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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9862 OF 2017

M/s. Amphenol Interconnect India Pvt. Ltd.	...Petitioner
vs	
Shri. Avinash S. Thigale	...Respondent

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Mr. Kiran Bapat, i/b. M/s. Desai & Desai Associates, for the Petitioner.

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CORAM : PRASANNA B. VARALE, J.

DATED: 12 SEPTEMBER, 2017

P.C. :

. Heard learned Counsel Mr. Bapat for the Petitioner.

2. The Petitioner challenges the order passed by the learned Presiding Officer, Industrial Tribunal, Pune dated 12 April 2017. Mr. Bapat, learned Counsel appearing for the Petitioner, by inviting my attention to the documents placed on record, and more particularly, the copy of the written statement and the application filed by the Petitioner i.e. the Respondent before the learned Member of the Industrial Court, submitted that the Respondent, who had approached the learned Member by filing complaint of an unfair labour practice under item 9 of Schedule IV of the MRTU & PULP Act, 1971 along with the application under Section 30(2) for interim relief, the contentions raised by the Respondent were opposed in the written statement. Mr. Bapat submitted that the allegation of an unfair labour practice is empathetically denied by the Petitioner and the Petitioner submitted that the complainant

could not have approached the learned Member, Industrial Court, as the complainant is not a workman as defined under Section 2(s) of the Industrial Disputes Act. It was submitted that the placement of the Respondent was in the supervisory cadre and in the administrative grade. The Respondent was employed as a Junior Engineer. Mr. Bapat then submitted that the application was filed on 8 April 2013 along with the written statement raising the issue of the relationship between the parties. It was submitted that the Respondent complainant is not a workman and the complaint is not maintainable. It was submitted that the issue raised goes to the root of the matter and be decided as a preliminary issue. Mr. Bapat then submitted that the learned Member of the Industrial Court, by order dated 12 August 2013, rejected the application filed by the Respondent complainant seeking interim relief. Learned Counsel then submitted that the application of the Petitioner was pending for quite sometime and an order dated 12 April 2017 came to be passed by learned Presiding Officer thereby rejecting the application of the Petitioner. It was the submission of Mr. Bapat, learned Counsel that the learned Member ought to have decided the issue firstly being the preliminary issue on the backdrop of the application filed by the Petitioner. Thus, the submission is the order of the learned Presiding Officer is unsustainable. With the assistance of the learned Counsel Mr. Bapat, I have gone through the material placed on record. Though the submission of Mr. Bapat looks attractive at the first blush, I am unable to accept the submission of learned Counsel for the Petitioner. The material shows that the learned Presiding Officer, while deciding the application for interim relief, took note of the submissions of the Petitioner in respect of the status of Respondent. It would be useful

to refer the observations of the learned Member in the order dated 12 August 2013 that the complainant was drawing wages exceeding Rs.10,000/- and he was appointed as Junior Engineer. The complainant was responsible for achieving planned target. The complainant had signed agreement with the Respondent in respect of intellectual property, which normally, is not signed by workmen. Then, it appears prima-facie that the complainant was not covered by the settlement applicable to the workmen. The complainant's work was of technical nature. Whether the work was technical nature or super -technical nature requires consideration. Ordinarily, the complainant challenging termination should go to the Labour Court. The complainant has approached this Court invoking item 9. Prima-facie, the learned Member found that the objection relating to status of complainant as a workman is required to be examined closely by recording evidence. Learned Member then, finding no favour with the complainant, rejected the application seeking interim relief. While passing the order dated 12 April 2017, learned Presiding Officer refers to the factual aspects of the matter namely: (i) the complaint is of the year 2013; (ii) a period of four years is passed; (iii) the application for interim relief and prayer for reinstatement is already rejected; (iv) the Court has framed the issues on 24 July 2014; (v) the issues have been finalised and the complainant is idle for a span of two years; (vi) the reference to the judgment of the Hon'ble Apex Court in the matter of **D.P. Maheshwari and others vs. Delhi Administration and others**¹; (vii) it may cause prejudice if an exercise of piecemeal adjudication is undertaken. On these grounds, learned Presiding Officer thought it fit to decide complaint itself along with the

¹ AIR 1984 SC 153

issues framed on 24 July 2014 and the issue raised by the Petitioner, namely, the relationship between the parties. Considering this aspect of the matter, I am of the opinion that the course adopted by the learned Presiding Officer cannot be faulted with. It will also not be out of place to state that the Hon'ble Apex Court itself observed that though there was a view prevailing of deciding the issue of the relationship being the preliminary issue during the passage of time, it is observed that the attempt is made to prolong the proceedings by raising such an issue and ultimately it affects the early disposal of the proceedings. There cannot be a dispute on the fact that these legislations, namely, the labour legislations and industrial legislations, are the beneficial legislations. Any attempt to prolong the proceedings would certainly a result in frustrating the object of the Acts. There is also other side of the coin, namely, by taking a decision in the complaint on all aspects and all issues raised of the complaint being decided finally, no prejudice would be caused to the Petitioner. Considering all these aspects, in my opinion, no error is committed by the learned Presiding Officer in the order dated 12 April 2017. The order is neither an illegal order nor an unsustainable order. The petition, thus being merit-less, deserves to be dismissed at the threshold and the same is accordingly dismissed.

(PRASANNA B. VARALE, J.)