

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

**WRIT PETITION NO. 444 OF 2020
AND
WRIT PETITION NO. 451 OF 2020**

Emerson Climate Technologies (India) Pvt.Ltd.	...Petitioner
vs.	
Bharatiya Kamgar Karmachari Mahasangh	...Respondent

Mr.Varun Joshi with Chetan Alai and Shruti Padsalgikar-Joshi for Petitioner.
Mr.Nilesh S. Patil for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 24 JANUARY 2020

P.C. :

Heard learned Counsel for the parties.

2 This writ petition challenges an order passed by the Industrial Court at Satara on a reference made to it under the Industrial Disputes Act. The impugned order was passed on a miscellaneous application of the Petitioner herein (original first party in the reference) challenging the locus of the Respondent herein (original second party) to represent the workmen in the reference. By the impugned order, the Industrial Court rejected the application of the first party.

3 The reference was at the instance of the second party, who claimed to represent workmen of the first party, who were casual or temporary. The demand of the second party concerned regularization of service and permanency to be accorded to temporary workmen, who had worked for a period over 240 days in a year and according of benefits

available to the permanent workmen of the first party to them with retrospective effect. Whilst opposing the reference, the first party objected to representation of the workmen by the second party. Its case before the Industrial Court was that under the proviso to Sub-section (1) of Section 36 of the Industrial Disputes Act, no workman was entitled to be represented except by a recognised union, which in this case was one Engineering Shramik Sanghatana. The Industrial Court rejected the objection on the ground that the recognised union in the present case, namely, Engineering Shramik Sanghatana, was not representing temporary workmen of the first party. The court observed that the recognised union not being in a position to represent temporary workmen and the first party not agreeing to grant them monetary benefits, which they sought, the workmen had no option to approach the court without the recognised union.

4 No fault can be found with the impugned order of the Industrial Court. Section 36(1) of the Industrial Disputes Act entitles a workman or workmen, who is or are party to a dispute, to be represented in any proceeding under the Act *inter alia* by any trade union connected with, or any other workman/workmen employed in, the industry in which the workman/workmen is/are employed, upon being authorized in a manner as may be prescribed. Proviso to Sub-section (1) requires that where there is a recognised union for any undertaking, no workman in such undertaking shall be entitled to be represented in any proceeding (except proceedings relating to legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee) except by such recognised union. By its very nature, this stipulation contemplates that the recognised union must be in a position to represent the concerned workman or workmen, as the case may

be. In our case, the Industrial Court has come to a categorical conclusion that the recognised union was only of permanent workmen and it was not in a position to espouse the cause of temporary workmen, at whose instance the present reference was made. The Industrial Court has referred in this behalf to the settlement arrived at between Engineering Shramik Sanghatana, the recognised union of permanent workmen of the first party, and the first party, which *inter alia* made it clear that the union was representing permanent workmen working with the first party. There is nothing to show, and no material is produced by the first party before the Industrial Court or, indeed, before this court, that the recognised union was in a position to represent temporary workmen in the present case.

5 The claim of the temporary workmen in the present case is for permanency and according of the benefits of a settlement between the recognised union and the management to them with retrospective effect. As against this, the concerned settlement itself contemplates (para 2.2 of the memorandum of settlement) that the settlement shall not be applicable to casual, badli, contractual or temporary workmen etc. or contract labour employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. It further contemplates (para 2.3.1 of the memorandum) that workmen, who may be recruited and/or confirmed in future in the category of permanent workmen during the period of the settlement, would be employed on a different set of terms, conditions, benefits and privileges. If one has regard to these terms, not only is the recognised union not in a position to represent temporary workmen but that its interest is conflicting with that of the temporary workmen and in the premises, the impugned order of the Industrial Court clearly deserves to be sustained.

6 In the above view of the matter, there is no merit in the writ petition. The writ petition is dismissed.

7 It is agreed between learned Counsel for the parties that the companion petition, namely, Writ Petition No.451 of 2020, which arises out of a separate reference and a separate order, though on the same lines as the order discussed in the petition above, can be disposed of in terms of the same order as above. The rationale, as discussed above, also governs the controversy in this companion petition. Writ Petition No.451 of 2020 is also, accordingly, dismissed.

(S.C. GUPTE, J.)