

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

WRIT PETITION NO.4951 OF 2018

M/s ZF Steering Gear India Ltd	...	Petitioner
Versus		
ZF Steering Employees Union	...	Respondent

.....

Mr. Kiran Bapat I/b Desai & Desai Associates for the Petitioner.
Mr. Nitin A. Kulkarni for the Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 5 JUNE 2018

P.C. :

. Heard learned Counsel for the parties.

2 **Rule.** Rule is taken up forthwith for hearing by consent of Counsel.

3 The present petition impugns an interim order passed by the Industrial Court at Pune on a complaint of unfair legal practices filed by the Respondent-union.

4 The Petitioner is a company engaged in the business of automobile spare parts. It is the Petitioner's case that certain employees of the Petitioner, who were in supervisory category, engaged in serious misconduct for which they were suspended. The union at that stage filed a complaint of unfair labour practices under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU

& PULP Act”), being Complaint (ULP) NO.27 of 2018. The complainant union also filed an application for interim order being Exhibit U-2 and sought withdrawal of suspension and payment of full wages. The Petitioner filed its reply claiming *inter alia* that the complaint was not maintainable, since the members of the Respondent-union did not fall within the definition for workmen under Section 2(s) of the Industrial Disputes Act, 1947. On these pleadings, the Industrial Court framed a preliminary issue concerning maintainability of the main complaint. Hearing of this preliminary issue is pending before the Industrial Court. In the meanwhile, charge sheets were issued to various employees in respect of the misconduct. At that stage, the Respondent-union filed application for interim stay of the departmental enquiry proceedings. The impugned order of the Industrial Court was passed on this application. By the impugned order, the Industrial Court stayed the enquiry initiated by the Petitioner against the employees, who claim to be members of the Respondent-union, till the disposal of the preliminary issue.

5 *Prima facie* the enquiry proceedings presently underway against the employees of the Petitioner cannot be termed as an unfair labour practice. There is no finding, *prima facie* or otherwise, of the Industrial Court that the departmental enquiry is being conducted without following the principles of natural justice or without giving adequate opportunity to the concerned employees. No effective purpose is accordingly to be served by staying the departmental enquiry pending decision on the preliminary issue framed by the Industrial Court. Whether or not the employees are workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947, no fault can be found with the conduct of the enquiry *per se*. The

Petitioner-employer appears to be conducting the enquiry into the alleged misconduct of the delinquent employees by choice and with a view to give them a fair chance of defending themselves without accepting their status as workmen of the former. On the other hand, the Respondent-union appears to be contesting the departmental enquiry *inter alia* on the ground that the employees are workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947. There is no manner of doubt that these rival cases may very well be asserted in the enquiry proceedings. The enquiry proceedings cannot be withheld pending the decision of the Industrial Court on the status of the employees as workmen. The status of the workmen has no impact on the propriety of the Petitioner conducting the departmental enquiry. If any standing orders are applicable to the concerned employees on the basis of their status as workmen of the Petitioner and the inquiry is contrary to such Standing Orders, the employees or the Respondent-union on their behalf has an adequate remedy.

6 In the premises, the impugned order of stay of the enquiry proceedings passed by the Industrial Court suffers from a grave infirmity and error of jurisdiction and cannot be sustained. Rule is, accordingly, made absolute by quashing and setting aside the impugned order dated 28 March 2018.

7 It is clarified that all contentions of the parties on merits including question of applicability of standings orders to the members of the Respondent-union are kept open.

(S.C. GUPTE, J.)