

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9446 OF 2019

1. Dainik Bhaskar Corporation Ltd.,
(D.B.Corp.Ltd.),
Through it's Managing Director,
Mr.Sudhir R.Agrawal,
R/o Plot No.6, Dwarka Sadan,
Press Complex, MP Nagar,
Bhopal (MP)
2. Manager-HR and Admin,
Through Mr.Mir Anwar Ali Manager
Maharashtra, Dainik Divya Marathi,

D.B.Corp Ltd., Motiwala Complex,
2nd floor, Jalna Road,
Aurangabad - 431005,
Dist.Aurangabad
3. Production Manager,
Through Rohit Khairnar,
Dainik Divya Marathi Press,
238/2, Kasat Compound,
Near Saibaba Temple,
NH-6, Gram Paldhi, Tal.Dharangaon,
Dist.Jalgaon

-- PETITIONERS

VERSUS

Mr.Rajendra s/o Jagatrao Salunke,
Age-39 years, Occu-Service,
R/o Pimpri Khurd, Tal.Dharangaon,
Dist.Jalgaon

-- RESPONDENT

Mr.N.S.Jaju h/f Mr.Manoj Shinde and Mr.A.B.Waikos, Advocate for
the petitioners.
Mr.A.A.More, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 05/11/2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner company is aggrieved by the interlocutory order passed by the Industrial Court, Jalgaon dated 30/04/2019 in Complaint (ULP) No.5/2019 vide which application Exh.U-2 filed by the respondent complainant seeking interim relief u/s 30(2) of the MRTU and PULP Act, 1971, has been allowed. The impugned transfer order dated 18/03/2019 transferring the respondent from Jalgaon, Maharashtra to Udaipur, Rajasthan has been stayed.

3. The grievance of the petitioners / Management is that it had raised an objection as regards the status of the complainant. It was contended that he was not a workman u/s 2(s) of the Industrial Disputes Act, 1947 r/w the definition of "employee" u/s 3(5) of the MRTU and PULP Act. His salary package in terms of Cost to Company (CTC) was about Rs.3,47,000./- p.a.

4. I have heard the learned Advocates for the respective sides and have perused the petition paper book with his assistance.

5. It requires no debate that if an issue as regards the status of the complainant or of the respondent/Management is raised in such proceedings before the Labour Court or the Industrial Court as the case may be, it would be gainsaid that the said issue has to be decided before granting interim relief. This Court has dealt with such challenges in several matters.

6. In the case of Dalal Engineering Pvt. Ltd. vs Ramrao Bhaurao Sawant And Others [1991 (4) Bom.CR 571 = (1992) IILLJ 384 Bom. = 1991 (2) Mh.L.J. 1534 = 1991 II CLR 808], this Court had observed in paragraph Nos. 11 and 14 as under :-

“11. However, wide the sweep of the jurisdiction of the Court to prevent unfair labour practices under the Act, however deep and pervasive the doctrine of social justice, the Labour Court and the Industrial Court are both creatures of statute, and have only so much jurisdiction as is conferred upon them thereunder. They cannot assume or usurp jurisdiction which does not directly flow from the statute under which they function. In the instant case, the jurisdiction to entertain the complaint and grant reliefs therein, interim or final, is conferred on the Labour Court by

Section 30 of the Act. Sub-section (1) of the said section deals with final relief and sub-section (2) with that of interim relief. By the judgments of this Court in *The Premier Automobiles Ltd. v. The Engineering Mazdoor Sabha and Ors.* (1982-II-LLJ-73), and *Kirloskar Oil Engines Ltd. v. V. B. Dharurkar & Ors.* (1987-I-LLJ-366), the limits of the jurisdiction to issue an interim order under Section 30(2) of the Act, have been surveyed and delineated by this Court. The two judgments have, in unmistakable terms, laid down that the jurisdiction to issue an order comes into existence only upon a finding that there is an unfair labour practice. If it is a final order, there must be a final finding, and, if it is an interim order, there must at least be a *prima facie* finding of unfair labour practice. This is the bare desideratum without which the Court can issue no order under Section 30. Recourse to the doctrine of social justice of Part III of the Constitution may not be necessary for this purpose. Apart from the jurisdictional limits indicated in these two judgments, the Labour Court must also realise that the general principles of law are still applicable to trials before it, unless the contrary is indicated by statute. One general principle of law is that an interim order is intended to ensure that the proceeding which is pending before the Court arising out of specific cause of action does not become frustrated by any act of a party, pending the hearing of the proceeding. This is really the reason *d'être* for an interim order, be it under any statute. At the invitation of Mr. Ganguli, I have anxiously perused the provisions of sub-section (2) of Section 30 and I find nothing therein, which makes a radical departure from the aforesaid established general principle of law and the law laid

down by the two judgments of our High Court in *The Premier Automobiles* (supra) and *Kirloskar Oil Engines Ltd.* (supra) The only departure, if any, discernible is that the Labour Court has been given power to pass even a mandatory order of withdrawing temporarily the practice complained of which is an issue in the proceeding, which though available to a Civil Court, is exercised, only in extremely rare cases.

14. Before concluding this judgment, I must refer to another aspect of the matter, to which my attention was drawn by Mr. Singh. That it is the practice of the Court exercising jurisdiction under the Act of passing, lightly, *ex parte* orders with serious consequences. Section 30 of the Act, in term, does not empower either the Industrial or Labour Court to make any *ex parte* order. However, the provision appended to sub-section (2) of Section 30 gives an indication that an interim order may, perhaps, be made even *ex parte* and that it may be reviewed on an application made by the aggrieved party. While I am not willing to accede to the argument that there is no power to grant an *ex parte* interim order, I have to point out that it is necessary to remember that an *ex parte* order should be the exception and not the rule, the Court should insist upon the party likely to be affected by the order being given notice, however short, If this is done as a matter of prudent practice, then the Court would be in a better position to appreciate the consequences of an *ad interim* order and decide whether an *ad interim* order needs to be made at all. It is possible that the party given notice might come before the Court, and ask for time to be able to show cause properly. Nothing prevents the Court from putting such party to terms and

thereafter taking up the application for interim relief for hearing. Shooting first, and asking questions later, may be sound practice in the Wild West, but is hardly so in a Court of Law. The practice of issuing ad interim order, ex parte, as a rule, and then repeatedly postponing applications for vacating the order, is neither just, nor equitable. Instead of rendering justice, it causes serious prejudice, hardship and injustice to parties.”

7. The learned Advocate for the petitioners places reliance upon the decision of the learned Division Bench of this Court in the matter of Nashik Merchants' Co-operative Bank Ltd., and another Vs. Madhukar Bhaurao Hingmire and another [2011(6) Mh.L.J. 567 = 2011(3) CLR 192], wherein it was concluded in paragraph No.7 as under :-

“7. Per contra, it is submitted by Mr. Topkar, learned counsel appearing for the respondents, that the issue in Writ Petition No. 6041 of 2007 was as regards the termination of the employee concerned therein and not the transfer and in view of the said fact situation, the learned single Judge had directed the preliminary issue to be framed and a decision rendered thereon before the relief of mandatory order by way of reinstatement could be granted. However, the learned counsel would submit that in the instant case the issue is as to whether the respondents could at all be transferred in view of the fact that they were not informed at the time of their appointment that they could be transferred out of the State and it is in the said

context that the interim reliefs were granted by the Industrial Court and have been, according to the learned counsel, rightly confirmed by this Court while dismissing the writ petitions.”

8. The learned Advocate for the respondent/employee submits that he is willing to lead evidence and establish his status as a workman. The ad-interim protection granted may be continued and the parties could lead evidence on the objection raised by the petitioner.

9. This Court has concluded in the matter of Chandrashekhar Chintaman Vaidya Vs. National Organic Chemical, [2010 (2) CLR 121] that the salary package of an employee is not a decisive factor while deciding whether a person is a workman or not. It is the nature of his duties and his job profile, which is to be considered. The salary package can be an additional factor.

10. The learned Advocate for the petitioners submits that the petitioners desire that the view taken by the learned Division Bench in Nashik Merchant's case (supra) could be followed.

11. As such, this petition is disposed off. The Industrial Court

shall frame the following issue :-

“Whether the respondent/Management proves that the complainant is not a workman u/s 2(s) of the I.D.Act and is not an employee u/s 3(5) of the MRTU and PULP Act, 1971.”

12. The litigating sides are at liberty to produce relevant documents in support of their respective stand and lead oral evidence on the above stated issue.

13. Akin to the direction in paragraph No.7(iv) in the matter of Nashik Merchants (supra), if the Industrial Court comes to a conclusion that the complainant is not a workman, the interim relief granted to him vide the impugned order, would stand vacated as the ULP complaint would then stand dismissed. However, if the Industrial Court concludes that the complainant is a workman, the interim relief would continue subject to the remedies available in Law to the petitioners, for which all contentions are kept open.

14. The Industrial Court shall endeavour to decide the said issue as expeditiously as possible and in any case on or before 31/03/2020. The litigating sides would extend their co-operation to enable the Industrial Court to decide the said aspect within the time

frame.

15. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)