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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.533 OF 2018

M/s. Radium Creation Ltd. & Anr.

... Petitioners

vs.

Engineering Workers Association

... Respondents

(Org.Complainants)

.....

Mr. Pramod N. Anaokar a/w. Mr. Siddhesh S. Shetye for the Petitioner.

Ms. Nayana Buch a/w. Mr. Shailesh K More for the Respondent.

.....

CORAM : A.K. MENON, J.

DATE : 12th FEBRUARY, 2018

JUDGMENT

1 Rule. Rule made returnable forthwith. By consent of parties the petition is taken up for final disposal at the stage of admission.

2 By this writ petition the petitioner employer challenges the order of the Industrial Court, Thane dated 4th December, 2017 by which Complaint (ULP) No. 86 of 2011 was partly allowed holding that the petitioner had engaged in unfair labour practices under item 9 of Schedule IV of the MRTU & PULP Act, 1971 and directing the petitioner to pay 50% earned wages from 1st January, 2010 till 18th April, 2011 to one of their former employees along with rise and benefits under a settlement dated 3rd December, 2010.

3 The brief facts to the present petition are as follows :

The petitioner is stated to be a public limited company carrying on business at Navi Mumbai. The petitioner is engaged in the business of imitation jewellery employing about 150 persons in its factory at Navi Mumbai. The respondent union has been functioning in the petitioner company since 2012. On 2nd September, 2009 a Complaint (ULP) No. 256 of 2009 came to be filed wherein the complainants have alleged unfair labour practices. The complainant made various allegations including non-payment of minimum wages and other benefits. The respondent alleged that the petitioner had forced the employees to sign salary registers showing higher salary, threatened workmen with loss of their livelihood and held out threats to their life as well. Apart from this the respondent alleged denial of conveyance allowances, leave benefits, LTA, bonus, HRA, Medical allowances for the workers and their family. The series of allegations included threats being held out even to the ladies staff by anti social elements who were recruited by the petitioner.

4 The complaint was opposed by the petitioner. All allegations were refuted. According to the petitioner the complaint discloses no cause of action. It sets out the fact that the employee employs 266 persons at Navi Mumbai including those 41 who were earlier employed in Chembur unit were transferred to the factory at Navi Mumbai. They recruited almost 200 persons who were under training. Most of them had not even completed 240 days. The employees they were covered under provisions of Provident Fund, E.S.I and other benefits. The petitioner denies having engaged in unfair labour practices especially under item 1(a) and 1(b). It is expressly denied that minimum wages are not being paid and in fact they were paid

more than the minimum wage. The allegations including those of threats being held out are only a figment of imagination.

5. On or about 3rd December, 2010 a settlement was arrived at under section 2(p) read with Section 18(1) of the Act wherein the petitioner and the respondent union dealt with all pending aspects. It was agreed that the settlement would come into effect from 1st January, 2010 and bind parties for 3 years upto 31st December, 2012 and would continue to remain in force until terminated by either of the parties. Clause 13 of the settlement dated 3rd December, 2010 is material to note and is reproduced below :

13. Local Committee Members

It is agreed by and between the parties that local committee members Mr. Ramjivan Jaiswal, Madhusudan Mishra, Rahul R. Herode, Sidhbodhar R. Wakode, Shalan K. Janrao and Geeta R. Sahu will be allowed to resume work on and from 01.12.2010 and they will be paid 50% wages for the intervening period i.e. from 1st January, 2010 to 30th November, 2010 including the rise and benefits of the settlement and for all purposes they shall continue to be in service. Mr. Anirudh N. Prasad will not be allowed to report for work till the matter is finally decided by the Court in pending Complaint (ULP) No. 256 of 2009. However, till then he shall continue to be paid 50% wages including the rise and benefits of the settlement as above from 1st January, 2010.(Emphasis supplied)

Thus save and except the said Mr. Anirudh Prasad who was not allowed to report till the Complaint (ULP) No. 256 of 2009 was finally settled provisions were made apropos other local committee members. The express provisions of clause 13 indicated substantial deliberation on this aspect.

6. During the pendency of the complaint Lok Adalat came to be held. Complaint (ULP) No. 256 of 2009 was taken up in the Lok Adalat and in view of the efforts made by both sides and the Court, an award came to be passed on 6th February, 2011 whereby Complaint (ULP) No.256 of 2009 came to be disposed of as settled out of Court and an award was directed to be drawn up. It is the case of the respondent that the aforesaid settlement of Lok Adalat overlooked the fact that clause 13 was still operative to the extent it concerned Mr. Anirudh Prasad. A fresh complaint(ULP) No. 86 of 2011 then came to be filed purporting to be an application for restoration of ULP No. 256. In ULP No. 86 of 2011 the respondent repeated the same allegations as in ULP No. 256 of 2009 and sought identical reliefs but only in respect of Mr. Anirudh Prasad. The application was opposed as not maintainable. After the hearing, evidence was also led and impugned judgment came to be passed.

7. I have heard counsel for the parties at length. Mr. Anaokar submitted that the fresh complaint was not maintainable and clause 13 made a specific reference to the fact that Mr. Anirudh Prasad will not be allowed to work, pending the disposal of the complaint and pay minimum 50% wages including the rise and benefits of the settlement as above from 1st January, 2010. This was accordingly paid. However in the meantime, the services of Mr. Prasad was terminated following due process of law. After being charge sheeted, he was dismissed from services on 18th April, 2011.

8. Complaint (ULP) No. 86 of 2011 was based on the same cause of action and the complaint was without any merit. The petitioner did not oppose the filing of

the application since it was in the guise of an application for restoration of the complaint. The fact that complaint (ULP) No.256 of 2009 was disposed of at the Lok Adalat cannot be lost sight of. The Complaint (ULP) No. 86 of 2011 was opposed by the petitioner by filing written statement wherein apart from challenging the complaint on the ground of limitation, maintainability was called into question. The petitioner denied all allegations of unfair labour practices. The respondent led evidence of the said employee Mr. Aniruddh Prasad who was complainant no. 2. In his deposition he has repeated all the allegations in the complaint verbatim. He deposed that he was entitled to receive the balance 50% of the wages, rise and benefits. He further deposed that he has been dismissed from services on or about 18th April, 2011 and that in terms of the settlement he was to continue to get the balance 50% of wages till Complaint (ULP) No. 256 of 2009 had been disposed of and continue to receive wages. According to him Complaint (ULP) No. 86 of 2011 is effectively renewal of Complaint (ULP) No. 256 of 2009.

9. In the cross examination the witness admitted that the company was paying wages to its employees just as any other similar placed industry. He further admitted that pursuant to the negotiations and the settlement signed on 3rd December, 2010 he was receiving wages till date of his termination upto 18th April, 2011. He also admitted that he was gainfully employed after the date of the termination. On behalf of the petitioners evidence was led in which the deponent stated that the company was paying more than the minimum wage and especially after the settlement, all benefits like LTA, bonus, HRA and medical allowances had been provided. All other allegations of having engaged in unfair labour practices and

hiring anti social elements and harassment of ladies staff had been denied. In an attempt to demonstrate that contrary to allegations, the petitioner had great respect for the ladies staff, it was revealed that 90% of the employees were ladies. Cross examination of Mr. Nandu Bhimaji Bangar does not appear to have made out any dent in the case made out by the petitioner and it is in this background that the impugned judgment came to be passed.

10. I must observe that the averments in Complaint (ULP) No. 86 of 2011 are a repetition of those in complaint (ULP) No. 256 of 2009, the only difference being that the second complaint is urged by the respondent union only on behalf of one ex-employee Mr. Aniruddh Prasad. In my view complaint (ULP) No. 86 of 2011 was not sustainable since the matter was considered and disposed off at the lok adalat. In my view having withdrawn the application by virtue of the settlement at the Lok Nyayalaya nothing survived to be agitated in the present case. It is pertinent to note here that on the basis of rival pleadings in the complaint(ULP) No. 86 the following issues were framed :

1. *Whether the complaint as framed is tenable under law ?*
2. *Does the Complainant union prove that the respondents have engaged in an unfair labour practices under Item 1(a), (b) of Schedule II of the MRTU & PULP Act, 1971.*
3. *Does the Complainant union prove that the respondents have engaged in an unfair labour practices under Items No. 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971?*
4. *Whether the complainant is entitled for relief as*

prayed ?

5. *What order ?*

11. Findings on the issue 2 and 3 are material. Issue no. 2 has not been answered. Thus there is no finding on whether unfair labour practices under item 1(a), (b) of the schedule II were ever proved by the respondent union. As far as allegation of unfair labour practices under Item 9 and 10 of schedule IV is concerned the Court came to the conclusion that unfair labour practices under item no. 9 had been established. This it did on the basis of the evidence before it. The evidence has been considered in paragraph 6 of the impugned judgment and it refers to oral testimony of Mr. Anirudh Prasad and the testimony of Mr Nandu Bhimaji Bangar. Record and proceedings in complaint (ULP) No. 256 of 2009 were also called for and the Court concluded that an allegation of unfair labour practices under section 9 has been established. Item 9 pertains to failure to implement award of settlement.

12. It is not understood on what basis the petitioner could have been held to be engaged in unfair labour practices by non implementation of award of settlement. Paragraphs 14 and 17 of the impugned judgment record that the services of Mr. Anirudh Prasad were terminated on 18th April, 2011 and in terms of the original settlement dated 3rd December, 2012 50% earned wages and other dues had been paid to him as of date of termination. It is another matter that the termination has been challenged and is a subject matter of separate litigation. Liberty had so been granted by the impugned judgment in paragraph 20 to pursue that challenge. In

the operative portion of the judgment it is seen that the direction to pay the remaining 50% earned wages is on the basis that the petitioner had engaged in unfair labour practices.

13 In my view there was no occasion to come to the conclusion that unfair labour practices under Item 9 had been indulged in since the settlement terms provided for payment of 50% of earned wages and rise in benefits which had already been paid over. The settlement did not envisage payment of any balance. In fact clause 13 dealt with only the local committee members. If the settlement did not provide for such further payment there was no occasion for the Labour Court to find the petitioner liable for unfair labour practices under item no. 9.

14 In my view the respondent has failed to establish that there has been any failure to implement the award or settlement, as far as Mr. Aniruddh Prasad is concerned. The impugned judgment is therefore liable to be set aside. I therefore pass the following order :

- (i) Rule made absolute in terms of prayer clause (a).
- (ii) It is clarified that challenge to termination, if any, may be considered before the appropriate Court without being influenced by the observation in this judgment.
- (iii) Writ Petition disposed of in the above terms.

(A.K. MENON, J.)