**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4119 OF 2012

Ceekay Daikin Ltd.
L-4, MIDC, Chikalthana,
Aurangabad through
its General Manager ,..PETITIONER
(Ori. Respondent)

VERSUS

Ceekay Daikin Workers Union
c/o R.T. Khandare,
N-12, D-28/6,
T.V. Centre, CIDCO,
Aurangabad
through its
General Secretary ..RESPONDENT
(Ori. Complainant)

Mr V.D. Salunke , Advocate for petitioner;
Mr N.L. Dhoble, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 13th November, 2017

ORAL ORDER:

Heard Mr V.D. Salunke, learned Counsel appearing on behalf of petitioner and Mr N.L. Dhoble, learned Counsel appearing on behalf of respondent.

2. The petitioner, a registered company, having a manufacturing unit for 'clutches' used in four wheelers, claimed to have employed 380 persons. The recognized union of these employees registered under the

Trade Unions Act, 1976, preferred Complaint (ULP) No.169 of 2003 on 23rd December, 1980 before Industrial Court, Aurangabad, alleging that the settlement entered into between petitioner and respondent on 23rd April, 2002 is not honoured, which was having tenure from 1st January, 2002 to 31st December, 2004. The said settlement deals with increase in productivity with proportionate payment of additional wages.

3. In the said complaint, it is claimed by respondent-union that petitioner has been engaged in unfair labour practice and, therefore, action of petitioner herein, of deducting wages or productivity bonus of the workers on various grounds be quashed and set aside with directions to pay the wages as per the settlement.

4. In the aforesaid complaint, an application under Section 28 (1) read with Section 30 (2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (for short "Act") seeking interim relief was moved.

5. It appears that the complaint preferred by respondent-union came to be allowed by judgment and order dated 21st March, 2012, whereby the learned Industrial Court has declared that petitioner has been engaged in unfair labour practice under Item 9 Schedule IV of the Act, with direction to cease and desist from the same. The action of the present petitioner in deducting wages or productivity bonus of the workers on various ground, is set aside with direction to refund the amount so deducted with interest @

7% per annum. Thus, the present petition.

6. Mr Salunke, learned Counsel appearing on behalf of petitioner would urge that the wages which were recovered by petitioner-employer from employees were pursuant to the Act, having noticed payment of excess amount to which the employees were not entitled to. According to him, there was no unfair labour practice much less the one as is claimed by respondent. By inviting attention of this Court to the provisions of Section 32 of the Industrial Disputes Act, he would urge that the burden was on the present respondent to demonstrate before the Industrial Court that the deduction was incorrect. He would also urge that the complaint qua *unfair* labour practice alleged under Item No.9 of Schedule IV of the Act is not maintainable. He would seek dismissal of the complaint by allowing the present petition.

7. Mr Dhoble, learned Counsel appearing on behalf of respondent-union would urge that the judgment and order rendered by learned Industrial Court does not call for any interference as the present respondent discharged its burden by demonstrating unfair labour practice engaged by petitioner. He would invite attention of this Court to the provisions of Section 5 of the Act and would urge that the complaint was very much maintainable. He would justify the reasons recorded by the Industrial Court for allowing the complaint and seek dismissal of the present petition.

8. In the aforesaid background, this Court has proceeded to examine the findings recorded by the learned Industrial Court. The complaint before the Industrial Court is based on the settlement dated 23rd April, 2002, which deals with wage rise in proportion to productivity. It was agreed between the petitioner and respondent that the parties would increase productivity to the extent of 20% as per the norms suggested by the National Productivity Council, in proportion to which rise of Rs.1,600/- per worker would be given. The complainant's claim that while calculating the production norms, the factors for which the members of the respondent union were not responsible, were taken into account and the proper data was not provided as input to the computers for calculating the entitlement resulting into deduction of the allowance. He would also invite attention of this Court to non-filling of operator cards by the workers with effect from 5th March, 2003. In view of above inaction on the part of the petitioner-employer, the case is sought to be covered under Item 9 Schedule IV of the Act on the issue of deductions made by the employer.

9. It is the case of the petitioner before the learned Industrial Court that the terms of settlement were not honoured by the workers as they have not achieved the settled production norms resulting into deduction of allowance to which the employees i.e. members of respondent union were not entitled to.

10. The issues were framed by the Industrial Court at Exh.04. The Industrial Court then proceeded to consider the specimen copy of the

operator card, process control report and pre-control chart at Exh.U-26. The other documents viz. the communication from the National Productivity Council Exh.U-27 and other documents were considered.

11. The respondent, by examining its witness Udaysing at Exh.08 established the details of deductions effected by the petitioner and specifically denied the suggestion of low productivity below the optimum. The certification by the National Productivity Council on optimum productivity which was higher than the productivity which the workers were giving was of the period prior to the settlement of which breach is alleged viz. 23rd April, 2002. It was also established that there would be rise of Rs.1,600/- in the wages in proportion to 20% rise in the production during each month. The petitioner raised an issue of denial of figures in the productivity.

12. In order to establish its case, the petitioner examined witness Bhagwan at Exh.C-17. However, said witness has failed to demonstrate in which capacity he was being examined as he had no authority to depose for the petitioner. This witness has gone to the extent of admitting the mistakes on the part of the petitioner-employer, such as, inclusion of the break down and maintenance timings while calculating the low productivity, so as to blame the members of the respondent-union. The said witness has exposed the case of the petitioner.

13. Once it is established that there exists settlement between the parties to the petition, vide agreement dated 23rd April, 2002, which was in existence on the date of deduction, the claim of the petitioner that the complaint is not maintainable as there is no unfair labour practice, is liable to be rejected. Once the complaint is held to be maintainable, the claim that the provisions of Section 32 of the Act would come to the rescue of the petitioner is also liable to be rejected, having regard to the finding recorded that the complaint at the behest of the respondent was maintainable.

14. The Industrial Court in depth has gone into the terms of the settlement particularly clause 19 in the wake of evidence of the respective parties, clause for deduction in case of failure to give productivity, the percentage of productivity, the proportion of increase in the wages and has recorded finding in favour of the respondent, allowing the complaint.

15. There is yet another reason for rejecting the claim of the petitioner that the complaint was not maintainable viz. undisputed fact of executing settlement, pursuant to the provisions of Section 2 (a) and Section 18 of the Industrial Disputes Act. Perusal of the complaint further depicts that in detail the narrations are made *qua* how the norms of increase in the productivity and increased payment of wages in proportion thereof in the various sections are to be made. The respondent has also placed on record pleadings in support of its case that it is the petitioner who has violated the terms of the settlement particularly about the production cards, the record that is to be maintained by filling up three types of cards for

achieving production and Man machine card. In the evidence of respondent's witness it is brought on record that clause in the settlement does not provide for deduction in case of lack of production.

16. Though Mr Salunke, learned Counsel appearing on behalf of the petitioner has relied upon the evidence of witness of the petitioner, namely Bhagwan, still it has come on record that he was not authorised by the petitioner to depose before the Court.

17. The learned Industrial Court has rightly observed that the present petitioner has failed to produce annexure "A" to the settlement dated 23rd April, 2002 and as such, has drawn adverse inference, which is very much permissible in law. The Industrial Court has rightly held that the deductions made were not justified by the petitioner, once it is established by respondent that such deductions were not permissible.

18. For the aforesaid reasons, I hardly notice any cause which calls for interference in extra-ordinary jurisdiction.

19. Writ Petition, as such, fails and stands dismissed.

(NITIN W. SAMBRE, J.)

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