

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3856 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Shivnand s/o Vajinath Nashte,
Age : 30 years, Occu: Daily Wager,
R/o Krishna Nagar, Shelhal road, Udgir,
Tq. Udgir, Dist. Latur.

..RESPONDENT

WITH
WRIT PETITION NO.3857 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Balaji s/o Madhavrao Rotewad,
Age : 34 years, Occu: Daily Wager,
R/o Tondar, Tq. Udgir,
Dist. Latur.

..RESPONDENT

WITH
WRIT PETITION NO.3871 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Nilkant s/o Vishwambar Mundhe,
Age : 31 years, Occu: Daily Wager,
R/o Dongarshelki, Tq. Udgir,
Dist. Latur.

..RESPONDENT

WITH
WRIT PETITION NO.3872 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Madhav s/o Panditrao Somuse,
Age : 30 years, Occu: Daily Wager,
R/o Samtanagar, Dam Road, Tq. Udgir,
Dist. Latur.

..RESPONDENT

WITH
WRIT PETITION NO.3873 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Dattatraya s/o Balaji Bhoinwad,
Age : 29 years, Occu: Daily Wager,
R/o Takli, Tq. Udgir,
Dist. Latur.

..RESPONDENT

WITH
WRIT PETITION NO.3874 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Amol s/o Kishanrao Patil,
Age : 27 years, Occu: Daily Wager,
R/o Arasnal Post. Devarjan,
Tq. Udgir, Dist. Latur.

..RESPONDENT

WITH
WRIT PETITION NO.3875 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Manmath @ Manoj s/o Havagiswami Mathapati (Swami)

Age : 26 years, Occu: Daily Wager,

R/o Somnathpur, Tq. Udgir,

Dist. Latur.

..RESPONDENT

WITH

WRIT PETITION NO.3876 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Dattatraya s/o Arjunrao Biradar,

Age : 32 years, Occu: Daily Wager,

R/o Netragaon, Tq. Udgir,

Dist. Latur.

..RESPONDENT

WITH

WRIT PETITION NO.3877 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,

Dist. Latur.

- 2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Gajanan s/o Rajeshwar Debadwar,
Age : 30 years, Occu: Daily Wager,
R/o Gokul Niwas, Samarth Colony,
Tq. Udgir, Dist. Latur.

..RESPONDENT

WITH
WRIT PETITION NO.3879 OF 2016

- 1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

- 2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Namdeo s/o Babruwan Phule,
Age : 32 years, Occu: Daily Wager,
R/o Navandi, Tq. Udgir,
Dist. Latur.

..RESPONDENT

WITH
WRIT PETITION NO.3880 OF 2016

- 1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

- 2 The Chairman,

Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Rajeshwar s/o Ishwar Vasale,
Age : 38 years, Occu: Daily Wager,
R/o Bihand Uday Talkies, Udgir,
Tq. Udgir, Dist. Latur.

..RESPONDENT

WITH
WRIT PETITION NO.3881 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Bhagwan s/o Govindrao Biradar,
Age : 38 years, Occu: Daily Wager,
R/o Aenki, Tq. Udgir,
Dist. Latur.

..RESPONDENT

WITH
WRIT PETITION NO.3882 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Namdeo s/o Prabhakar Baikare,
Age : 32 years, Occu: Daily Wager,
R/o Satala, Tq. Ahmedpur,
Dist. Latur.

..RESPONDENT

WITH
WRIT PETITION NO.3897 OF 2016

1 The Secretary,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

2 The Chairman,
Agricultural Produce Market
Committee, Udgir, Tq. Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

Shivkumar s/o Vyankatrao Birajdar,
Age : 34 years, Occu: Daily Wager,
R/o Dhanegaon, Tq. Devani,
Dist. Latur.

..RESPONDENT

Mr.M.S.Deshmukh h/f Mr.U.L.Momale, Advocate for the petitioner.
Mr.N.V.Gaware h/f Mr.D.S.Kudale, Advocate for the respondent

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 05/04/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2. The petitioners are aggrieved by the interim order dated 01/02/2016 below application Exh.U-2 passed u/s 30(2) of The MRTU and PULP Act, 1971 by which all the respondents, who are daily wagers, have been protected and the petitioners are directed not to terminate their services till the decision of their complaints.

3. The petitioners submit that it is an Agricultural Produce Market Committee at Tal.Udgir, Dist.Latur. All these respondents, who are identically placed and are working as daily wagers with the petitioners, have put in services for periods ranging between 3 to 8 years. None of them have completed 240 days in the continuous and uninterrupted service of the petitioners. None of them are entitled for the protection u/s 25-B r/w 25-F, 25-G and 25-H of the I.D.Act, 1947.

4. He further submits that all the respondents were working as and when the work was available and they would put in about 15 to 20 days intermittently in each month.

5. Mr.Deshmukh, therefore, strenuously criticizes the impugned order on the ground that merely because the petitioners failed to file

its written statement, the protection by the impugned order was granted to the respondents. He further submits that no court can grant a blanket and ultimate protection to an employee by directing the employer not to terminate his services.

6. He further submits that all the respondents have preferred complaints invoking Item Nos.4, 5, 6 and 9 of Schedule IV of the MRTU and PULP Act, 1971. Unless it is established that the petitioners are prima-facie guilty of unfair labour practices, no relief could have been granted against the petitioners. He, therefore, submits that the impugned order deserves to be quashed and set aside. The petitioners have moved applications in each of the complaints filed by the respondents, by which, the “No W.S. Order” passed by the Industrial Court is sought to be recalled so as to enable the petitioners to place its written statement on record and contest the matter on its merits.

7. Mr.Gaware, learned Advocate supports the impugned order on behalf of the respondents/employees. Contention is that once the Industrial Court comes to a prima facie conclusion that the original complainants have been working in the employment of the petitioners for more than 240 days, they would be entitled for protection till their

complaints are adjudicated upon so as to ensure that their claims are not frustrated. He, therefore, supports the impugned order on the ground that if the petitioners are allowed to terminate the respondents, the complaints would be rendered infructuous.

8. He further submits that workers similarly situated as like the respondents had filed Complaint (ULP) Nos. 61/2015 and 62/2015 before the Industrial Court praying for regularization and protection against apprehended termination. These very petitioners settled the dispute with those complainants and both the complaints were disposed of under a settlement/compromise. Those complainants were granted absorption on the condition that they gave up their claim towards their past service benefits. He, therefore, submits that the petitioners would be precluded from adopting a different stand in this matter. He, therefore, prays for dismissal of the petitions.

9. I have considered the submissions of the learned Advocates.

10. It is trite law, as laid down in the cases of Dilip s/o Indrabhanji Wawande v. Industrial Court, Nagpur and Ors.[1995 II CLR 897], Ichalkaranji Municipal Council Vs. R.B.Taral [1999 LLJ II 70] and Jet Airways (I

Ltd. Vs. Jet Airways Thozhilalar Sangam [2001 (88) FLR 150], that final relief cannot be granted at an interim stage. It is also settled law that an employer cannot be placed under an embargo on terminating the services for any reason whatsoever. It, however, cannot be ignored that the claim of the complainants set out in the complaints ought not to be frustrated.

11. In the above backdrop, a Court dealing with the claim of regularization has to consider the facts of the case seriously so as to ensure that employees are not foisted upon an employer and an employer is not compelled to continue an employee merely because his claim for regularization is pending. Nevertheless, an employer can be placed under an embargo that it shall not terminate the services of the employees without following the due procedure of law. However, there cannot be a blanket prohibition on termination.

12. In the instant case, on account of negligence of the petitioners, written statements in each of the complaints filed by the respondents/employees and written 'SAY' in response to the application for interim relief, have not been filed before the Industrial Court. It is in nobody's interest that a proceeding of this nature be decided ex-parte. In fact, ends of justice are met if the litigating sides

are given adequate and equal opportunities to contest the matter, which leads to an adjudication on its merits.

13. In the light of the above, I am of the view that the petitioners deserve to be granted an opportunity to file its Written Statement and Say before the Industrial Court. The application for recalling “No W.S. Order” filed on record can, therefore, be dealt with by the Industrial Court, keeping this object in view.

14. The impugned orders have been passed only upon hearing the respondents and in view of the fact that there was no written statement and say of the petitioners on record. The impugned orders u/s 30(2) can be subjected to a review by the proviso to sub section (2).

15. Considering this legal position, I am of the view that rather than this Court prejudging the matter, ends of justice would be met by permitting the petitioners to file an application seeking review of the impugned orders under the proviso to section 30(2). This would enable the petitioners to make out a case as against the claim of the respondents and the Industrial Court would therefore be in a position to deal with the impugned order or cause some amendment,

addition or review of the same.

16. Mr.Deshmukh submits that all these respondents have preferred criminal complaints u/s 48(1) before the Labour Court at Latur. The petitioners are willing to continue to offer work to the respondents as was being offered prior to the filing of the complaints till the Industrial Court considers its application for review. These criminal complaints could, therefore, be disposed of.

17. Mr.Gaware submits that the statement of the petitioners can be recorded that they would continue to treat the respondents as they were treated and offered work prior to the filing of the complaints in the Industrial Court and on such a statement being recorded, respondents would proceed to withdraw the complaints pending in the Labour Court.

18. Mr.Deshmukh submits, on instructions, that the work, as was been given to the respondents prior to their filing of the complaints before the Industrial Court, would be continued to be given till the impugned orders are subjected to a decision of the Industrial Court on the review applications, that would be filed by the petitioners.

19. In view of the above, these petitions are partly allowed. Statement of the petitioners as recorded above would assure the respondents of work as was being made available to them prior to the the filing of the complaints. Consequentially, the respondents shall proceed to withdraw their criminal (ULP) cases from the Labour Court within 2 (two) weeks from today.

20. The petitioners shall file their written statement and say before the Industrial Court. Considering the peculiar facts as recorded above, the Industrial Court shall accordingly proceed to allow the petitioners to file their written statement and say.

21. In the event, the petitioners file an application seeking a review of the impugned orders under the Proviso to Section 30(2), the Industrial Court shall decide the said applications after hearing the litigating sides within a period of 10 (ten) weeks from the date of filing of the review applications.

22. Needless to state the Industrial Court shall decide the said applications on their own merits keeping in view the settled position of Law and after considering the reply of the respondents to the review applications.

23. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)