

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 3244 OF 2019 IN
WRIT PETITION NO. 12497 OF 2017**

**WITH
WRIT PETITION NO. 12497 OF 2017**

**AURANGABAD MAJDOOR UNION THROUGH ITS GENERAL
SECRETARY AND OTHERS**

VERSUS

**M/S EAST WEST SEEDS PRIVATE LIMITED AURANGABAD
AND OTHERS**

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Advocate for the Applicants : Shri P. V. Barde h/f.

Shri A. S. Kulkarni

Advocate for Respondent No.1 : Shri Yugant Marlapalle h/f.

Shri S. V. Adwant

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 05th APRIL, 2019.

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PER COURT :

1. This matter was heard for quite some time.
2. The order of this Court dated 09/08/2018 is said to have been implemented, initially by both the sides. 22 workers have given good conduct undertakings to the principal employer and the principal employer reciprocated by allotting work to such 22 purported contract labourers.

3. The applicant Union has preferred this Civil Application for the reason that a service provider by name "Sai Manpower Services Pvt. Ltd." issued Transfer Orders on 25/12/2018 and 30/01/2019, thereby transferring such workers out of the premises of the principal employer. It is informed that one of these 22 workers namely Arjun Trimbak Khandagale has quit and has withdrawn from the litigation as it is said that he has acquired employment elsewhere.

4. The union has made a grievance that the said service provider has issued transfer orders in defiance of the order of this Court dated 09/08/2018.

5. The learned Advocate for the Management has made a valiant attempt to narrate the subsequent events, post the order dated 09/08/2018, to indicate that the work had reduced and presently there are only farming operations. The processing operations in the factory of the principal employer, are at a stand still. It is stated that since the work considerably reduced, the service provider may have transferred these

employees.

6. I find that it would have been proper for the service provider to intimate the principal employer before issuing transfer orders to enable the principal employer to move an application before this Court seeking the leave of the Court for modification of the order dated 09/08/2018. This was not done which, in my view is, an act of defiance. Though the learned Advocate for the principal employer submits that the principal employer would never tend to undermine the majesty of law, it appears that the act of the service provider has a semblance of over bearing the authority of the Court.

7. The learned Advocate for the principal employer, in consultation with the officers, submits in this backdrop, that the principal employer would be obeying the orders of this Court and an equitable order may be passed today.

8. The learned Advocate for the union representing the workers submits that good conduct undertakings have been given by each of the 21 workers. They are duty bound to

follow the rules and regulations and the discipline prevalent in the premises of the principal employer.

9. The service provider transferred them to forging units, which is a part of the metallurgical industry and they could not perform work since they are completely new to the nature of the manufacturing activities.

10. It is informed that the wage rise demanded by the Union from the principal employer has now been referred to the Industrial Tribunal as an industrial dispute. The second party Union is supposed to file its written statement by 25/04/2019. The issue raised by the principal employer that there is no employer employee relationship between the principal employer and the contract labourers, has not been referred to the Industrial Tribunal.

11. In my view, this deficiency would not be an impediment to the principal employer to raise this issue through its written statement and the Tribunal could very well frame such an issue alongwith the terms of reference. It is informed that the terms

of reference include the demand for regularization with the principal employer and the elimination of the contractor, along with wage revision demands. These aspects are covered by the law laid down by the Honourable Apex Court in the matter of *Maharashtra General Kamgar Union and Ors. Vs. Cipla Limited (2001) 3 SCC 101* which has crystalized the position, which would enable the Tribunal to deal with all these issues.

12. The learned Advocate for the Union submits that since the reference of their Industrial Dispute has been made to the Industrial Tribunal, they would be withdrawing complaint ULP Nos. 218/2016, 27/2017 and 47/2017 from the Industrial Court, Aurangabad. The present petition can, therefore, be disposed off.

13. In view of the above, I deem it appropriate to dispose off this Civil Application, as well as, Writ Petition No. 12497/2017, with the following directions :-

(A) In view of the order dated 09/08/2018 passed by this Court, the 21 purported contract workers would be allotted work by the principal employer respondent No.1.

(B) If the work is allotted to them, they would work as per their shift schedule and strictly in accordance with the good conduct undertaking bonds submitted by them.

(C) The principal employer shall deposit the monthly wages of these 21 workers for the period January 2019 to March 2019 before the Industrial Tribunal in Dispute No. 9/2018, on or before 30/04/2019.

(D) The 21 workers will be at liberty to withdraw only one month wages out of the above stated deposit.

(E) If the principal employer finds that no work is available, the principal employer shall deposit their monthly wages from April 2019 in the Industrial Tribunal on or before the usual pay day in the subsequent month and these workers can withdraw the said amounts from the Industrial Tribunal, unconditionally.

(F) The Union shall file its statement of claim before the Industrial Tribunal, without seeking any adjournment, on or before 30/04/2019. Liberty to file an application for interim relief is granted.

(G) The principal employer would file its written statement along with all objections, on or before 15/06/2019.

(H) The litigating sides would complete their oral

submissions on the application for interim relief, on or before 30/06/2019.

(I) The Industrial Tribunal would pass its order on the application for interim relief, on or before 31/07/2019.

(J) The above options of allotment of work/deposit the payment in the Tribunal, would be subject to the orders of the Industrial Tribunal on the application of interim relief.

(K) Such depositing of wages would continue till 31/07/2019 or till the application for interim relief is decided, whichever is earlier.

(L) Since prima-facie this Court was convinced that the suit preferred by the principal employer was in tune with the law laid down by the Honourable Apex Court in the matter of *Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. And anr., AIR 2001 SC 1534 and Cipla Limited Vs. Maharashtra General Kamgar Union and Ors. 2001(2) Supreme Court, 112*, the above order is passed with the understanding between the parties in the peculiar facts of this case and would not be cited as a precedent in any other matter.

(RAVINDRA V. GHUGE, J.)

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