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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 29 OF 2015**

Trigo Quality Production Services Pvt.Ltd .. Petitioner  
Vs.

Shri Nikhil Rajaram Aher .. Respondent

Mr.V.S.Pandey, Advocate for the Petitioner.  
Ms.Seema Sarnaik, Advocate for Respondent.

**CORAM : R.G.KETKAR, J.**  
**DATE : 23<sup>rd</sup> February, 2015**

**P.C. :**

. Heard Mr.Vindu Pandey, learned Counsel for the petitioner and Ms.Seema Sarnaik, learned Counsel for the respondent at length. Rule. Ms.Sarnaik waives service. At the request and by consent of the parties, rule is made returnable forthwith and the petition is taken up for final hearing.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 14/07/2014 passed by the learned Judge, 2<sup>nd</sup> Labour Court, Nashik below Exhibit U-6 in Complaint (ULP) No. 12 of 2014 as also the judgment and order dated 04/12/2014 passed by the learned Member, Industrial Court, Nashik in Revision (ULP) No. 67 of 2014. By these orders, the Courts below allowed the application Exhibit U-6 filed by the respondent and directed the petitioner-employer to pay

amount of Rs.5,000/- per month from 01/07/2014 till the disposal of the complaint. The amount of Rs.5,000/- for the month of July 2014 is ordered to be paid on or before 10<sup>th</sup> August 2014 and the amount in respect of each subsequent month accordingly on 10<sup>th</sup> day of the next month. The respondent was at the liberty to withdraw the same without furnishing any security.

3. Mr.Pandey submitted that by order dated 01/06/2011, the respondent was appointed as an Inspector. Clause 4 of the appointment letter stipulates that services of the respondent are at the sole discretion of the Management and are liable to be transferred to any other office/department of the company at any other location, or to any other subsidiary/associate companies at any place. He submitted that from 18/04/2012, respondent went on leave without prior permission. A warning memo dated 26/04/2012 was issued to him. Subsequently, in the month of November 2012, respondent remained absent from 19/11/2012 till 30/11/2012 without leave, information and any explanation.

4. In view thereof, again letter was issued on 30/11/2012 calling upon respondent to submit written explanation. This letter was replied by the respondent on 14/12/2012. The respondent thereafter instituted complaint before the Labour Court, Nashik under section 28 read with Items No.1(a), (b), (c) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of

Unfair Labour Practices Act, 1971 (for short 'Act'). The complaint was compromised before the Lok-Adalat on 23/11/2013. He invited my attention to the terms of compromise.

5. He submitted that thereafter, the respondent instituted Complaint (ULP) No. 12 of 2014 in the Labour Court under section 28 read with read with Items No.1(a),(b), (c) and (g) of Schedule IV of the Act. In paragraph 4, he admitted that though he was willing to resume duties at Chennai, his services were terminated by letter dated 14/02/2014. Mr.Pandey submitted that in fact, respondent's tickets were booked under Tatkal quota and he was supposed to depart on 18/12/2013 from Nashik to Kalyan (date of journey – 20/12/2013-confirmed) and Kalyan to Chennai (date of journey -20/12/2013-waiting list 17). He submitted that the tickets could not be confirmed from Kalyan quota. He submitted that subsequently, arrangement was made on 25/12/2013 and tickets were booked from Nashik to Mumbai by train, from Mumbai to Bangalore by train and Bangalore to Chennai by bus. Even accommodation was arranged. Despite that, the respondent did not resume duties at Chennai. In short, he submitted that the petitioner did not terminate services of the respondent, but asked him to resume duties at Chennai. Though respondent expressed his willingness to resume duties at Chennai, ultimately, he did not join duties at Chennai.

6. He further submitted that the Courts below directed the

petitioner to pay Rs.5,000/- per month to the respondent during the pendency of the complaint. The petitioner is accordingly depositing the said amount in the Labour Court. The Courts below permitted the respondent to withdraw the amount without furnishing any security. He submitted that if, ultimately the complaint is dismissed, it will not be possible for the petitioner to recover the amount paid under the impugned orders. Mr.Pandey, upon instructions states that petitioner is willing to permit respondent to resume duties at Chennai.

7. On the other hand, Ms.Sarnaik supported the impugned orders. She submitted that though the first complaint was disposed of in terms of the compromise terms, the respondent was not allowed to resume duties at Nashik. The compromise terms were arrived at on 23/11/2013. At that time itself, petitioner should have made it clear that opening at Nashik is not available and he is required to join duties at Chennai. In short, she submitted that the petitioner malafide intended to transfer services of petitioner from Nashik to Chennai, though work is available at Nashik.

8. She further submitted that as far as the permission granted by the Courts below to the respondent to withdraw the amount deposited by the petitioner unconditionally is concerned, Ms.Sarnaik, upon taking instructions from the respondent who is present in the Court, states that before withdrawing the amount deposited by the petitioner, the respondent will furnish solvent

security to the satisfaction of the Labour Court. She further states that the respondent is not willing to resume duties at Chennai on the basis of present emoluments.

9. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have perused the material on record. In paragraph 10 of the Labour Court's order, it was noted that the respondent-complainant alleged that even though he was ready to go to Chennai, the respondent-petitioner herein terminated his services. As against this, petitioner alleged that inspite of arrangement of traveling tickets and accommodation at Chennai, the respondent-complainant did not join duties at Chennai. This conduct of the respondent-complainant shows that he was not willing to join services of the petitioner at Chennai. The Labour Court observed that this issue will have to be gone into while deciding the main complaint. In the meantime, services of the respondent are terminated without holding any domestic enquiry. The Labour Court also noted that though the respondent has strong prima facie case, he cannot be reinstated at interim stage, but some interim protection needs to be given to the respondent. The Labour Court further noted that no opening is available with the petitioner herein. The Labour Court accordingly directed the petitioner to pay Rs.5,000/- per month to the respondent. The said order was confirmed by the Industrial Court. In view thereof, I do not find that the Courts below committed any error

in that regard. At the same time, in my opinion, the Courts below should have put respondent to terms before permitting withdrawal of the amount deposited by the petitioner, so as to protect interest of both the sides. In other words, the Courts below should have permitted the respondent to withdraw the amount so deposited by the petitioner subject to furnishing solvent security to the satisfaction of the Labour Court.

10. In view thereof, the direction issued by the Courts below permitting the respondent to withdraw the amount unconditionally is modified. The amount deposited by the petitioner shall be withdrawn by the respondent subject to furnishing solvent security to the satisfaction of the Labour Court. Subject to modification to this effect, rest of the orders of the Courts below are maintained.

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

12. The parties including the Labour Court shall act upon authenticated copy of this order.

**(R.G.KETKAR, J.)**