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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 21 OF 2015

Indian Education Society

.. Petitioner

Vs.

Shri Ramesh Ghanashyam Bhowar and others

.. Respondents

Mr.Kiran Bapat a/w Ms.Nandini G.Menon & Ms.Pooja Bhide, Advocate for the Petitioner.

Mr.S.N.Deshpande a/w Ms.S.P.Munshi, Advocate for Respondents No. 1, 4, 8, 13, 14, 17 & 19.

CORAM : R.G.KETKAR, J.

DATE : 21st JANUARY, 2015

P.C. :

. Heard Mr.Kiran Bapat, learned Counsel for the petitioner and Mr.S.N.Deshpande, learned Counsel for the respondents No.1, 4, 8, 13, 14, 17 & 19 at length.

2. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the judgment and order dated 08/11/2014 passed by the learned Member, Industrial Court, Mumbai below Exhibit U – 102 in Complaint (ULP) No. 174 of 2004. By that order, the Industrial Court allowed the application filed by the respondents-complainants and directed the petitioner to produce the relevant extract of service books, confidential reports having the entry of appreciation of work giving the different graders and pay-sheets of the complainants and other employees who are referred by the

witnesses in their evidence as mentioned in that list of 75 employees. The petitioner is further directed to produce the originals of office copies in prayer clause 3(B). The petitioner is further directed to produce the inward and outward register and seniority list mentioned in clauses 3(C) & 3(D) of the application.

3. In support of this petition, Mr.Bapat submitted that the original complainants are employees of the trust. They are not the employees working in either aided or non-aided schools run by the petitioner. The complaint is filed under section 28 read with Items 5, 6, 9 & 10 of Schedule IV of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act'). He submitted that the complainants examined certain witnesses in support of their case and thereafter filed present application for production of the original documents. In the first place, the said application should have been filed at the beginning that is to say before examining any witness. Secondly, in any case, no justification is given by the complainants seeking production of documents in respect of 75 employees. This really amounts to roving and fishing enquiry. He submitted that the documents which are sought to be produced are not relevant for deciding the controversy raised in the complaint. He further submitted that in fact 11 complainants have settled their disputes with the petitioner. The petitioner has filed applications at Exhibits C-22 to C-24. 11 Complainants have also

filed affidavits supporting applications at Exhibits C-22 to C-24 and despite that, the Industrial Court has not disposed of the said applications. For all these reasons, Mr.Bapat submitted that the impugned order deserves to be set aside.

4. On the other hand, Mr.Deshpande submitted that in the complaint, the complainants have specifically asserted that the petitioner has made discrimination between complainants and other employees. He submitted that the evidence on behalf of the complainants is not yet over. The original documents are with the respondents, however, they have not produced any document. On the contrary, during the course of evidence, objection was raised on the ground that the complainants did not file application for production of documents. It is in that context, the present application is filed at Exhibit U – 102 for direction to the petitioner to produce the documents. He submitted that by the impugned order, the Industrial Court has directed the petitioner herein to produce the documents as in the evidence, complainants have deposed about these facts. He, therefore, submitted that no case is made out for invoking powers under Article 226 of the Constitution of India.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. The complaint is filed seeking permanency including the graded scale of wages from the dates of their respective

appointments and other benefits. It appears from the record that some of the complainants were examined. Those witnesses have produced photo-copies of the correspondence between themselves and the petitioner. The original documents are office copies and the documents are with the petitioner. The petitioner, however, objected to photo-copies and therefore, photo-copies were not given exhibit numbers and they were marked as Articles. The Industrial Court observed that unless the original documents are called for, the secondary evidence cannot be allowed. Even adverse inference cannot be drawn. The respondents-complainants, therefore, filed the present application. It is further observed that all these documents are referred in the evidence of the witnesses of complainants and are marked as articles. These documents are relevant for deciding the case on merits. As far as the documents in relation to 75 employees are concerned, it has come in their evidence that complainant's work was appreciated by the petitioner. It has also come on record that some of the employees were granted the grades sought by the complainants and on that basis, the discrimination was sought to be declared. The Industrial Court, therefore, held that extract of service books of those employees who are referred by the witnesses in their evidence is necessary. The Industrial Court also held that these documents are relevant for deciding controversy between the parties. Before closing the evidence, the complainants have sought production

of the documents which are in the custody of the petitioner. For all these reasons, the Industrial Court partly allowed the application and issued directions. I have also perused the affidavit filed by the complainants in support of the application and in particular paragraphs C & D.

6. As far as the photo-copies produced on record by the complainants which are marked as articles, are concerned, Mr.Bapat submitted that the petitioner has no objection for marking them as exhibits subject to the proof of contents of these documents. In view thereof, photo-copies marked Articles shall be exhibited subject to proof of the contents of these documents.

7. In view thereof, I do not find that the Industrial Court committed any error in passing the impugned order. In any case, the impugned order is purely interlocutory. No case is made out for invoking powers under Article 226 of the Constitution of India. Hence, petition fails and the same is dismissed.

8. Having regard to the fact that applications at Exhibits No. C-22 to C-24 are pending, the Industrial Court is requested to decide these applications expeditiously.

9. The petitioner is given 3 week's time for producing the documents as per the impugned order.

(R.G.KETKAR, J.)