

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 23.05.2017

CWP No.22942 of 2016

Bridgestone India Automotive Products Employees Union ...Petitioner

Vs.

Labour Commissioner, Haryana & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sudhir Mittal, Advocate, for the petitioner.

Mr. Ashwani Talwar, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J.

In this petition, the petitioner has challenged the order dated 30.09.2016 (Annex P-18), whereby the disputes have been referred to the Labour Court -cum- Industrial Tribunal, Gurgaon-1, while making the following prayers:

- “(a) A writ in the nature of a writ of certiorari may be issued calling for the record of respondent No.1 pertaining to the order Annexure P-18 and after perusing the same the said order may be quashed.
- (b) Ad interim stay of further proceedings before the Labour Court may kindly be granted during the pendency of the writ petition.
- (c) Any other appropriate writ, order or direction may kindly be issued in the peculiar facts and circumstances of this case.
- (d) Exemption may kindly be granted from filing certified copies of the Annexures and from filing typed copies of Annexure P-1 to P-4 and P-18.
- (e) Exemption may kindly be granted from serving advance notices of motion upon the respondents.

(f) Costs of the petition may be allowed.”

Order dated 30.09.2015 (Annex P-18), in scanned form, is as under:

ORDER

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Brief background of the case is that an un-registered Trade Union, namely, Bridgestone India Automotive Products Employees Union, approached the Hon'ble High Court of Punjab and Haryana by way of filing C.W.P. No. 5052 of 2016 seeking direction to the Government for sanctioning prosecution of the management for committing unfair labour practice. The Hon'ble High Court vide its order dated 17.3.2016 was pleased to dispose of the writ petition by directing the Labour Commissioner, Haryana, to take action on the letters dated 1.2.2016 and 5.11.2015 (Annexures P-9 and P-10), expeditiously, in accordance with law, preferably within a period of one month from the date of receipt of certified copy of order of this Hon'ble High Court.

2. Since the then Labour Commissioner was on election duty, so an application for extension of time was filed by this office before the Hon'ble High Court. The Hon'ble High Court vide its orders dated 9.5.2016 was pleased to allow the application and granted two months time for complying with the directions dated 17.3.2016 passed by this Hon'ble Court.

3. Vide Annexure P-9, it was intimated by the Additional Labour Commissioner, NCR, Gurgaon that in order to defuse the continuing labour unrest in M/s Bridgestone India Automotive Products Private Limited, IMT Manesar, Gurgaon, conciliation meetings had been called on 6.1.2016, 12.1.2016, 14.1.2016, 18.1.2016 and 28.1.2016 wherein discussions took place regarding payment of suspension allowance to suspended workmen and also with regard to reinstatement of 96 workmen. The management paid the suspension allowance to the suspended workmen in the presence of the concerned Labour Inspector. Regarding taking of workmen back on duty, the management submitted a draft of settlement and stated that the workmen who are willing to accept the

same, they would be taken back on duty. On the other hand the workmen insisted for directing the management to prepare a time schedule which was not accepted by the management, and thus, the Additional Labour Commissioner, NCR, Gurgaon vide his letter dated 1.2.2016 sent his failure report in this regard to the Government as required under section 12(4) of the Industrial Disputes Act, 1947.

4. Similarly, the Deputy Labour Commissioner, Circle-2, Gurgaon had conducted an enquiry on the complaint submitted by S/Sh.Krishan Murari, Santosh and others with reference to unfair labour practice by the management and submitted report vide his letter dated 5.11.2015 (Annexure P-10) in which he has recommended prosecution of the management on the basis of following three grounds:-

- (i) To abolish the work of a regular nature being done by workmen, and given such work to contractors as a measure of breaking a strike.
- (ii) To insist upon individual workman, who are on a legal strike to sign good conduct undertaking as a pre-condition to allowing them to resume work.
- (iii) To recruit workmen during a strike which is not an illegal strike.

5. On receipt of failure report, conciliation meetings were also fixed at the level of the undersigned on 17.5.2016, 14.6.2016, 17.6.2016, 16.8.2016, 23.8.2016, 30.8.2016, 2.9.2016, 9.9.2016, 15.9.2016, 20.9.2016, 28.9.2016 and 30.9.2016. On 17.5.2016, 30.8.2016, 28.9.2016 and 30.9.2016 representatives of both the parties appeared before the undersigned. However, on other dates, no hearing could take place as either the management or the workmen' representatives requested for adjournment of the case. Some delay in the process also took place due to

the mandatory in service training of the undersigned from 27.6.2016 to 22.7.2016 and again from 8.8.2016 to 12.8.2016 and the conciliation was again fixed for 16.8.2016. During the course of hearing the stand of the management was that the workmen had gone on one day fool down strike on 17.9.2015 and subsequently did not report for duty. Thereafter various public notices were issued by the management to the workmen for resuming duty and only 17 workmen resumed their duty after submitting the 'Good Conduct Undertaking'.

6. During the course of hearing on 30.9.2016 before the undersigned the stand of the representatives of the management was that they are vendors to M/s Maruli Suzuki India Limited and due to disturbance created by the workmen, their work orders have been reduced by 30% and also stated that they have outsourced some jobs to vendors. They further submitted that they have apprehension that the workmen may create industrial unrest in the factory so they insisted that the workmen should submit 'Good Conduct Undertaking' and then they would be taken on duty by them in phased manner. Further in case after joining, the workmen creates industrial unrest in that event they would not allow the other batch of workmen to resume duty. This offer was not accepted by the representatives of the workers and thus, finally the conciliation efforts failed.

7. The report of the Deputy Labour Commissioner recommending prosecution of the management was considered. It was observed that the report does not narrate specific instances of a particular work of regular nature that was abolished to give it to a contractor. Further, it is the prerogative of the Labour Court to decide whether a strike is legal or not. It is also not on record as to which particular new workmen have been appointed to work on the shop floor. Therefore, parties were heard at

length in the conciliation meetings to obtain specific information and record regarding the charges levelled against the management in this regard also.

8. I have perused the record and have carefully gone through the submissions of the parties.

So far as the first issue is concerned, the representatives of the management has categorically submitted that they have not employed any workmen through contractor(s) for deploying on machines as there was no such need because of decrease of orders from the Maruti Suzuki India Limited to the extent of 30% and also because the management outsourced some jobs to vendors. Therefore, in the absence of categorical and specific information in the report of the Deputy Labour Commissioner, Gurgaon regarding jobs that may have been abolished and the contract workers who may have been given the same, no adverse conclusion can be drawn without taking evidence, etc. for the purpose of taking any action against the management in this regard.

As regards the issue regarding insisting upon the individual workman for submitting 'Good Conduct Undertaking' is concerned, it is permitted under the Certified Standing Orders and in view of decision dated 15.12.2000 of Hon'ble Punjab and Haryana High Court in C.W.P. No. 16193 of 2000 - Maruti Udyog Employees Union and another Versus State of Haryana and others. Furthermore, there is no illegality on the part of the management in demanding 'Good Conduct Undertaking' from the workmen. It is, therefore, within the right of the employer to ask for such an undertaking on Good Conduct.

Regarding issue no. (iii) i.e. to recruit workmen during a strike which is not an illegal strike, it was observed that as to whether the strike resorted to by the workmen is legal and justified or not, can only be

decided by the learned Labour Court after recording evidence of both the parties; therefore, the undersigned cannot decide the issue.

9. As stated above, during the course of conciliation proceedings before the Additional Labour Commissioner, NCR, Gurgaon and also before the undersigned, the management was prepared to take back the workmen whose services have not been terminated / suspended subject to giving 'Good Conduct Undertaking', and further subject to the condition that such workmen would be taken back in a phased manner and that such workmen will not be paid back wages for the intervening period, and that in case after joining the workmen create industrial unrest in that event they would not allow the other batch of workmen to resume duty. The representatives of the workmen agreed to the above said proposal but did not agree to the condition that in case the workmen so re-employed take recourse to industrial unrest in that event the rest of the workmen would not be taken back on duty as it could be provoked by the management even. In view of this the conciliation proceedings failed.

10. Therefore, the legal course available under the Industrial Disputes Act, 1947 is to refer the following issues to the Industrial Tribunal-cum-Labour Court, Gurgaon-2 for its adjudication. Considering the various issues which emerged during the conciliation proceedings before the field officers and also before the undersigned, it is felt necessary in the interest of justice to refer the following issues to the Labour Court-cum-Industrial Tribunal, Gurgaon-2 for its adjudication in exercise of powers conferred under section 10(1) of the Industrial Disputes Act, 1947:-

- (i) Whether the tool down strike resorted to by the workmen of M/s Bridgestone India Automotive Products Private Limited, IMT Manesar, Gurgaon on 17.9.2015 was legal and justified or not ?

- (ii) Whether the termination of S/Sh. Krishan Murari and others (list enclosed at Annexure-A) by M/s Bridgestone India Automotive Products Private Limited, IMT Manesar, Gurgaon was legal and justified or not ?
- (iii) Whether the workmen S/Sh. Rajni Phukon and others (list enclosed at Annexure-B) themselves abandoned their services by remaining absent from duty or the management has been unfair in any manner and what would be the legal consequence and status of these workers ?
- (iv) Whether the management abolished the work of regular nature and gave it to contract labour or recruited new workmen in order to break the strike and thus conducted unfair labour practice or not ?
- (v) Whether the action of management in laying down the condition that in case workmen who are taken back on duty creates industrial unrest then rest of the workmen would not be taken back on duty and in the event of absence of orders from the principles M/s Maruti Suzuki India Limited, amounts to unfair labour practice or not ?
- (vi) In view of findings on above issues, what relief the workmen would be entitled to ?

The Labour Court-cum-Industrial Tribunal, Gurgaon-2 may decide the above issues within a period of 6 months from the date of receipt of this orders.

Any further action in the matter would be decided on the basis of the findings of the learned Labour Court-cum-Industrial Tribunal in its award on the terms of reference.

In view of above, Annexures P-9 and P-10 are hereby disposed of accordingly.

Copy of the order be supplied to the parties.

Dated: 30.9.2016

[Signature]
(Pankaj Agarwal)
Labour Commissioner, Haryana.

Endst. No. IR-1/2016/39232-37 Dated: 30-9-2016

A copy is forwarded to the following for information and necessary action:-

- and* [
1. Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon-2.
 2. M/s Bridgestone India Automotive Products Private Limited, IMT Manesar, Gurgaon.
 3. Bridgestone India Automotive Products Employees Union, Chamber No. 72-A, District Courts, Gurgaon through its President.
 4. The Deputy Labour Commissioner, Gurgaon-2.
 5. The Assistant Labour Commissioner, Gurgaon-6.
 6. The Statistical Officer, Labour Department, Haryana, Chandigarh.

[Signature]
Addl. Labour Commissioner,
for Labour Commissioner, Haryana.

In challenge to the order, learned counsel for the petitioner submits that the first respondent has not taken into consideration letters dated 17.09.2015, 17.09.2015 & 18.09.2015 (Annex P-5, P-6 & P-7), where from it is argued that the labour authorities have found that management has discharged/transferred workmen to discourage trade union activities. It is further argued that the labour authorities below the rank of the first respondent have concurrently held that regular workmen have been replaced by contractors' employees. The workers union has also given numbers and names of the regular employees before the labour authorities, as have been

laid off. It is then argued that the Labour Commissioner, Haryana (respondent No.1.) has committed patent illegality by holding that this Court in CWP No.16193 of 2000 has held that asking for a 'good conduct undertaking' is not an unfair labour practice. The writ petition is pending and thus there could not have been any final decision regarding the matter. Next, it was argued that after one day tool down strike on 17.09.2015, the management unlawfully prevented the workmen from joining duty. The strike was resorted to after prior intimation to the management outlining the reason for the strike being victimization of workmen for indulging in trade union activities. The strike cannot thus be said to be illegal when there is no violation of Sections 23 and 24 of the Industrial Disputes Act, 1947. Challenge to the impugned order is also on the ground when it concludes that only Labour Court can determine, whether strike is legal or not.

For one, the Labour Commissioner, Haryana has not concluded on the issue of 'good conduct undertaking' on the basis of pending CWP No.16193 of 2000, but has at the same time observed that 'good conduct undertaking' is permitted under Certified Standing Orders. Even if we ignore reference to the pending writ petition even then it is not the case of the petitioner that the terms and conditions of employment were governed by Certified Standing Orders or that any such Certified Standing Orders provided to management the right to demand a good conduct bond or undertaking and therefore action taken was impermissible in law. It has been argued that the findings of unfair labour practice recorded by the authorities below the rank of labour Commissioner in favour of the workers has been scuttled by the impugned order. This argument misses the point that the authorities in the labour department from conciliation to breakdown and

reference of the disputes are administrative actions which are not to be treated as findings on unfair labour practice are alone recordable by the Labour Court on evidence. That stage has not reached and the petition has been preferred assailing the order of reference at interlocutory stage.

I have heard the respective parties through their learned counsel at some length and pointed out the dangers inherent in the prayer clause and the suicidal argument based on them. Even with utmost care I find hardly any legal error in the impugned order when it refers six issues as framed to the labour Court for determination, but at the same time I also cannot lose sight of the fact that learned counsel for the petitioner has insisted that the impugned order is unsustainable in law and fact and the same should be set aside, which is the main prayer in the petition, as reproduced in the opening paragraph. It has been further prayed that the proceedings before the Labour Court should be halted by an ad interim stay.

If the union does not want the determination of the disputes by the Labour Court, it is entirely their wish. Therefore, I have no option left, but to grant prayer (a) and set aside the impugned order dated 30.09.2015 at Annex P-18.

Consequently, the petition is allowed as prayed. The accompanying application/s are accordingly dismissed.

23.05.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*