

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

WRIT PETITION NO. 11506 OF 2018

**MAHINDRA AND MAHINDRA FINANCIAL SERVICES LTD THROUGH
GENERAL MANAGER AND ANOTHER
VERSUS
PRAVIN PURUSHOTTAM MOGRE**

**WITH
WRIT PETITION NO.11561 OF 2018**

**MAHINDRA AND MAHINDRA FINANCIAL SERVICES LTD THROUGH
GENERAL MANAGER AND ANOTHER
VERSUS
FAJAL AHEMAD KHAN.**

...
Advocate for the Petitioners : Shri P.V.Barde h/f Shri Gangakhedkar
Shailendra S.
Advocate for the Respondents : Shri Mule Rajaram B..
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th October, 2018

Per Court:

1 In both these petitions, the Petitioner Management is aggrieved by the interlocutory orders passed by the Labour Court dated 10.12.2013 and 11.12.2013, by which, the applications Exhibits U/2 seeking interim relief by the Respondents/ original Complainants in Complaint (ULP) Nos.32/2013 and 33/2013, respectively, have been allowed and the Labour Court has directed reinstatement of the

Respondents/ original Complainants.

2 The Petitioner/ Management is also aggrieved by the judgments of the Industrial Court dated 03.09.2018, by which, Revision (ULP) Nos.96/2013 and 95/2013 filed by the Management have been dismissed.

3 The basic grievance of the Petitioner/ Management is that interim relief in the nature of a final relief has been granted. An order of reinstatement in service as an interlocutory order is impermissible in law. Both the Respondents were working as Customer Manager and would not fall within the definition of "workman" under Section 2(s) of the Industrial Disputes Act, 1947 and within the meaning of "employee" under Section 3(5) of the MRTU & PULP Act, 1971.

4 The learned Advocate for the Petitioner/ Management makes a grievance that Criminal ULP complaints have been filed under Section 48(1) of the MRTU & PULP Act, 1971 before the Labour Court wherein, the Managing Director of the Petitioner has been arrayed as accused/ respondent.

5 The learned Advocate for the Petitioner/Management is justified in submitting that there cannot be an order of reinstatement in service by way of an interim relief. He is supported by the orders of this Court in the matters of *Narsinggirji Mills vs. Abdul Rashid Ladlesab Shaikh*, 1993 (2) CLR 866 : 1994 (2) LLJ 152 (WP No.3878/1993

(Bombay) decided on 28.09.1993), *Lorcom (Protectives) Ltd. vs. Lata Dangare and another, (1993) ILLJ 1025 Bom* (Writ Petition No.738/1993 (Aurangabad Bench) decided on 30.04.1993 and *Executive Engineer, MSEB, Morshi vs. Industrial Court and another, 2001 (3) Mh.L.J. 320 : (2002) IV LLJ 292 Bom*, wherein, this Court has set aside an interim relief order only because the complainant was granted the relief of reinstatement at an interim stage. The impugned orders, therefore, would not be sustainable.

6 The learned Advocate for the Petitioners then relies upon judgment delivered by this Court in the matter of *The Zilla Parishad, Jalgaon vs. Smt.Maya Tukaram Sonawane, 2016 (7) ALL MR 652*.

7 I find that in catena of judgments delivered by the Honourable Supreme Court and various High Courts in the past about 30 years on this issue, it is concluded that there cannot be an order of reinstatement in service as an interim order especially in cases where charges are levelled against an employee and he has been held guilty of proved misconduct in a domestic enquiry.

8 I, however, find one distinguishing feature in these two cases. None of these two employees have been terminated from service on account of any charges of misconduct. They are permanent employees and their services have been dispensed with on the ground that their work is not satisfactory. It requires no debate that the ground that "work is

unsatisfactory or that an employee is unsuitable for organization" would not be available to the employer to terminate an employee simpliciter once he has completed his training programme or his probation period and is a permanent employee. Such ground of dispensing with the services of a permanent employee, would not be available after he has been bestowed with regularization in service.

9 Considering the above, I have called upon the Petitioner/ Management to state as to whether, they would agree to pay 50% of the gross wages to these Respondents/ employees from January, 2018 onwards as an equitable relief in lieu of the reinstatement granted by the Labour Court and sustained by the Industrial Court.

10 The learned Advocate for the Petitioner has taken instructions and submits that the arrears of 50% gross wages from 01.01.2018 would be deposited within four weeks from today and the Management would continue to pay such 50% gross wages to the Respondents/ employees till the complaints are decided.

11 The learned Advocate for the Respondents/ employees submits, on instructions from the Respondents who are present in the Court, that they are willing to accept this proposal without prejudice to their rights, which would be considered after the two ULP complaints filed by them before the Labour Court would be decided.

12 Both the learned Advocates submit that two ULP complaints

pending before the Labour Court be expedited.

13 In view of the above, both these Writ Petitions are partly allowed. The impugned orders of the Labour Court dated 10.12.2013 and 11.12.2013 and the judgments of the Industrial Court dated 03.09.2018 stand quashed and set aside and shall be replaced, by the consent of the parties as recorded in the foregoing paragraphs. Consequentially, the Respondents/ employees would be entitled for 50% gross wages considering their last drawn gross wages at the time of their termination, from January, 2018. The said amount shall be deposited by the Petitioner/ Management in the Labour Court within four weeks from today.

14 Both Complaint (ULP) Nos.32/2013 and 33/2013 are expedited with the following directions :-

- (a) The original Complainants shall place on record before the Labour Court their recent photographs, copies of Election Commission's Voters Identity Cards/ PAN Cards and their local residence proof for correspondence.
- (b) The original Complainants shall not leave the municipal limits of Aurangabad and shall not shift their local addresses at Aurangabad, without the permission from the Labour Court.
- (c) Both the original Complainants shall be precluded from accepting any new appointment or start any business or profession or calling. In the event, it is so done, they will be

disentitled for payment of 50% monthly gross wages.

- (d) The original Complainants shall withdraw the amounts of arrears deposited by the Petitioners in the Labour Court and shall receive their 50% monthly gross wages by withdrawing the amount from the Labour Court or directly receive them from the Petitioner/ Management on or before the 10th day of each month.
- (e) The Labour Court shall endeavour to decide the complaints expeditiously and in any case, on or before 31.12.2019.
- (f) The Labour Court shall frame an issue as to whether, the original complainants are "workman" under Section 2(s) of the Industrial Disputes Act, 1947 and an "employee" under Section 3(5) of the MRTU & PULP Act, 1971.
- (g) All issues in the complaints shall be tried together and neither of the parties would make an attempt to delay the matter.
- (h) In view of the above directions, the pending Criminal ULP Complaints filed by the Complainants before the Labour Court, shall stand disposed of forthwith.