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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2138 OF 2019**

Municipal Corporation of Gr. Mumbai
and Ors.

.....Petitioner

V/s.

Mr. Sunil Nivrutti Bhandare and another

.....Respondents

Mr. R. V. Govilkar with Mr. Vinod Mahadik for the Petitioner
Ms. Shilpa Bhatia for respondent no. 1

CORAM : NITIN W. SAMBRE, J.

DATE : JUNE 24, 2019.

P.C.

Heard.

2 Respondents filed complaint (ULP) No. 179 of 2018 alleging that petitioners have indulged into unfair labour practice and conducted themselves contrary to Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It is the case of the respondents that one of them is a specially abled

person who has joined services with the petitioner on 18/10/2011 and 01/12/2011. The nature of duties which were entrusted to the respondents were collection and keeping account of cash, to work as assistant in X-ray Department etc. According to respondents they were required to work under the provisions of the head clerk. According to the petitioner, monthly salary of Rs. 7000/- was paid to them.

3 According to respondents, benefits which are given to similarly placed persons such as leave, festival and national holidays, bonus, provident fund, medical facilities etc. are not provided to respondents. According to respondents in view of above, since the respondents were not paid their salary for period from October 2015 to February 2018, they were constrained to file complaint in question.

4 Complaint was registered by petitioner by filing written statement/reply. A prayer for interim relief was taken out by the respondents which came to be allowed by the Industrial Court by its

order dated 13/11/2018 which is impugned in this petition which reads thus.

“ORDER

- 1. Application below Exh. U-2 is partly allowed.*
- 2. It is held and declared that, the respondent Nos. 3, 4 and 6 indulged into unfair labour practice under Item 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971.*
- 3. The Respondent No. 3 is hereby directed to pay unpaid wages of Rs. 1,98,500/- to each complainant employee for the period October 2015 to 10.02.2018 within 2 months from the date of this order.*
- 4. The Respondent Nos. 4 to 6 are directed to ensure that, the order passed by this Court shall be implemented within two (2) months from the date of this order”.*

5 While questioning the aforesaid order, the learned counsel for the petitioner-employer submits that there is serious dispute about the employer-employee relationship in the matter in question. According to him, respondents were not appointed after following

due process of law. According to him, donations offered by the patient or their relatives or visitors are collected in a donation box and a special corpus was formed. Out of the said corpus, the salaries were paid to the respondents-employees. As such, according to him, the claim that respondents are entitled for the benefit at par with other employees cannot be considered as the appointment of the respondents was not by the Corporation. A further submission is, at interim stage, declaration given by the learned Court below to the extent of petitioners indulging into unfair labour practice under item 9 & 10 of Schedule IV of the Act is also not sustainable for want of analysis of material in support thereof. The submissions are order impugned is liable to be quashed and set aside.

6 *Per contra* the learned counsel for respondents-employees support the order impugned passed by the learned Industrial Court and submits that the evidence of the respective parties are appreciated in the backdrop of pleadings brought on record and detail findings are recorded. According to the learned counsel, the order of payment of arrears of wages is very much justifiable as

there is material to that effect on record and that being so, the petition is liable to be dismissed.

7 Considered submissions.

8 Respondents-employees through their oral evidence established that they were appointed as is claimed and have worked in the hospital. Payment of their wages of Rs. 7000/- per month is also established based on material evidence to that effect brought on record. Though the petitioner has on one hand denied the employer-employee relationship but in a later part, pleading of the petitioner that respondents were paid honorarium from the amount received in the form of donation or the fees collected from the patients cannot be ignored.

9 The said material is formed to be a basis for inferring *prima facie* employer-employee relationship and the working of the respondents on wages/honorarium at Rs. 7000/-.

10 Sufficient material brought on record before the learned Industrial Court to infer that respondents continue to work at wages of Rs. 7,000/- per month and such wages are not paid by the petitioner from October 2015 to 10th February, 2018.

11 That being so, the finding recorded by the learned Industrial Court to the extent of directing the petitioner to pay unpaid wages of Rs. 1,98,500/- to each of the complainant/respondent herein for a period from October 2015 to 10th February, 2018, does not warrant any interference.

12 That being so, in my opinion, no case for interference in supervisory jurisdiction is made out. Petition fails, dismissed.

[NITIN W. SAMBRE, J.]