

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9239 OF 2016

1. M/s. Radium Creation Ltd.
C-32, TTC Industrial Estate,
Behind NOCIL (PIL), Pawne,
Navi Mumbai-400 705.
2. Mr. Anil Jagdish Rai, Seth
Director
Having office at
5-Borla Village, Motibag,
Chembur (E), Sion-Trombay Road,
Mumbai-400 071.
3. Mr. Dhruv Anil Seth
Director
Having office at
5-Borla Village, Motibag,
Chembur (E), Sion-Trombay Road,
Mumbai-400 071.

..Petitioners

Versus

1. Engineering Workers Association,
A registered Trade Union under Trade
Union Act, 1926, having its
Office at Siddharth Chambers,
Opp. Gaondevi Maidan, Naupada,
Thane-400 601

..Respondent

**Shri. S. K. Talsania, Senior Advocate i/by Shri. Pramod Anaokar a/w
Shri. Rahul D. Oak for the Petitioners.**

Ms. Nayana Buch i/by Shri. Shailesh K. More for the Respondent.

**CORAM : R. M. SAVANT, J.
DATE : 25th OCTOBER, 2016**

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 20.07.2016 passed by the Learned Member of the Industrial Court, Thane, by which order, the Review Application filed by the Respondent herein being Review Application (ULP) No.1 of 2016 came to be allowed and resultantly, the condition of furnishing a bank guarantee in terms of the order dated 04.04.2016 was set aside.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that a lock out came to be declared by the Petitioners by notice dated 05.07.2014 with effect from 20.07.2014. This was preceded by the suspension of operations which was done on 02.07.2014. On the lock out being declared, the Respondent herein filed Complaint (ULP) No.194 of 2014. Amongst the reliefs sought in the Complaint was that the members of the Respondent Union should be permitted to join duties and carry out their work. In the said Complaint, an application for interim relief being Exh.U-2 came to be filed by the Respondent Union. The said application came to be rejected by the Learned Member of the Industrial Court by order dated 24.07.2014. This

resulted in the Respondent Union filing a Writ Petition in this Court being Writ Petition No.9196 of 2014. The said Writ Petition came to be dismissed by a Learned Single Judge of this Court (R. G. Ketkar, J) by order dated 03.02.2015. Against the said order dated 03.02.2015 the matter was carried to the Apex Court by way of Special Leave Petition being No.8379 of 2015. In the said Special Leave Petition, the Apex Court on 10.04.2015 directed the Petitioner herein who was the Respondent No.1 in the SLP to calculate and deposit in the Apex Court the wages payable to the workmen, affected by the lock-out with effect from 01.08.2014 onwards. The same was directed to be done within two months from the said date. The said Special Leave Petition thereafter appeared on 27.07.2015 when a statement came to be made on behalf of the Petitioner by its Learned Counsel that the Petitioner is ready to lift the lock-out qua 150 out of the total of 202 workmen, to be named in a list, which he undertook to file by the next date of hearing with an advance copy to the Counsel on the opposite side. The Special Leave Petition lastly appeared on 14.10.2015 when the Apex Court noted that the Petitioners pursuant to its order dated 10.04.2015 had deposited the sum of Rs.1,40,32,249/- towards wages payable to the affected workmen with effect from 01.08.2014 upto 30.04.2015. The Apex Court noted that no deposit for the period commencing from 01.05.2015 upto 14.08.2015

when the lock-out was lifted qua 150 workmen has however been made. The Apex Court then adverted to the question that fell for its determination namely whether with the lifting of the lock-out the affected workmen are entitled to receive their wages for the period they were locked out. In so far as the said aspect is concerned, the Apex Court distinguished the 150 workmen in respect of whom the lock-out was lifted from the 40 workmen against whom disciplinary action was taken by the Petitioners. In so far as the 150 workmen were concerned, the Apex Court directed that they should be paid 50% of the wages due to them for the lock-out period on furnishing undertaking to the effect that in case the Industrial Court records finding that the lock-out was legal or justified and that the said finding is finally upheld by the Appellate/Revisional Authorities the amount so received shall be refunded back to the Petitioners.

4 In so far as the 40 workmen who are facing disciplinary proceedings are concerned, Apex Court left it to the Industrial Court to examine whether any payment of wages can be made in their favour also by way of an interim direction. Since the instant Petition concerns the said 40 workmen, it would be apposite to refer to the directions of the Apex Court as contained in its final order. Excerpt of the same relating to the 40 workmen is reproduced hereinunder :-

“As regards the 40 workmen qua whom the lock-out stands withdrawn but who are facing the disciplinary proceedings, we leave it to the Industrial Court to examine whether any payment of wages can be made in their favour also by way of an interim direction. In case the Industrial Tribunal comes to the conclusion that such a payment deserves to be made, the Industrial shall do the needful by utilising the amount already in deposit.”

5 In terms of the aforesaid directions, the Industrial Court was to examine the aspect as to whether any payment could be made to the 40 workmen and in case it arrived at the said conclusion, then it was directed to do so by utilising the amount deposited.

6 In terms of the said directions, an application came to be filed by the Respondent on behalf of the said 40 workmen being application Exh.U-11-B. The said application came to be allowed by the Learned Member of the Industrial Court, Thane by order dated 04.04.2016. The operative part of the said order reads thus :-

“1. The application is allowed.

2. The amount of 50% deposited in the Court by the respondent company be paid to these 40 applicants on the undertaking, which was submitted by 150 employees alongwith bank guarantee to the extent of amount which they received from the Court and this order will take effect after three weeks from the date of this order.

3. No order as to costs.”

7 However prior to the said operative part, it is recorded by the Learned Member of the Industrial Court that the Counsel for the Complainant Union also has shown his willingness to give the bank guarantee in respect of amount which they would receive from the Court. Hence the said recording discloses that the Learned Counsel appearing for the Respondent Union had shown willingness of the Respondent Union to furnish a bank guarantee to secure the amount that would be realised by the Court to the 40 workmen as 50% of the wages for the lock out period. The said order dated 04.04.2016 was challenged by way of Writ Petition being Writ Petition No.5062 of 2016 as also the order dated 04.04.2016 passed on Exh.U-10. However in the present Petition this Court is not concerned with the order passed on Exh.U-10. In so far as the order passed on Exh.U-11-B is concerned, a Learned Single Judge of this Court (S. C. Gupte, J) has recorded the statement of the Learned Counsel appearing on behalf of the Petitioners that he would not press the challenge to the said order dated 04.04.2016 and that liberty should be reserved to the Petitioners in case an order is passed on Exh.U-11-B thereby reviewing the stipulation of furnishing bank guarantee. This was in the context of the fact that by then the instant Review Application was already filed.

8 The said Review Application being Exh.U-11-B was

considered by the Learned Member of the Industrial Court and as indicated above has been allowed by the impugned order dated 20.07.2016. A reading of the impugned order discloses that two reasons or grounds weighed with the Learned Member of the Industrial Court. Firstly that though the condition of furnishing bank guarantee was imposed by his predecessor Court on the ground that if the said 40 workmen was dismissed it would be difficult to recover the amount paid to them. The Learned Member has observed that there is possibility that even after dismissal of 40 workmen by the Respondents, they may have right to file necessary Court proceeding for reinstatement in service. The second ground is that the Petitioners have not taken the plea or objection about furnishing of bank guarantee in their reply.

9 Heard the Learned Counsel for the parties. The Learned Senior Counsel Shri. S. K. Talsania appearing for the Petitioners sought to reiterate the submissions as urged on behalf of the Petitioners before the Revisionary Court, namely that the said 40 workmen have been dismissed from service and therefore it would be impossible to recover the amount paid to them if security is not furnished. It was also the submission of the Learned Senior Counsel that the Respondent Union having once agreed before the earlier Court to furnish bank guarantees, now cannot resile from the said position and seek withdrawal without providing security.

The Learned Senior Counsel to assist this Court produced a statement of the amount that would be payable to each of the 40 workmen and the amount payable by way of gratuity to some of them and the amount payable towards encashment of leave to contend that the amounts lying with the Petitioners would not provide security for the amount which would be withdrawn by the said 40 workmen.

10 Per contra, the Learned Counsel appearing for the Respondent Ms. Nayana Buch would contend that the doing away of the condition of the bank guarantee as per the direction of the Industrial Court is a consequence of the discretion which was vested in the Industrial Court by the order passed by the Apex Court. It was the submission of the Learned Counsel that between the 150 workmen in respect of whom lock-out wages were directed to be paid on furnishing undertaking and the 40 employees involved in the present Petition, the question was only about the entitlement and the condition to be imposed for withdrawal was left to the discretion of the Industrial Court in so far as the 40 workmen are concerned, which the Industrial Court has exercised by doing away with the condition of furnishing bank guarantee.

11 In my view, it is not possible to accept the contentions urged on behalf of the Respondent Union by the Learned Counsel. As indicated

above, the said 40 workmen have been dismissed from service and therefore it would be impossible to recover the amount from them which they would withdraw pursuant to the order passed by the Industrial Court. It is also required to be noted that each of the 40 workmen are entitled to an amount ranging from Rs.45,000/- to Rs.60,000/-. Only those workmen who have over five years of service have gratuity to the extent of Rs.23,000/- each. The said workmen are ten in number out of the 40. Even the said gratuity is liable to be forfeited in view of the dismissal of the said 40 workmen. The leave wages are hardly in the region of Rs.5000/- to Rs.8000/- and can hardly provide a security for the amounts between Rs.45,000/- to Rs.60,000/- which would be withdrawn. Though undoubtedly discretion was exercised by the Industrial Court pursuant to the order passed by the Apex Court, the Industrial Court had exercised the said discretion at the first instance by permitting the withdrawal on furnishing of a bank guarantee by the said 40 workmen, which condition was also stipulated on account of the willingness shown by the Respondent Union. The Learned Member of the Industrial Court has for the reasons which have absolutely no relevance to the security that is required to be provided has done away with the condition of furnishing the bank guarantee. In that view of the matter, the impugned order dated 20.07.2016 is not sustainable and is required

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to be quashed and set aside and is accordingly quashed and set aside. The application for review being Exh.U-11-B would accordingly stand rejected. The order dated 04.04.2016 would resultantly stand restored in its entirety. The said 40 workmen would accordingly be entitled to withdraw the amount on furnishing bank guarantee. If the said 40 workmen are not in a position to furnish a bank guarantee, the Respondent Union may do so on their behalf. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]