

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

WRIT PETITION NO. 7150 OF 2016

The Dairy Manager,
Government Milk Scheme & Ors.

... Petitioners

V/s.
Kamgar Ekta

... Respondents

Mrs. Vaishali Nimbalkar, AGP for the Petitioner.
Mrs. Meena H. Doshi for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 19/04/2017**

:ORDER:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of Constitution of India, the Petitioners are challenging the order below Exh. U-2 in Complaint (ULP) No. 839 of 2014 passed by the Industrial Court, Thane on 11.09.2015 directing the petitioners to pay the arrears of minimum wages to all 14 employees for the month of January 2014 to October 2014 and also directing the petitioner to pay wages @ minimum wages from November 2014 per month onwards to all 14 employees.

3 In the present proceedings, the Respondents filed Complaint (ULP) No. 339 of 2014 for Unfair Labour Practices under Item 9 of Schedule IV of M.R.T.U. & P.U.L.P. Act, 1971, directing the petitioners to pay the entire arrears of minimum wages to them for the period December 2006 till November 2014 and for other reliefs those are as under:

- “(a) Hold and declare that the Respondents have engaged and are engaging in the Unfair Labour Practices under item 9 of Schedule IV of the Act.*
- (b) Direct the Respondents to cease and desist from engaging into Unfair Labour Practices under item 9 of Schedule IV of the Act in respect of the Complainants.*
- (c) Direct the Respondents to pay the entire arrears of Minimum wages the workers are entitled to from the period from December, 2006 to November, 2014.*
- (d) Direct the Respondents to pay compensation as the Court may deem fit for the default of the Respondents in paying the Minimum Wages to the workers.*
- (e) Direct the Respondents to pay compound interest on the arrears of the wages under the Minimum Wages Act the workers are entitled to from the month of December, 2006 to November, 2014.*
- (f) Pending the hearing and final disposal of the complaint*
- (i) Direct the Respondents to pay the workers in Annexure 'A' arrears of Minimum Wages for the month of January, 2014 to November, 2014.*
- (ii) Direct the Respondents to start paying Minimum wages as per the Minimum Wages Act applicable to the Employment in Dairies to the workers in Annexure 'A' for the month of October and November, 2014 and thereafter every month on pay day.*
- (g) Pending the hearing and final disposal of the complaint ad-interim / interim relief in terms of prayers (f) (i) & (ii).*
- (h) Any other reliefs as this Hon'ble Court deem fit and proper on the facts and circumstances of the case.*
- (i) Cost of litigation.”*

4 In that complaint, Respondents preferred application for ad-interim relief on 19.12.2014 below Exh. U-2 for directions to the petitioners to pay minimum wages as per the Minimum Wages Act applicable to the employment in the Dairy's workers. In that application, the Respondents made following prayers:

“ (a) *Pending the hearing and final disposal of the complaint*

(iii) *Direct the Respondents to pay the workers in Annexure 'A' arrears of Minimum Wages for the month of January, 2014 to November, 2014.*

(iv) *Direct the Respondents to start paying Minimum wages as per the Minimum Wages Act applicable to the Employment in Dairies to the workers in Annexure 'A' for the month of October and November, 2014 and thereafter every month on pay day.*

(b) *Pending the hearing and final disposal of the complaint ad-interim / interim relief in terms of above prayers.*

(c) *Any other reliefs as this Hon'ble Court deem fit and proper on the facts and circumstances of the case.”*

5 The Industrial Court considering the pleadings on record held that petitioners are liable to pay minimum wages as per Minimum Wages Act to the Respondents. That order was challenged by the Petitioners in the preset petition.

6 The learned AGP appearing on behalf of petitioners submits that the learned Industrial Court has not considered the fact that the concerned Workmen were on contract basis working with them. Therefore, there is no question of paying them amount as per order

passed by the Industrial Court. She further submits that earlier in the Reference (IT) No. 16 of 2003, the Industrial Court, Thane passed Award dated 25.02.2009 holding that the Respondents are entitled to all the monitory and consequential benefits arrived out of the permanency in favour of the respondents. The operative part of the said order reads thus:

“A W A R D

i) The Reference (IT) No.16 of 2003 is hereby allowed and the First Party No.1 Diary is hereby directed to give all monetary and consequential benefits arrived out of permanency to the workers concerned in the Reference w.e.f. the date of order of Reference referred for adjudication to this Tribunal, within the period of one month from the date of publication of this Award.

ii) It is hereby declared that contracts between 1st party and Contractors is sham and bogus and camouflaged and only for name sake.

(iii) Award accordingly with no order as to costs.”

7 The learned AGP submits that they challenged the said order by preferring Writ Petition No. 8151 of 2009. She submits that after hearing both the sides this Court by order dated 08.12.2009 granted Rule in Writ Petition No. 8151 of 2009. Paragraph 2 of the said order reads thus:

“It is directed that though the petitioner will treat the concerned workmen as their regular workmen, a declaration and benefit of permanency are stayed. It is further clarified that as regular workmen, they will be entitled to their salary as long as they continue to work. Hearing of Writ Petition is expedited.”

8 The learned AGP submits that though the order dated 08.12.2009 was placed before the Industrial Court, the Industrial Court without considering the order passed by this Court, directed them to pay minimum wages to the Respondents. Hence, the said order is required to be set aside.

9 On the other hand, the learned Counsel for the Respondents vehemently opposed the present petition. She submits that in the present proceedings, earlier the Industrial Court passed order dated 25.02.2009 in Reference (IT) No. 16 of 2003 in their favour. She submits that though this Court by order dated 08.12.2009 stayed the said order but this Court has made clear that Petitioners have to pay wages to the Respondents as regular workmen. Though the respondents called upon the petitioners to comply the said order, they failed and neglected to do so. Hence, the Respondents preferred complaint for unfair Labour Practices under Item 9 of Schedule IV of M.R.T.U. & P.U.L.P Act, 1971.

10 The learned Counsel for the Respondents submits that the Industrial Court after considering the earlier order in Reference as well as Order dated 08.12.2009 passed by this Court in Writ Petition No. 8151 of 2009 rightly directed the petitioners to pay the minimum wages. Therefore, there is no question of interfering with the said order at this stage.

11 I heard both the sides at length. It is to be noted that the present Writ Petition preferred by State against the interim order passed by the

Industrial Court on Exh. U-2.

12 Considering the order dated 25.02.2009 passed by the Industrial Tribunal, Thane in Reference (IT) No. 16 of 2003 and order passed by this Court in Writ Petition No. 8151 of 2009, the Industrial Court rightly held that Petitioners are entitled to minimum wages. In any case, Respondents are working with the petitioners as regular workmen as per order dated 08.12.2009 passed by this Court in Writ Petition No. 8151 of 2009. Hence, they are entitled to the wages as per Minimum Wages Act. Considering this fact and as the petitioners challenged the interim order passed by the Industrial Court, I do not find any reason to interfere with the well reasoned order.

13 Hence, Writ Petition stands rejected.

14 The learned Counsel for the Respondents submits that they filed complaint (ULP) No. 339 of 2014 before the Industrial Court on 19.12.2014 and same is pending till today just because the petitioners preferred the present Writ Petition before this Court.

15 Considering the submissions made by the learned Counsel for the Respondent and orders passed by this Court in the earlier Writ Petition No. 8151 of 2009 and in the interest of justice, hearing of complaint (ULP) No. 339 of 2014 is expedited.

(K.K.TATED, J.)