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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 2565 OF 2015

M/s. The Ravalgaon Sugar Farm Ltd. ... Petitioner.

V/s.

Construction Employees Union
Construction House. ... Respondent.

Mr. Rajesh Gehani for the Petitioner.
Mr. Arshad Shaikh i/b. D.H. Patil for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 06 JANUARY, 2016.

ORAL ORDER. :-

Rule. Rule made returnable forthwith. Respondent waives service. Taken up for disposal by consent.

2. By order dated 11 August 2015 the Industrial Tribunal, Mumbai, by way of interim relief, has directed the Petitioner to pay Rs.5,000/- per month to each of the concerned workmen with effect from 1 April 2007, till the final adjudication of the Reference.

3. The Additional Commissioner of Labour, Mumbai made

a Reference regarding the dispute between the Petitioner and its employees, by order dated 28 October 2014. A Reference No. 84 of 1998 which was filed earlier was allowed. This Award was challenged by the Petitioner by way of Writ Petition which was dismissed on 13 December 2012. A fresh charter of demand was submitted which resulted in the present Reference. The Respondent – Union filed their statement of claim. An application was filed by the Respondent for direction to pay Rs.5,000/- per month with effect from 1 April 2007. Show Cause Notice was issued on the application. The Petitioner filed their reply and resisted the application. The Industrial Tribunal by the impugned order has directed an amount of Rs.5,000/- per month to be paid to the two concerned workmen with effect from 1 April 2007. This order has been challenged in the present Petition.

4. The order passed by the Industrial Tribunal is an interim order. That the Industrial Tribunal has power to pass interim order during the pendency of the Reference cannot be disputed however, the Industrial Tribunal must apply its mind to all facets before granting such an interim relief. The learned Counsel for the Petitioner submitted that there is no application of mind in the present case before granting interim relief and the arguments of the Petitioner have not been considered. He submitted that there is no rational as to why Rs.5,000/- p.m. has been fixed and that too with the retrospective effect.

5. I have considered this submission. The Industrial Tribunal in its discretion has found it equitable to direct the Petitioner to pay Rs.5,000/- p.m. to two workmen in addition to the amounts they have already receiving. This being an interim order, the amounts that will be paid to the concerned workmen would be subject to the final outcome of the Reference and if necessary, the Industrial Tribunal can always pass an appropriate order regarding this amount at the end of the adjudication. In the circumstances, I do not find any failure of justice to warrant an interference under Articles 226 and 227 of the Constitution of India, with this direction.

6. The contention of the learned Counsel for the Petitioner that the amount should not be directed to be paid with retrospective effect, however, has merit. If the Industrial Tribunal, as by way of adjusting equities, found that these workmen are entitled to certain additional amount per month, there is no reason why at an interim stage such direction should be issued retrospectively. I am therefore inclined to modify the direction to pay the two concerned workmen Rs.5,000/- p.m with effect from 1 April 2007 to Rs.5,000/- p.m. to operate from the date of the impugned order.

7. The learned Counsel for the petitioner then submitted that the Petitioner had taken a specific ground in its pleadings that such direction to pay these two employees will have wide spread

ramification and the other employees will also start making similar demands and consequently, the Petitioner will have serious financial burden. The learned Counsel for the Respondent submitted that this ground was not argued before the Industrial Tribunal and it is not taken in the Petition. He submitted in any case, this issue stands concluded by the decision of this Court in earlier round of litigation wherein it is held that there is no comparison between the workmen who are benefited by the impugned order with the other set of workmen which have been referred to by the Petitioner.

8. In the impugned order there is no discussion as to whether the direction to pay the two workmen an additional amount of Rs.5,000/- p.m. would lead to the claims by other workers. Though this contention was advanced by the learned Counsel for the Petitioner during the oral arguments, it does find place in the pleadings of the Petitioner before the Industrial Tribunal. I have not interfered with the impugned order on the ground that it does not lead to failure of justice since it concerns only two workmen and the amount of Rs.5,000/- p.m. can be adjusted subsequently, however, the concern raised by the Petitioner regarding the wide spread financial implications cannot be dismissed as hypothetical. Therefore, though I am not inclined to interfere with the impugned order, I am inclined to give an opportunity to the Petitioner to agitate the issue of financial

implications before the Industrial Tribunal by making an application to that effect for consideration of interim relief. It is however made expressly clear that merely because this liberty is granted to the Petitioner, it does not mean that this Court has permitted the Petitioner to re-open any issue which stands concluded by this Court in earlier round of litigation before the Industrial Tribunal at the interim stage in the earlier proceedings. The Industrial Tribunal will, no doubt, consider the issue on its own merits.

9. Accordingly, the Writ Petition is disposed of by following order :-

(a) Clause (2) of the impugned order shall stand modified as under :-

The First Party shall pay Rs.5,000/- p.m. to each of the concerned two workmen from 11 August 2015 till further orders to be passed by the tribunal, subject to the final orders to be passed in the Reference.

(b) As regard the payment of the amount from 1 April 2007 to 11 August 2015, the same is kept open to be decided at the time of final order to be passed by the Industrial Tribunal.

(c) The Petitioner will be entitled to make an application to the Industrial Tribunal as regard the interim relief in the light of what is stated above, to be considered on its own merits.

10. All contentions on merits are kept open. The Writ Petition is accordingly disposed of in above terms. No costs.

(N.M. JAMDAR, J.)