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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4582 OF 2019**

The Municipal Union

.....Petitioner

V/s.

The Municipal Corp. of Gr. Mumbai and others Respondents

Ms. Neeta Karnik for the Petitioner

Mr. Yashodeep Deshmukh a/w Mr. Vinod Mahadik for respondent-
MCGM

CORAM : NITIN W. SAMBRE, J.

DATE : JUNE 24, 2019.

P.C.

Complaint under Section 28 r/w Item 9 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('the Act' for short) being Complaint (ULP) No. 157 of 2018, alongwith an application under Sub-Section 2 of Section 30 of the Act was preferred before the Industrial Court, Mumbai by the petitioner-Union. Ad-interim relief on 09/05/2018 injuncting respondent-employer from transferring the employees mentioned in list, from Shop and Establishment Department to any

other Department came to be passed. The said application for injunction/interim relief was rejected on merit on 03/07/2018 which order at the behest of the petitioner was set aside in Writ Petition No. 7662 of 2018 on 20/07/2018 thereby restoring Ad-interim order dated 09/05/2018.

2 Pursuant to the order of remand passed by this Court referred above, on 20/07/2018, an application for injunction was required to be argued afresh by the petitioner, however, petitioner had chosen to prefer an application for amendment of the complaint at Exhibit U-33, seeking permission to incorporate the duties of employees mentioned in Annexure 'B' to the complaint pursuant to the provisions of Maharashtra Shops and Establishments Act, 1948. During the pendency of the said application for amendment, application Exhibit U-35 came to be moved praying direction to decide the amendment application i.e. Exhibit U-33 before the decision on application for grant of injunction i.e. Exhibit U-2. The said application came to be rejected vide order dated 28/02/2019. As such, this petition.

3 The submissions of Ms. Karnik are, the Court should first decide the amendment application so as to understand where the petitioner stand as according to her, to decide an issue of workman under Section 2(s) of the Industrial Disputes Act, pleadings in the amendment application are very much required to be considered. According to her, great prejudice will be caused to the petitioner in case if the application Exhibit U-2 for grant of interim relief is decided prior to application for amendment Exhibit U-33. She would then urge that even the procedure contemplates decision of amendment application first.

4 The learned counsel for respondent-corporation supports the order impugned.

5 In the order impugned, the learned Industrial Court while rejecting application Exhibit U-35 seeking decision on application for amendment Exhibit U-33 has made following observations:

“8. While deciding the interim relief application as well as the complaint (Exhibit U-1) the Court is required to take into

consideration every aspect, every evidence available on record. If the status of members of the complainant union is in dispute, the court will certainly take into consideration the duty list prepared by the respondent corporation as well as the duty list which is available under the Shops & Establishment Act and Rules framed thereunder. Even if, there is no pleading in this regard, the Court cannot ignore this aspect”.

6 The law on the pleadings is quite settled as party need not to plead legal provisions. The duty chart described under the provisions of Maharashtra Shops and Establishments Act which is sought to be inserted through an amendment to the complaint is provided statutorily and it is always open for the petitioner to rely on the said provisions at the time of hearing of the interim relief application. As such, no illegality could be noticed in the order impugned.

7 Petition fails, dismissed.

[NITIN W. SAMBRE, J.]