

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

WRIT PETITION NO.10257 OF 2017

Maharashtra Girls Education Society
691, Narayaan Peth, Huzurpaga,
Laxmi Road, Pune 411030.

... Petitioner

V/s

Maharashtra Karmachari Sanghatana
54, Budhwar Peth, Kakakuva Mansion,
Pune 411002.

... Respondent

Mr.R.S.Pai with Mr.A.R.Pai and Mr. A.K.Gopalan i/by M/s Haresh
Mehta & Co. for the Petitioner.

Mr.A.S.Rao with Mr. Prashant Kamble for the Respondent.

CORAM : S.C.GUPTE, J.

DATE : JUNE 21, 2018.

ORAL JUDGMENT :

1. This Petition challenges an order passed by the Industrial Tribunal at Pune on an application made to it for interim relief (Ex.U-4) in a reference made under Section 10 read with Section 12(5) of the Industrial Disputes Act, 1947 for various reliefs concerning service conditions and monetary benefits of workmen represented by the Respondent Union. By the impugned order, the Industrial Court extended the benefits of settlement/s made by the petitioner-society with what was claimed as the majority of its workmen to all other workmen on the same terms and

conditions as and by way of interim relief.

2. The petitioner is a society registered under the Societies Registration Act, 1860, and is engaged in imparting education to female students. The respondent is a union registered under the Trade Unions Act, claiming to represent non-teaching staff employed at various educational institutions of the petitioner-society. It is the case of the union that there were four settlements in relation to service conditions of workmen between the union and the society. It is submitted that around the time of expiry of the last settlement, a new charter of demands was submitted by the union, but no amicable settlement could be arrived at between the parties. After failure of conciliation, those demands were referred by the appropriate government to the Tribunal. The demands concerned issues of permanency of posts, promotions, uniforms and other allowances, leaves and holidays, service-book, wage slip, bonus, time-scale promotions, compassionate appointments, medical facilities, etc. The demands also included an interim wage rise. It was the contention of the union that the society had given a wage rise to some workers as per a settlement arrived at with a group of fifty-

five out of hundred and eleven workmen of the society. It was the union's grievance that wage rise in accordance with this settlement was not given to the members of the union and accordingly, there was a difference between wages of members of the union and other workmen and that such discrimination was illegal. The union applied for interim relief of wage rise commensurate with the settlement arrived at by the society with the other workmen. By its impugned order, the Industrial Tribunal directed the petitioner-society to extend the benefits of settlement for the periods from 1st January 2010 to 31st December 2012, 1st January 2013 to 31st December 2015, and 1st January 2016 to 31st December 2018, to all workmen of the petitioner-society, who were not paid on same terms and conditions. This interim order, framed as an "Interim Award", is challenged by the petitioner-society in the present petition.

3. Mr.Pai, learned counsel appearing for the petitioner, objects to the interim order on various grounds. Learned counsel submits that the Industrial Tribunal has no power to grant this relief as interim relief. Learned counsel submits that this was not an incidental matter having regard to the terms of the reference.

Learned counsel submits that interim wage rise was claimed by the union in its charter of demands and it was a matter specifically referred by the appropriate government to the industrial adjudicator, and it being a matter of reference itself, could not have been decided as an interim relief incidental to the reference. Learned counsel relies on several judgments of the Supreme Court as well as this Court in support of his objections. It is submitted that since interim wage rise was a matter specifically referred to the Industrial Tribunal under Section 10 of the Industrial Disputes Act, the Tribunal was bound to decide it finally and after taking into account evidence led by the parties. Learned counsel also submits that the final settlement arrived at by an employer with a group of its employees cannot be extended as an interim relief to the other or dissenting employees. Learned counsel submits that if at all, the employees represented by the respondent-union may be made to accept this as a final settlement and not an interim wage rise.

4. Power of the Labour court or industrial tribunal grant interim relief in applications and references made under the Industrial Disputes Act has been the subject matter of much debate

and such debate has still not been finally laid to rest. In fact, the question as to whether the industrial adjudicator has power to grant relief including relief in the nature of injunction in applications filed before it under Section 33A of the Industrial Disputes Act, has been specifically referred to a Larger Bench of the Supreme Court by a Two Judge Bench in **Goa MRF Employees Union Vs. MRF Limited**¹. The arguments in favour of permissibility of interim relief proceed on the footing that the foundation of the workmen's claim is the reference made under Section 10(4) of the Act, which outlines the jurisdiction or power of the Labour Court or Tribunal; such jurisdiction extends not only over adjudication of those points which are specified in the order of reference, but even matters incidental thereto and any interim relief which can be considered incidental to the points of dispute can always be awarded. In this sense, 'incidental' may mean something contingent or occurring in the course of or flowing from the matters referred. On the other hand, the case against award of interim reliefs in such matters proceeds on the basis that the expression "Incidental thereto" appearing in

1 (2010)15 SCC 432

Section 10(4) of the Act relates to the subject matter of adjudication relating to the points of dispute specified and matters incidental thereto and does not in any way refer to interim relief pending or in aid of such specified matters. The Two Judge Bench in the case of **Goa MRF Employees Union** found favour with this latter view, and the other view expressed in case of **Hotel Emperior Vs. Hotel workers Union**, was referred to a Larger Bench. The question, thus, as to whether any interim relief could be granted in view of the use of the expression “matters incidental thereto” in Section 10(4) of the Act, is presently res-integra.

5. In the present matter, however, we are spared of having to decide this question one way or the other. In the present case, the charter of demands as well as the order of reference covers specifically a temporary or interim wage rise of Rs.4,000/- per month with effect from 1st January 2013, to be adjusted against whatever final wage rise is awarded in the reference or otherwise agreed upon between the parties in a settlement. In other words, passing of an interim award for an interim wage rise till the final wage rise is decided either by

way of settlement or by way of adjudication was the very subject matter of reference. It was expected of the Industrial Tribunal to have considered the relief of interim wage rise before it considered final service conditions including wage rise for the workmen. The case law cited by Mr.Pai on permissibility of interim relief as a matter incidental to the points of dispute referred, accordingly, has no relevance to our case.

6. The next question to be considered is what is the level of inquiry expected of the Industrial Tribunal for the purposes of award of an interim wage rise. Relying on the case of **Hiru B. Barot Vs. IPCA Laboratories Ltd., Silvasa and anr.**¹, Mr. Pai submits that grant of interim relief is different from making of interim award and what the court has done in the present case is merely granting of interim relief pending award and not passing of an interim award. Firstly, considering the nature of relief being considered by the court, which was interim wage rise pending determination of final wage rise, the distinction between interim relief and interim award has hardly any significance. Be that, however, as it may, even for an interim award, that is to say, a

1 2011(4) Mh.L.J.120

final determination of the question of interim wage rise, the level of inquiry that one finds in the impugned order of the Industrial Tribunal can very well be considered as quite adequate. Our court in the case of **IPCA Laboratories Limited Case (supra)** considered the distinction between an interim award and an interim order of relief. The court noted the definition of “award” under Section 2(b), which includes even an interim determination of any industrial dispute or any question relating thereto by Labour Court or Industrial Tribunal. The court held that for treating a decision of a Labour Court or Industrial Tribunal as an interim award, the decision should reflect proper framing of the relevant point for determination and consideration of the relevant material so as to determine the controversy one way or the other. Such determination, in other words, involves framing of a correct issue or point of determination and thereafter, discussing and giving of reasons for the court's conclusion. All interim awards in that sense would necessarily involve interim relief, but not vice versa. Determination of the issue in an interim award may stand, thus, on a higher pedestal than passing of an order of interim relief. Yet, when an interim award

is expected to determine interim wage rise pending final adjudication of wage rise, for passing of such interim award the Court or Tribunal has but to consider the prima facie case of the industrial dispute referred to it and apply its mind for such prima facie adjudication and such application must be reflected in the order itself.

7. Coming now to the impugned order, in our case, it is to be noted that the court has correctly framed the points in issue, for the purposes of what even the court termed as an interim award, the points being (i) Whether the second party-union has made out a strong prima facie case in their favour, that is to say, for the wage revision claimed by it as and by way of a final order, (ii) whether the balance of convenience lies in favour of the workmen and (iii) whether irreparable loss would be caused to the workmen if the interim relief, namely, the interim wage rise, was not granted. The court, in answer to these points, noticed that the petitioner-society was prepared to extend the same settlement as was arrived at with fifty-five of its workmen to all its workmen including the workmen who claimed to be represented by the second party-union; the case of the petitioner-

society was that it was the second party-union who was not ready and willing to accept the settlement. The court then noticed that after discussion and negotiations with the petitioner-society, Class-III and Class-IV employees, including non-teaching employees, had entered into wage rise settlements with the first party society for the periods from 1st October 2010 to 31st October 2012, and 1st January 2013 to 31st December 2015. The court noticed that a further settlement for the period from 1st January 2016 to 31st December 2018 was arrived at between the petitioner and a purported majority of its workmen. Whether such settlement was actually signed by majority of workmen and whether it was binding on minority, might be a matter of evidence; Yet for the purposes of an interim award, it would certainly be in the interest of justice, if the first party employer were to be directed to extend the same benefits to those workmen who had not signed the settlement. By that process, the disparity in service conditions of both groups of workmen would be removed as and by way of an interim arrangement. The court then considered the question of balance of convenience and irreparable prejudice and held that it would be just and proper

to extend the benefits of the settlement arrived at by the petitioner-society with fifty-five of its workmen to those workmen who had not signed the settlement.

8. This approach of the Industrial Tribunal, its analysis of the material placed before it and order proposed, are well within the powers of the Tribunal and informed by proper application of mind, which is reflected in the order. The interim award contains a just and fair provision of interim wage rise, which was a matter specifically referred to the Industrial Court. It is futile to suggest that this determination of interim wages being a matter submitted specifically by way of reference, only a final determination could have been made after evidence was led and the parties were heard thereon. As the order of reference indicates, the interim wage rise was to be considered as a temporary measure pending adjudication of the reference and whatever interim wage rise was given was to be adjusted towards the final wage rise. The Industrial Court proposed to dispose of the reference within six months after allowing the parties to lead evidence and hearing them on the final relief. It would be a travesty of justice in such a case to insist on leading evidence and

hearing the parties thereon for determination of interim wages.

9. In the premises, there is no infirmity in the order in principle. It must, however, be noticed that the interim wage rise has been directed to be extended to all workmen for the periods between 1st January 2010 to 31st December 2012, 1st January 2013 to 31st December 2015, and 1st January 2016 to 31st December 2018. The inclusion of the period from 1st January 2010 to 31st December 2012 clearly appears to be erroneous. The charter of demands as well as the order of reference requires the industrial adjudicator to determine an interim wage rise with effect from 1st January 2013. The Industrial Court, in the premises, could not have considered the question of interim wage rise between 1st January 2010 to 31st December 2012. That part of the impugned order, accordingly, needs to be corrected.

10. The writ petition is, in the premises, disposed of by upholding and confirming the interim award of the Industrial Court dated 7th February 2017 save and except the direction to extend the benefits of settlement to all workmen for the period from 1st January 2010 to 31st December 2012. The direction to

extend the benefits of settlement for this period are quashed and set aside. No order as to costs.

(S.C.GUPTE, J.)