegations made against them. They claimed that performance of the Company had deteriorated from 1996-1997 onwards. Ultimately, the entire operation came to a standstill w.e.f. 1st April, 2003. The workmen and other employees of the respondents ceased to report for work on account of non-availability of work. Then, there was unrest amongst the workmen. Therefore, intervention of Additional Commissioner of Labour and the Ministry of Labour, Government of Maharashtra was sought which resulted into agreement between the respondents and all the unions that, ex-gratia amount at the rate of Rs.3,500/- for each year of service be given to workmen towards voluntary separation besides the legal dues. Accordingly, the settlement was signed in the presence of Minister of Labour. The respondents then sold the machineries for the purpose of making payments to workmen. Out of 833 workmen, 614 workmen immediately accepted the settlement, received the amounts due under the settlement and resigned from service. On behalf of some of the remaining workmen, Bhartiya Kamgar Sena filed Complaint (ULP) No. 333 of 2005, Complaint (ULP) No. 334 of 2005 and Complaint (ULP) No. 335 of 2005 against the respondents. By the order passed in

those complaints, the date of closure of the company was held to be of April, 2004 instead of March, 2003. Being aggrieved by the order, the respondents have preferred Writ Petition No. 3117 of 2008 in this Court, which is admitted and pending for final disposal. Pursuant to the interim orders passed therein, the orders of the Industrial Tribunal have been stayed. Despite being fully aware of the above situation, the petitioners filed complaints making false claim of having worked with the respondents since 1st April, 2004 and demanding the payment, as well as, reinstatement. Lastly, the respondents alleged that there was considerable delay in filing the complaints. While alleging that, the respondents had stopped paying wages to them from 1st April, 2004 the petitioners filed complaints in the year 2008.

4). The findings given by the Industrial Tribunal, on the evidence led before it, are :- (i) the petitioners failed to establish that the respondent, Company is functioning and is in existence under a new name, (ii) they failed to establish that the settlement arrived at between the petitioners and the union is not binding upon them, and (iii) the petitioners failed to establish that the respondent is engaged in unfair labour practice under Item-9 of Schedule-IV of the PULP Act. The Tribunal did not raise issue of limitation and consequently the same was not dealt with.

5). For arriving at the above findings, the Industrial Tribunal referred to the settlement produced by the respondent at Exhibit-U-35 arrived at between the respondents and Eagle Karmachari Sangha Vikas Sanghatana and other Unions to note that majority of the workmen i.e. more than 70%, had signed the settlement either through the representative unions or in their individual capacity. Relying upon the decision of this Court in **Walchandnagar Industries Ltd. Satara V/s. Dattusingh Lalsingh Pardeshi, reported in 2006-I-CLR-810**, it held that the settlement is binding even upon those employees who are not the members of the Union. It further noted that, there was not even an allegation made by the petitioners that the settlement arrived at was unjust, *malafide* or suffered from want of bonafides on the part of the union. The observation from the decision relied upon by the Tribunal read as follows :-

“. The settlement otherwise than in conciliation proceedings is binding between the parties and when such a settlement is between the union which has a majority of workers and/or with the recognised union, the said settlement is binding not only on the members of the said union or the recognised union but also on those employees who are not the members of the said union. Such settlement is to be accepted for industrial peace and stability of economy and courts shall be slow in interfering with such settlement. Such settlement shall not be interfered with unless it is proved that the settlement is unjust, *malafide* or suffers from want of bonafides on the part of the union and/or the settlement is illegal.”

6). Mr. Badgujar, submits that the claim of the respondents that the work in the Company has come to a standstill and the activities of the Company have been closed down on account of want of work, cannot be believed because the application made by the respondents before the Board of Industrial and Financial Reconstruction (BIFR) for declaration of the respondent as a sick industry, has been dismissed. This would mean that the respondent companies are in existence. The argument appears attractive in the first blush. But, apart from the fact of dismissal of the application by the BIFR, the petitioners have not brought any material on record to show that the respondent, Company is in fact active in business and carrying on its manufacturing activities. Besides, the record shows that more than 70% of its workmen have resigned from the Company, pursuant to the settlement arrived at in the year 2004. Thus, there is also no workforce with the respondents.

7). There is an allegation made that, the respondents have continued their business under a different name. Perusal of the record shows that, no evidence has been produced by the petitioners to establish the fact. Therefore, the findings of the Tribunal that the petitioners have failed to establish that the respondents are continuing to exist and carrying on business is the correct finding and does not require any interference.

8). The unfair labour practice, on the part of the respondents alleged

by the petitioners, was of failure to implement award, settlement, agreement. According to the petitioners, as per the settlement of the year 1998 between the respondents and Eagle Karmachari Swayamvikas Sanghatana they were getting salary till 31st March, 2003. Non-payment of salary beyond that date is alleged to be failure to implement the settlement. The record, however, shows that there is subsequent settlement arrived at between the respondent and Eagle Karmachari Swayamvikas Sanghatana, by which the services of the employees have come to an end. Since the subsequent settlements would be binding on the petitioners, as already held above, the Tribunal has correctly found that, it cannot amount to unfair labour practice under Item-9 of Schedule-IV of the MRTU & PULP Act.

9). In the circumstances, the petitions are dismissed.

(SMT. R.P. SONDURBALDOTA, J)