

Sequeira

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

WRIT PETITION NO. 10141 OF 2015

Thane Bharat Sahakari Bank Ltd. & anr. .. Petitioners

Vs.

Co-Operative Bank's Employees Union,
Thane. .. Respondent

***Along with
WRIT PETITION NO. 2439 OF 2016***

Co-Operative Banks Employees Union,
Thane. .. Petitioner

Vs.

Thane Bharat Sahakari Bank Ltd. & anr. .. Respondents

Mr.Ganesh Sovani i/b Mr.Harshad M.Inamdar, for Petitioners in
Writ Petition No.10141 / 2015.

Mr.Meelan S.Topkar, for the Respondent and Petitioner in Writ
Petition No.2439 / 2016.

***CORAM: N.M. JAMDAR, J.
Tuesday, 1 March 2016.***

Oral Order :

Rule in both the petitions. Rule made returnable forthwith.
Respondents waive service. By consent taken up for disposal.

2. Both the Petitioners, rival parties in Reference (IC) No.1 of 2015 pending before Industrial Court Thane, are aggrieved by the order passed by the Industrial Court Below Application Exhibit U-5 dated 11 September 2015. The impugned order reads thus :

- 1. The Application Exh.U-5 allowed.*
- 2. The second party is hereby restrained from altering, changing, modifying the service conditions of employees covered by the Charter of Demand dated 2.5.2014.*
- 3. The second party is restrained for entering into agreement, settlement or negotiation with any other association, group of person, other than the first party union.*
- 4. The second party union is directed to discuss the issue of 15% rise in monthly wages with the first party union within a period of one month and with the consent give the effect to the rise in wages from 1.5.2014.*
- 5. The issue in deduction of the wages equivalent to 20% in favour of the first party union shall be decided after recording the evidence of both the parties.*
- 6. The cost of the application shall be in the main cause.*

3. As regards clauses (2), (3) and (4), the Bank i.e. the Petitioner in Writ Petition No.10141 of 2015 is aggrieved, while the Union i.e. the Petitioner in Writ Petition No.2439 of 2016 is aggrieved by clauses (4) and (5).

4. I have heard learned counsel for the parties. An attempt was made to give the effect to the directions given in clause (4), to discuss the matter without prejudice to the rights and contentions. However, learned counsel for the parties inform that the matter could not be resolved amicably.

5. As regards clause (2) is concerned, it is the grievance of the Bank that even though some of the employees are not covered, they have been wrongfully included in the Charter of Demand and the Bank is unnecessarily restrained from altering or changing

their service conditions. The issue as to whether these persons could be covered under the definition of 'employees' will have to be decided at the time of hearing of the Reference and therefore, I am not inclined at this stage, to disturb the interim order passed by the Industrial Court as regards clause (2.) is concerned.

6. As regards clause (3) the Union is a representative Union and therefore, the interim order passed by the Industrial Court restraining the Bank from entering into an agreement for settlement with other associations, group of persons, cannot be faulted with. As regards clause (5) the direction to decide after recording the evidence also cannot be faulted as this issue requires leading of evidence. The learned counsel for the Union has also not been able to show how those directions are perverse.

7. As regards clause (4.) both, the Bank as well as the Union is aggrieved by the same. According to the learned counsel for the Bank, the Bank could not have been directed to give consent regarding the rise in wages from 1.5.2014. According to the learned counsel for the Union, the Industrial Court ought to have decided the issue and not merely suggested holding discussion.

8. The clause (4) as it reads does not contain any direction to the Bank to give effect to rise in wages from 1 May 2014, but it is a suggestion. Therefore the apprehension expressed of the Bank is not warranted. This would mean that the Industrial Court has not adjudicated on the prayer made by the Union as regards 15% rise

in monthly wages as sought by them. It appears that the Industrial Court has simply directed the parties to discuss and decide the issue themselves. If the party to the reference had moved an application for interim relief, it ought to have been decided, rather disposing of the same suggesting discussions. As stated earlier this attempt was made and has not fructified into any solution. Therefore, this prayer of the Union for interim relief will have to be adjudicated by the Industrial Court on its own merits. For this relief, the Application below Exhibit U-5 will have to be restored. It will be considered by the Industrial Court on its own merits.

9. Accordingly both the Writ Petitions are disposed of by confirming the directions given in clauses (2), (3), (5), (6) of the impugned order dated 11 September 2015. As regards clause (4) of the impugned order, same is quashed and set aside and for consideration of the issue indicated in clause (4) the Application Exhibit U-5 stands restored to file of the Industrial Court Thane, to be decided on its own merits. The contentions of both the parties are kept open in that regard. Both the Writ Petitions are disposed of as above. No order as to costs.

(*N.M. JAMDAR, J.*)