

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

WRIT PETITION NO. 3221 OF 2018

Hind Kamghar Sanghatana

...Petitioner

Vs.

M/s.Neel Auto Pvt.Ltd.

...Respondent

Mr.Nagesh Y. Chavan for Petitioner.

Mr.Varun Joshi with Chetan Alai for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 13 AUGUST 2018

P.C. :

Heard learned Counsel for the parties.

2 This petition challenges a common order passed by the Industrial Court at Pune in a complaint of unfair labour practice. The interim applications, U-2, U-16 and U-20, by the Petitioner herein (original complainant) before the Industrial Court sought a restraint order against termination of employees represented by the Petitioner, a restraint order not to obstruct the employees from reporting on duty, reinstatement of 16 employees whose services were terminated purportedly despite status quo order, respectively.

3 The original complaint of the Petitioner, who is a registered union recognized under the provisions of Maharashtra Recognition Trade Unions and Prevention of Unfair Labour Practices Act, 1971 for the industry of the Respondent, seeks a restraint order concerning transfers of employees of the Respondent, listed in Annexures-A and B to the

complaint, as well as service benefits to these employees as may be applicable to permanent employees of the Respondent. The complaint seeks absorption and permanency for the employees listed in Annexure-B with effect from completion of one year's service. It is the case of the Respondent that the employees listed in Annexure-A are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act and accordingly, do not qualify as employees within the meaning of Sub-section (5) of Section 3 of the MRTU Act. As regards the employees listed in Annexure-B to the complaint, it is the case of the Respondent that there is no employer-employee relationship between the Respondent and these persons. The Respondent's case is that these persons are all engaged through its contractors and are contract labours.

4 As far as employees listed in Annexure-A to the complaint are concerned, learned Counsel for the Respondent makes a statement that their services shall not be terminated except on any exigency in future after following due process of law pending the hearing and final disposal of the original complaint. The statement is accepted.

5 As regards the employees listed in Annexure-B, apart from raising a question of jurisdiction on the basis of disputed relationship of employer-employee between the Respondent and these individuals, the Respondent has relied on voluminous evidence such as the individual contracts entered into with contractors through whom these individuals are engaged, identity cards issued to these contract labours, copies of their appointments, wage registers of the contractors reflecting their names, their pay slips, ESI and welfare fund details, etc. Contractors, through whom these individuals are engaged, are registered contractors. Based on

the pleas raised by rival parties and the material produced before the court, the Industrial Court in its order has observed that the relationship of employer-employee between the parties is a matter of serious dispute giving rise to a substantial question of jurisdiction based on the law declared by the Supreme Court in the case of **Cipla Ltd. vs. Maharashtra General Kamgar Union**¹ as well as cases following **Cipla**. The Industrial Court has further observed that based on the documents produced before the court, the court *prima facie* found substance in the submissions of the Respondent that these individuals are contract labours and not direct employees of the Respondent and accordingly rejected the interim application. The rejection of the interim application of the Petitioner insofar as employees listed in Annexure-B to the complaint is concerned, cannot be found fault with. The Industrial Court has correctly applied the law and assessed the material to arrive at its *prima facie* findings.

6 Accordingly, there is no merit in the challenge to the impugned order insofar as employees listed in Annexure-B to the complaint are concerned.

7 The writ petition is, accordingly, dismissed. The statement of the Respondent insofar as employees listed in Annexure-A to the complaint are concerned, is accepted.

8 The Labour Court shall endeavour to dispose of the original complaint as expeditiously as possible.

9 Learned Counsel for the Petitioner prays for continuation of

1 **2001-I-CLR-754**

the statement made by learned Counsel for the Respondent and recorded by this court in its order dated 14 March 2018 for a further period. Since the petition has been fully heard and comprehensively dismissed so far as employees listed in Annexure-B to the complaint, this court is not inclined to grant any further relief to the Petitioner in that behalf. The request is rejected.

(S.C. GUPTE, J.)