

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1629 OF 2018

Mumbai Mazdoor Sabha	...	Petitioner
Versus		
Mohd. Zahir Mohd. Shafiq		
And Others	...	Respondents

.....

Mr. Arshad Shaikh I/b Gautam Yadav for the Petitioner.

Mr. Rajesh Patil I/b Datta Patil for Respondent Nos.1 to 20.

.....

CORAM : S.C.GUPTE, J.

DATE : 1 AUGUST 2018

Oral Judgment

. Heard learned Counsel for the parties.

2 **Rule.** Rule is taken up forthwith for hearing by consent of learned counsel for the parties.

3 This petition challenges an order passed on an interlocutory application filed by the complainants in a complaint of unfair labour practice under Section 28 read with Items 6, 9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act"). The complainants are Respondent Nos.1 to 20 in the petition.

4 The complainants are employees of B.D. Petit Parsee General

Hospital (Respondent No.21 herein). They were appointed initially as temporary employees. On 28 March 2014, a Memorandum of Understanding (“MoU”) was executed between Respondent No.21 hospital and the recognized union, i.e. the Petitioner herein. The MoU *inter alia* provided (Term No.11) for appointment of the complainants on probation with effect from 1 April 2014 with all benefits of the settlement signed between the hospital and the union being made applicable to them after completion of probation in consultation with the Petitioner-union. On 1 April 2014, appointment letters were accordingly issued to the complainants by the hospital purportedly on the basis of the MoU. Clause-11 of the appointment letters provided for making them permanent after their probation in consultation with the union. It is the grievance of the complainants that despite these stipulations they were not absorbed as permanent employees of Respondent No.1 after completion of three years' service. They accordingly filed the present complaint. The complainants filed an application for interlocutory relief under Section 30(2) of the MRTU & PULP Act in the complaint. The Labour Court, by its order dated 12 February 2018, allowed that application, directing Respondent No.1 to 3 to consider the service record of the complainants and act in accordance with term No.11 of the MoU as well as Clause-11 of the appointment letters issued to the complainants. This order is challenged by the Petitioner-union (original Respondent No.4 to the complaint) in the present petition.

4 It is submitted by Mr. Arshad Shaikh, learned Counsel for the Petitioner, that the complainants are not eligible to file the present complaint. He submits that under Section 21 of the MRTU & PULP Act, no

employee in an undertaking, to which the provisions of Industrial Disputes Act for the time being apply, is allowed to appear or act or be represented in any proceedings specified in Items 2 and 6 of Schedule IV except through a recognized union. Learned Counsel submits that the Petitioner-union alone could, thus, represent the employees in the present complaint which is under Item 6 of Schedule IV.

5 Item 2 of schedule IV deals with abolition of work of a regular nature being done by employees, and giving of such work to contractors as a measure of breaking a strike. This item has no relevance to the present complaint. The relevant item may be Item 6, which deals with employment of employees as badlis, casuals or temporaries and their continuation as such for years with the object of depriving them of the status and privileges of permanent employees. It is true that this particular complaint is filed *inter alia* in respect of Item 6 of Schedule IV. It is, however, also stated to be a complaint under Items 9 and 10 of Schedule IV. Item 9 deals with failure to implement an award, settlement or agreement. The settlement or agreement in the present case is the MoU dated 28 March 2014 and the appointment letters issued to the complainants by the Respondent-management. *Prima facie*, thus, it is arguable that the complaint at the instance of the complainants herein under Item 9 is maintainable, though not under Item 6.

6 On the basis of the *prima facie* case made out by the complainants, the court has granted interim relief in the present complaint. That interim relief requires the Respondent-management to consider the service record of the complainants and act in accordance with term-11 of the MoU and

clause-11 of the appointment letters issued to the complainants. The reliefs appear to be perfectly in order; they are in keeping with what can be granted under Item 9 of Schedule IV. The court has proceeded on the footing that *prima facie* under the MoU as well as the appointment letters issued to the complainants, the Respondent-management was bound to consider their case for permanency after completion of three years.

7 Learned Counsel for the Petitioner relies on the judgment of the Supreme Court in the case of **Shramik Uttarsh Sabha Vs. Raymond Woollen Mills Ltd.**¹ In this case, the Supreme Court considered the purport of Section 21 of MRTUP & PULP Act in the light of its earlier judgments in the cases of **Girja Shankar Kashi Ram Vs. The Gujarat Spinning & Weaving Co. Ltd.**², **Santuram Khudai Vs. Kimatrai Printers & Processors (P) Ltd.**³, **Balmer Lawrie Workers' Union, Bombay Vs. Balmer Lawrie And Co. Ltd.**⁴ and **Crescent Dyes and Chemicals Ltd Vs. Ram Naresh Tripathi.**⁵ The court, in the light of these judgments, observed that the scheme of the Act concerning grievances of workmen and their effective representation, with a view to facilitate collective bargaining in certain undertakings, *inter alia* provided for the concept of recognized unions and obligations and rights to be imposed and conferred on such unions. In particular reference to the provisions of Section 21 of MRTU & PULP Act, the Court held that despite the fact that any order passed in the concerned proceedings would bind all employees of the respondent-employer, though some of them may not owe allegiance to the recognised union, considering

1 1995 I CLR 607

2 1962 Supp.(2) SCR 890

3 1978 (2) SCR 387

4 1985 I CLR 103

5 1993 I CLR 253

the objective of Section 21 of the Act, an embargo was placed on representation of employees by anyone other than their representative, who, for the most part, is their recognized union, except in matters pertaining to individual disputes of the employees with the employer. This embargo was to facilitate collective bargaining; its rationale was that it was in the interest of industrial peace and in public and national interest that the employer should have to deal, in matters which concern all or most of its employees, only with a union which is their representative.

8 There is no quarrel with this proposition. But that is not directly in question here. The question here is whether the subject matter of the present complaint is a matter concerning all or most of the employees covered by Item 6 or individual grievances of the workmen concerned covered by Item 9 based on the settlement of MoU and individual contracts of employment entered into with them by their employer. As I have noted above, *prima facie* the matter appears to be well covered by individual contracts based on the settlement and therefore falling within Item 9.

9 The fact of the matter is that the complaint is yet to be heard by the Industrial Court. The impugned order has been passed merely on an interlocutory application under Section 30(2) of the MRTU & PULP Act. As I have noted above, the complainants certainly have an arguable case both on maintainability of the complaint as also its merits. Considering the *prima facie* merits of the legal issue and also merits of substance based on the provisions contained in the MoU, and the appointment letters issued in case of each of the individual complainants in pursuance thereof, there is clearly a *prima facie* case for granting the interim relief claimed by the

complainants. Afterall, by way of this interim relief, what the Industrial Court has done is to simply require the Respondent-management to act in accordance with term-11 of the MoU, which admittedly holds the field, and clause-11 of the appointment letters, which admittedly is a condition of the contract of employment of the complainants herein.

10 In the premises, no fault can be found with the impugned order of the Industrial Court. There is no merit in the petition. The petition is, accordingly, dismissed.

11 It is clarified that the above observations are made for the purpose of deciding the present writ petition. The Industrial Court shall decide the complaint including the Petitioner-union's objection to the maintainability on its own merits.

(S.C. GUPTE, J.)