

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

WRIT PETITION NO.10173 OF 2019

AURANGABAD MAJDOOR UNION THROUGH ITS GENERAL SECRETARY
AND OTHERS
VERSUS
M/S EAST WEST SEEDS PVT LTD AND OTHERS

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Advocate for the Petitioners : Shri T.K.Prabhakaran with Shri P.V.Barde
h/f Shri Kulkarni Ashutosh S.

Advocate for Respondent 1 : Shri Marlapalle Yugant R.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 19th August, 2019

Per Court:

1 By this writ petition, the Petitioners and individual 41 workers have sought to challenge the interlocutory order passed by the Industrial Tribunal, Aurangabad dated 22.07.2019 by which, the application seeking interim relief exhibit U/11 in Reference (IT) No.9/2018, has been rejected.

2 The learned advocate for the petitioners has submitted as under :-

- (a) These 41 workers had earlier resorted to ULP complaints before the Industrial Court in which, it was prayed that the industry in which they were deployed, should not engage in

unfair labour practices under Schedule II and Schedule IV of the MRTU & PULP Act, 1971 and should not interfere in their formation of the Union and Union activities.

- (b) These petitioners were also before this Court earlier in Writ Petition No.12497/2017 which was disposed off by order dated 05.04.2019 by issuing certain directions after Civil Application No.3244/2019 was filed.
- (c) Out of 41 workers before the Industrial Tribunal in the reference case, serial nos.1 to 21 at page 32 of the petition paper book are not in employment and they are already before the Labour Court in reference cases in relation to their alleged termination.
- (d) In fact, these workers at serial nos.1 to 21 have not been terminated by the contractor. However, under a legal advise, they had raised an industrial dispute under Section 2(A) of the Industrial Disputes Act, 1947 and the reference cases are, therefore, pending before the Labour Court.
- (e) These 21 workers have decided to withdraw the reference cases from the Labour Court as they were filed under an inappropriate advise and would continue to prosecute the present reference proceedings in which all 41 workers have sought employment and regularization with the principal

employer on the ground that the contractor was sham and bogus and the documents pertaining to the principal employer and the contractor were a camouflage.

- (f) As on date, to the extent of the prayer for interim protection during the pendency of the reference case before the Industrial Tribunal, relief is being sought to the extent of serial nos.22 to 41 set out in the chart at pages 32 and 33 of the petition paper book.
- (g) Though all these workers are not in employment since 01.01.2017 to the extent of the worker at serial no.1, 01.06.2017 to the extent of serial nos.2 to 14, 04.08.2018 to the extent of serial nos.15 to 21, 25.12.2018 to the extent of serial nos.22 to 27 and 30.01.2019 to the extent of serial nos.28 to 41, the workers at serial nos.22 to 27 and 28 to 41 (20 workers) have been paid their wages in view of the directions of this Court dated 05.04.2019 while disposing off Writ Petition No.12497/2017.
- (h) Since the industrial dispute raised by the petitioners was admitted in conciliation on 08.08.2018, these 20 workers, who have been in employment on the said date, need to be protected until the reference case is decided.
- (i) The conciliation between the parties failed before the

Conciliation Officer, who submitted the failure report on 28.09.2018 and the appropriate Government has passed the reference order on 03.10.2018 thereby, referring the dispute to the Industrial Tribunal. The reference case has also been registered in 2018 itself when these 20 workers were in employment.

3 The learned advocate appearing on behalf of the principal employer submits as under :-

- (a) The issue raised in this petition is restricted to seeking interim relief.
- (b) A litigant has to approach the court with clean hands while seeking interim relief as it is an equitable relief that is to be granted.
- (c) Voluminous documents produced by the petitioners before the Industrial Tribunal are bogus documents and they are manufactured by the petitioner in order to mislead the Industrial Tribunal.
- (d) Some documents have been pointed out to indicate the fraud allegedly played by the petitioners.
- (d) None of the petitioners are in employment and the principal employer has paid them the wages only in view of the order

of this court dated 05.04.2019 by which, the wages were directed to be paid till 31.07.2019 and the protection was granted until then.

- (e) In fact, the salary for the month of January, 2019 has been paid twice, though the said amount can be adjusted in view of two months wages deposited by the management lying in the Industrial Tribunal.
- (f) None of these 20 workers are in employment from 30.01.2019 and in the event, they desire to avail of any remedy as may be permissible in law, they may do so.
- (g) A litigant approaching the court, on the basis of fabricated documents, should not be granted any relief, much less interim protection.
- (h) The documents placed before the Industrial Tribunal would now be considered at the time of recording of oral evidence and further fabrication can be exposed.
- (i) Granting any relief of continuing such contract labourers in the service of respondent no.1 would amount to foisting unnecessary burden including financial liability on the principal employer.
- (j) The contract labourers, who are not in employment from 30.01.2019, were transferred by their contractor to a different

location based on the terms of the contract between the contractor and the contract labourers.

(k) No work can be allotted to these contract labourers today.

4 The learned advocate for the petitioners adds, in rebuttal, that the payment for the month of January, 2019, which can be said to have been double payment, can be adjusted as against the amounts still lying with the Industrial Tribunal with reference to those workers, who may have received double payment.

5 The learned advocate for the petitioners further submits that the point that is being canvassed in the reference proceedings to the extent of the interim relief application is that the workers, who are parties to the conciliation proceedings, have certain protection in view of Section 33 of the Industrial Disputes Act, 1947. That protection cannot be taken away by rejection of the interim relief application. If they have been in employment, in whichever manner, as on the date of the admission of the dispute in conciliation and seven days after the failure of the conciliation, such protection under Section 33 would continue till the reference case is decided.

6 Though the learned advocate for the petitioners has submitted that the issue of whether, the documents are fabricated or not, need not be gone into at an interlocutory stage, I am of the view that the

conduct of the litigants before the court is as important as the grant of equitable relief. The Honourable Supreme Court, in the matters of *Kishore Samrite v/s State of Uttar Pradesh, (2013) 2 SCC 398* and *Bhaskar Laxman Jadhav and others vs. Karamveer Kakasaheb Wagh Education Society and others, (2013) 11 SCC 531*, has crystallized the law that a litigant, who plays mischief with the court and attempts to gain advantage by playing mischief, should be deprived of relief even if he may have a good case on merits.

7 The litigating sides, both alleged against each other, that the documents have been fabricated. The Industrial Tribunal has recorded in paragraph 17 that voluminous documents filed by the Second Party Union/ Workmen and the First Party, appear to be fabricated documents. The Industrial Tribunal has, prima facie, observed that both the sides seem to have resorted to creation of documents.

8 By way of an example, respondent no.1/ management has placed before this Court two compilations. One compilation contains about 454 pages filed by the petitioners. The documents at page nos.10, 11, 12 and similar such documents upto page no.36 and at page nos.366, 370, 376 and 385, are pointed out, which prima facie, do appear to be fabricated. However, this aspect ought to be left to the Tribunal to consider on the basis of oral evidence so as to crystallize as to whether, these documents have been fabricated.

9 The issue is as to whether, these 20 contract labourers, who claim to be employed on manufacturing activities of the principal employer, should be granted protection that was temporarily granted by this Court by order dated 05.04.2019. I have passed the order on 05.04.2019 on the basis that the Union was espousing the cause of such members. I am not going into the aspect of their membership receipts indicating that they became members of the said Union in May, 2019.

10 I had granted wages to such workers upto 31.07.2019 in view of the contention that these workers were shifted out of the deployment with the principal employer because of the pendency of the reference case and they were transferred by their respective contractors since there was no work available. I had, therefore, directed the Industrial Tribunal to decide the pending application for interim relief filed by the workers, after the pleadings are complete, on or before 31.07.2019. Accordingly, the impugned order has been passed and Exhibit U/11 seeking interim protection has been rejected.

11 The pending dispute before the Industrial Tribunal is quite peculiar. It does not involve a demand for wage revision by permanent workers of the employer. It involves the issue as to whether, the principal employer is the employer or whether, the contractor would be the actual employer of the said workers. When such a dispute is pending, the court necessarily has to be cautious in granting interim relief for the fear of

causing injustice to one party while endeavouring to grant an equitable relief to the other party.

12 All the workers covered by the reference case are out of employment insofar as the principal employer in this case is concerned. About 15 workers are not in employment for more than two years and the other workers are not in employment since more than one year. In this backdrop, granting reinstatement or employment to these workers as an interim measure, is likely to cause injustice to the principal employer and at the same time, would amount to granting wages to these workers, who are not deployed with the principal employer from the dates referred to above.

13 The learned advocate for the petitioners has strenuously canvassed that they would be entitled to the protection of Section 33 of the Industrial Disputes Act, 1947. The learned advocate for the principal employer has countered the said submission by stating that Section 33 would not apply to the contract labourers vis-a-vis the principal employer.

14 In my view, if the petitioners/ workmen are of the view that they are entitled to the protection under Section 33 and that the principal employer has allegedly violated the provisions under Section 33, they would naturally be at liberty to avail of a remedy as may be permissible in law. Since they are out of employment for about 12 months to 24 months, keeping in view the observations at a prima facie stage made by the

Industrial Tribunal, I do not deem it appropriate to grant the relief of payment of wages without work or reinstatement, which would amount to foisting these workers on the principal employer. I am not exercising discretion in favour of these petitioners in view of the above observations coupled with the fact that prima facie, it appears, on the basis of the documents which were cited before me and referred to in the foregoing paragraphs, that there has been fabrication of documents, prima facie, at the instance of the Union/ workers.

15 In the light of the above, this Writ Petition is disposed off.

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(RAVINDRA V. GHUGE, J.)