

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.8 of 2010
IN
WRIT PETITION NO.1003 OF 1996**

Parke Davis India Limited	.. Appellant
Versus	
Suresh P. Kandu and ors	.. Respondents

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Mr. Ajit Kapadia with Pratik Salgaonkar i/b Salgaonkar & Co. for
the appellant.
None for the respondents.

**CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.**

DATED : 7th JANUARY, 2020.

ORDER :- (Per Smt.Bharati Dangre, J)

1 The original appellant in LPA No.8 of 2010 is M/s.Parke Davis India Limited, a Public Limited Company. The said company stood merged in Pfizer Limited and the cause title of the Appeal been amended in pursuant of an order passed in Civil Application, as on today it is Pfizer Limited which is prosecuting the present Appeal against its two employees i.e. respondent nos.1 and 2.

2 Complaint (ULP) No.539/1992 was filed by 18 workmen alleging unfair labour practices under Item Nos.5,6 and 9 of Schedule IV of the Maharashtra Recognition of trade unions and prevention of unfair labor laws practices Act 1971 (for short 'MRTU and PULP Act, 1971'). The complaint alleged that M/s.Parke Davis (India) Ltd, a pharmaceutical Company engaged in the manufacture of chemicals and life saving drugs had engaged the complainants for number of years as *Badli* workmen and in spite of their rendering continuous service to the company in various category as helpers, attendants, material handlers, process workers etc, they were denied the status of permanent employees, resulting in their exploitation and depriving them of the benefits of permanency including the wages and various allowances. It was also alleged that each of the complainant had to put in more than 240 days of continuous service and they are covered by the certified standing orders applicable to the company.

3 The Industrial Court, Maharashtra, Mumbai by order dated 19th December 1995 allowed the said complaint and declared that the respondent company has indulged in unfair labour practice under Item Nos.6 and 9 of Schedule IV of the MRTU and PULP Act and by way of affirmative action, the respondent Company was directed to seize and desist from engaging in the said unfair labour practice. The respondent was

directed to confirm all the complainants in service as permanent workmen with effect from the date they were actually provided work and the company was also directed to pay the difference between the wages paid to them and the wages to which the workmen were entitled on being made permanent with all allowances and monetary claims including the benefits of LTC, Medical Expenses, etc which are available to the permanent workmen. The Company was also directed to provide work to each of the complainants and treat them as permanent in service for all purposes.

4 Being aggrieved by the said verdict, M/s.Parke Davis (India) Ltd approached this Court by filing Writ Petition which was numbered as Writ Petition No.1003/96. Another Writ Petition no.6385/1996 was filed by some of the workmen assailing the judgment of the Industrial Court, on the pretext that certain reliefs which they had claimed have not been granted. During the pendency of the Writ Petition, out of the 18 original complainants, except two, settled their disputes with the company and the petition was therefore prosecuted only by two workmen, who are respondent nos.1 and 2 before us i.e. Suresh Kandu and Savita Patil.

5 The learned Single Judge decided both the writ petitions on 18th January 2008, thereby recording that the

Industrial Court has rightly concluded on the basis of the evidence led before it that the workmen were employed to do the work of perennial nature regularly and they were employed for five days in a week almost throughout the year and not merely when a temporary vacancy arose. The learned Single Judge therefore returned a finding that there is no finding of law in the impugned judgment, much less an error apparent on the face of record requiring interference under Article 227 of the Constitution of India. The contention of the workmen that the Labour Court dismissed the complaint with respect to Unfair labour practice committed under Item 5 of Schedule IV was also turned down by recording a finding that there is no evidence to indicate that there has been an unfair labour practice under the said item. However, the learned Single Judge recorded that perusal of the impugned order divulged that the Industrial Court mainly discussed as to whether the Company has committed unfair labour practice under Item No.6 of Schedule IV and there is no discussion regarding the unfair labour practice alleged under Item No.9 of Schedule IV and therefore, it was appropriate to remand the complaint for decision on the said aspect. Resultantly, the order of the Industrial Court declaring that the Company has committed an unfair labour practice under Item 6 of Schedule IV of the MRTU and PULP Act came to be upheld and so also the decision of the Industrial Court dismissing the complaint with respect of unfair labour practice under Item 5 of

Schedule IV and the petition of the workmen came to be dismissed. Finding substance in the contention of the petitioner company, the said petition was partly allowed and the complaint was remanded to the Industrial Court to decide whether the company is involved in unfair labour practice under Item 9 of Schedule IV. It was also directed by the learned Single Judge that the Industrial Court will decide the issue within a period of three weeks.

6 The Letters Patent Appeal is filed challenging the said order and the same was admitted on 15th June 2010.

When the Appeal appeared on board for final hearing before us, our attention was invited to a series of developments which transpired while the Appeal was pending for adjudication in this Court. On remand of the matter pursuant to an order passed by the learned Single Judge which is impugned in the present Appeal, the Industrial Court by order dated 7th April 2008 dismissed the complaint insofar as Item No.9 Schedule IV was concerned. The then existing company which was taken over by Pfizer Limited was directed to grant permanency with consequential benefits to the complainants including the petitioners in terms of order dated 19th December 1995 passed by the Industrial Court. Pfizer Ltd assailed the said order by filing a Writ Petition No.3026 of 2008 and by an order dated 15th January 2009, the said Writ Petition was allowed by setting aside

the direction of the Industrial Court insofar as granting of permanency with consequential benefits. Vide the earlier order dated 19th December 1995 the declaration of unfair labour practice under Item No.6 of Schedule IV was confirmed by this Court in Writ Petition No.1003/1996. The said order was passed without prejudice to the rights of the petitioner and with the liberty of availing remedy to adopt suitable proceedings in respect of the order of the Industrial Court dated 7th April 2008.

7 The two workmen who did not accept the settlement with their employer and who were prosecuting their complaint instituted Contempt Petition No.49 of 2011 being aggrieved by the non-compliance by the order passed by the Industrial Court dated 19th December 1995, which according to them, was confirmed in Writ Petition No.1003/1996 and they alleged that the petitioners were neither reinstated nor paid the back wages.

8 In response to the contempt proceedings, the appellant Company urged that the particular undertaking of Parke Davis which was a factory at Saki Naka in Mumbai where the petitioners were employed has been closed since long i.e. somewhere in the year 1997 and this event took place after the order was passed by the Industrial Court on 19th December 1995. It urged that all the workmen who were parties to the complaint ULP No.539/1992 except the two petitioners in the Contempt

Petition were paid their entire dues and the matter of reinstatement with back wages was fully settled with them. It was averred that even the contempt petitioners were offered their dues together with closure compensation but they refused to accept the same and rather insisted on reinstatement. It was submitted that Pfizer Limited has taken over the erstwhile company in terms of the scheme of amalgamation which was sanctioned by the Court on 7th February 2002 and the appointed date according to the said scheme was 1st December 2001. The scheme reflect that the undertaking which was taken over by the company covered "All the assets and properties of the transferor company as on the appointed date" i.e. 1st December 2001. The submission was therefore advanced that the undertaking of Parke Davis at Saki Naka was not in existence on the appointed date and therefore, it was not taken over by Pfizer Limited in pursuance of the scheme of amalgamation since it was already closed down and the property including the land was disposed of by Parke Davis prior to the scheme of amalgamation. The appellant before us therefore argued in the contempt petition that there is no question of fastening the liability of Parke Davis on Pfizer Limited to reinstate the contempt petitioners.

9 The learned Single Judge (S.C. Gupte, J) accepted the submission that on the effective date, which, in any event, was after the appointed date, the petitioner cannot be said to be an

employee of particular undertaking taken over by the transferee company, since the said undertaking of the transferor company was already closed in 1997 and the entire property, including the land, was disposed of fully in March 2001 and there was no obligation on the transferee company to employ the petitioner as its employee. The learned Single Judge also recorded that insofar as monetary liability is concerned, it was sought to be discharged upto the date of closure including the compensation being offered to the petitioners. Even at the hearing of the petition, an offer was made by the Company to pay the entire dues including closure compensation, it was declined by the counsel for petitioners.

10 In the backdrop of the said submission, the learned Single Judge (S.C. Gupte, J) on 4th May 2016 held that the order of reinstatement could not be enforced against Pfizer Limited and the Contempt Petition was dismissed.

11 The findings recorded in the order dated 4th May 2016 foreclose the issue before us and in spite of the fact that the two employees of the erstwhile Parke Davis (India) Ltd being ordered reinstatement and benefit of permanency by the Industrial Court by its order dated 18th December 1995, the said order has now become a *fate accompli* in light of the subsequent developments in the matter.

12 Resultantly, the Appeal filed by the appellant succeeds in the wake of the subsequent developments and the appellant cannot be directed to comply with the order passed by the Industrial Court directing reinstatement of respondent nos.1 and 2.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE