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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2373 OF 2019

Godrej & Boyce Manufacturing Company
Limited

.. Petitioner

Vs.

Ravindra A. Chabukswar

.. Respondent

WITH

WRIT PETITION NO.2374 OF 2019

Godrej & Boyce Manufacturing Company
Limited

.. Petitioner

Vs.

Rameshwar P. Gawade

.. Respondent

WITH

WRIT PETITION(ST)NO.5313 OF 2019

Godrej & Boyce Manufacturing Company
Limited

.. Petitioner

Vs.

Shrikant M. Khambe

.. Respondent

Mr. Bharat Goyal a/w Atman Mehta I/b. Haresh Mehta & Co. for the
petitioner.

Mr. Nitin A. Kulkarni a/w Avinash R. Belge for the respondents.

CORAM : A.K. MENON, J.

DATED : 12TH MARCH, 2019.

P.C. :

1. These three petitions challenging the ad-interim and interim orders
passed on 6th May, 2018 and 25th January, 2019 respectively passed by

the Industrial Court, Satara in three complaints being Complaint (ULP)nos.24 of 2018, 25 of 2018 and 23 of 2018. By the impugned orders, transfer orders dated 2nd May, 2018 issued by the petitioners were stayed pending the disposal of the complaints. In the meanwhile, the petitioners were directed to allow the respondents to join duties at the petitioners plant at Shirwal.

2. The facts in brief are that the respondents were appointed as technical staff. For the purposes of this common order, the facts in Writ Petition (St)no.5313 of 2019 are being referred to. The complaint proceeds on the basis that since the petitioners were not providing certain benefits to employees, the respondent along with others, approached the union and submitted certain demands. The petitioners allegedly acted with vengeance and transferred the respondent to Hyderabad with effect from 12th May, 2018. That the duties being performed by the respondent at Shirwal were not required at Hyderabad and that the transfer order was only with an intention of victimizing the respondent and in order to control the union related activities undertaken by the respondent and also to discourage other members of the union from pursuing union activities.
3. Amongst others, the contention of the respondent is that he is the only

responsible member of his family and the family which would suffer is his wife being pregnant and his son having required to educate in his station. It is also the respondent's case that his services are not required at Hyderabad yet he is being transferred deliberately with a view to control his union activities and out of vengeance. It is on this basis that the complaint came to be filed on behalf of the petitioners.

4. Mr. Goyal, the learned counsel submitted that the letters of appointment of the respondent and the respondents in the Company Petition clearly provided for transfer of services and tour entitlement under which the respondent was liable to be transferred to any of the offices of the Division in India as per business exigencies and that the employee would not be eligible for any additional payments on that count. He therefore submitted that the basis of the complaint itself was unjustified and no case of unfair labour practices under items 3, 5, 9 and 10 of Schedule IV of the MRTU & PULP Act has been made out.
5. Mr. Goyal invited my attention to the fact that the ad-interim order of status quo came to be passed on 6th May, 2018 which was a Sunday without hearing the petitioner. Therefore the petitioner had no opportunity of meeting the respondents case. The order of status quo came to be passed after the transfer order was issued. The transfer

order was issued on 2nd May, 2018 whereas the order of status quo was passed on 6th May, 2018. He submitted that the respondent was a member of the management team and was engaged in activities which would take him out of the ambit of the definition of workman under section 2(s). He submitted that the nature and scope of duties did not entitle the respondent to claim any relief under the MRTU & PULP Act.

6. According to Mr. Goyal, the petitioner had acted bonafide and in the interest of its business since the organizational structure and the petitioners provided for various job responsibilities in 'Bands' such as K, A, O, P & T bands under the leadership of a Senior Vice President. The respondents fall within the 'K' Band category which was required to carry out jobs in relation to daily work of management in co-ordination with third party agency supervisors. He contended that the petitioner was inter alia engaged in manufacture of items at Shirwal plant and in a division known "Interio" and nature of duties were of a Senior Technical Staff Associate. The service function is said to be critical and the respondent was required to render services at Hyderabad branch for a period of two years from 2nd May, 2018 the respondent was directed to join on 12th May, 2018 but he failed and neglected to do so but instead approached the Industrial Court. The other respondents were therefore required to serve at Chennai and

Ahmedabad. Mr. Goyal stressed upon the fact that the notice of filing the complaint was received on 5th May, 2018 at 11.00 a.m. calling upon the petitioner to appear on the same date, however, notice being short, the petitioner's representative appeared but the Court was not in service and on that date no hearing took place on 5th May but on 6th May, 2018 which was a Sunday, the Advocate for the petitioner at Satara received a call from the Industrial Court stating that the matter would be heard on Sunday on that day the order of status quo came to be passed. He therefore submitted that no proper opportunity had been given to the petitioner. Mr. Goyal, however, conceded that subsequent to the order of status quo a hearing was granted by the Industrial Court and after hearing the parties interim relief came to be granted by the impugned order dated 25th January, 2019. Mr. Goyal relied upon the decisions of this Court in the case of *Wimco Ltd. V/s. Wimco Employees Union and anr.*¹ in which this Court had found that there was no cause for interference by the Industrial Court with an order of transfer which was made in accordance with terms and conditions of service. Making reference to the decision of the Supreme Court in *Mahesh Kumar K. Parmar & ors. v/s. S.I.G. of Police and ors.*² Mr. Goyal submitted that there was no vesting in the respondent in the present case to insist that he should be continued at

¹ (2001) 3 CLR 803

² 2002 II CLR 27

the plant in Shirwal because the job was transferable and the respondent was bound to attend the duties at the new location. He submitted that the impugned order deserves to be quashed and set aside.

7. The petition has been opposed on behalf of the respondent by filing an affidavit dated 26th February, 2019 in which the respondent has submitted that being an interlocutory order it does not call for interference and that the power of transfer has been exercised only to victimize him and that there is nothing on record to justify the transfer as one resulting from business exigencies. It is submitted that although the respondent had not joined with effect from 2nd May, 2018 the petitioner had not complained that his failure to join at a place of transfer, the after sale service functions had hampered or that the petitioner's business suffered. Mr. Kulkarni submitted that a charter of demand was served by the Union in 2016 and the matter was pending for conciliation. The petitioner has contended that the respondents were not workmen and at the petitioner's instance a preliminary issue has been framed. The petitioner has also examined two witnesses and the third witness is presently under cross examination and the matter is scheduled to be heard on 22nd March, 2019. The order of status quo was granted after notice to the

petitioners and thereafter the order came to be modified on 16th March, 2018 directing the petitioners not to terminate the services without following due process of law and that the complaint filed is legitimate and the passing of the order on 6th May, 2018 it was necessary since the Industrial Court was on vacation from 7th May, 2018. It is due to the fact that the Member of the Industrial Court was on leave on 5th May, 2018 that the matter had been taken on 6th May, 2018. Furthermore, the order was taken up on 6th May, 2018 with the consent of the petitioner. It is contended that the petitioners have committed contempt of order passed by the Industrial Court. They have failed to comply the order directing the petitioner to allow the respondent to work at Shirwal. Mr. Kulkarni therefore supported the impugned order.

8. I have heard the learned counsel for the parties at length and have considered the rival submissions. In my view, the order being an interim order and the fact that the preliminary issue has already been framed and awaits a decision and the fact that the parties are already in the process of recording of evidence, no interference is called for. The dispute between the parties also involves a question of whether or not the respondents are workmen in view of the fact that according to the petitioner members of the 'K' Band are carrying out tasks which

are supervisory in nature. If this issue is decided in favour of the petitioners, the complaint cannot survive since the parties have already made substantial progress in the matter before the Industrial Court. It would be sufficient to direct the Industrial Court at Satara to hear the complaints without granting any adjournments to either party and in time bound manner and decide the preliminary issue within a period of two months from today.

9. Writ petitions are disposed with the aforesaid directions.

After the order is passed, it is stated across the bar that the Industrial Court at Satara is presently vacant and that the in-charge Court is stated to be Pune. In that event, liberty is granted to the petitioner to apply before that Court. In the event the application is made, the Court will consider the application expeditiously and proceed with the matter without granting any unnecessary adjournments.

(A.K.MENON,J.)