

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

WRIT PETITION NO.12424 OF 2019

Pune Zilha Kamgar Sangh	...	Petitioner
Versus		
State of Maharashtra		
And Others	...	Respondents

.....

Mr. Nitin Kulkarni a/w Mr. Avinash Ram Belge for the Petitioner.
Mr. A.P. Vanarse, AGP for Respondent Nos.1 and 2-State.
Mr. K.M. Naik, Senior Counsel a/w Mr. Varun Joshi, Mr. Sujeet Salkar and Shruti Padsalgikar-Joshi i/b Chetan Alai for Respondent No.3.

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CORAM : S.C. GUPTE, J.

DATE : 13 DECEMBER 2019

P. C. :

. Heard learned Counsel for the parties. **Rule.** Rule taken up for hearing forthwith with consent.

2 This writ petition challenges an order passed by the Additional Commissioner of Labour, Pune, who is the competent authority under Section 25M of the Industrial Disputes Act 1947. The order has been passed on an application of Respondent No.3 herein seeking permission for layoff of seven days of every month upto December 2020. The grievance of the Petitioner herein, who is a registered trade union having a representative capacity for workmen of

Respondent No.3, is that the order permitting Respondent No.3 to declare layoff for every seven days in a month has been passed without affording adequate opportunity to the Petitioner herein to show cause to it.

3 Wherever an application is made for permission for layoff under sub-section (1) or sub-section (3) of subsection 25-M of the Industrial Disputes Act, the appropriate government or specified authority, as the case may be, has to give a reasonable opportunity of being heard whilst assessing the genuineness or adequacy of the reasons for such lay off *inter alia* to workmen affected by it. It has to take into account the interest of workmen and all other relevant factors before passing an order, recording its reasons in writing, granting or refusing to grant such permission. It is submitted that the authority in the present case has not given such adequate opportunity to the Petitioner union. It is particularly submitted that the application of the employer was on the basis of its financial circumstances. The documents referred to by the company in this behalf were never disclosed to the Petitioner. This submission is supported by a document placed on record in the form of a communication addressed by the Petitioner to the Additional Commissioner of Labour on 1 October 2019.

4 On these facts, the mandate of sub-section (4) of Section 25-M is clearly not satisfied. The workmen in question had no adequate opportunity of being heard or to show cause to the proposed layoff

for which permission was sought from Additional Commissioner. Mr. Naik, learned Senior Counsel appearing for Respondent No.3, relies on sub-section (7) of Section 25-M. Sub-section (7) empowers the appropriate government or specified authority, as the case may be, either of its own motion or on an application made either by the employer or by any workman, to review its order granting or refusing to grant permission under sub-section (4) or to refer the matter, or cause it to be referred, to a tribunal for adjudication. Learned Counsel submits that having regard to the grievance of the workmen in the present case, this particular course of action is open to them, namely, to appeal for a review or reference, as the case may be, under sub-section (7). Sub-section (7) is to be invoked when an order is duly passed under sub-section (4) of Section 25-M. If the order is passed without affording an effective opportunity to show cause to the workmen affected by it, the mandate of sub-section (4) is not satisfied and the order passed on the employer's application for layoff cannot be termed as a duly passed order. In that case, there is no question of applying for review of the order. The order is clearly passed in breach of law; it is passed without observing the principles of natural justice; and it must go.

5 Accordingly, the impugned order passed by Additional Labour Commissioner at Pune is quashed and set aside; and the application of Respondent No.3 for permission to layoff is remanded to the Additional Commissioner for a fresh hearing in accordance with law and after taking into account the observations made herein. This

court is informed that Respondent No.3 has already declared layoff in terms of the order for the month of December 2019. The Additional Commissioner is directed to hear the parties in accordance with this order, ensuring that adequate opportunity is given to the Petitioner union for showing cause to the proposed order. The Additional Commissioner is requested to dispose of the application as expeditiously as possible and preferably by 31 January 2020. Till the order is passed by the Additional Commissioner, no further layoff shall be declared by Respondent No.3. With a view to expedite the matter, Respondent No.3 shall furnish copies of whatever documents have been requisitioned by the Petitioner union in terms of its requisition dated 1 October 2019. It is made clear that layoffs declared in the past shall abide by and be the subject to the final order that may be passed by the Additional Commissioner on remand.

6 The writ petition is disposed of accordingly.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

Digitally signed
by Rajesh V.
Chittewan
Date: 2020.01.14
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