

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.13165 OF 2019**

The Bhatia General Hospital, Mumbai And Anr. ...Petitioners
vs
Mr. Hanmant Anandrao Raje And Ors. ...Respondents

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Mr. K.S. Bapat, i/b. Ms. Desai & Desai Asso., for the Petitioners.

Mr. S.C. Naidu, a/w. Mr. T.R. Yadav, for Respondent Nos. 1 to 6.

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CORAM : S.C. GUPTE, J.

DATED: 18 FEBRUARY, 2020

P.C. :

. This writ petition challenges an interim order passed by the Industrial Court at Mumbai under Section 30(2) of the MRTU & PULP Act, 1971 ("Act"). The complaint concerns benefits, such as LTA, medical benefits, leave encashment and annual increments to be granted to six employees of the Petitioner hospital, who are arraigned as Respondents to the present writ petition and who were complainants before the Industrial Court. The complaint was under Section 28, read with items 5, 9 and 10 of Schedule IV of the Act. The complainants are all permanent employees of the Petitioner hospital, who have been working since 1992. They were admittedly originally appointed as workmen and were granted benefits, accordingly, in terms of various

settlements entered into by the hospital with the union of employees. According to the Petitioner establishment, the complainants were promoted some time in 2009 to the managerial cadre but despite this promotion, benefits which were applicable to unionised workmen of the Petitioner hospital were by mistake extended to them.

2. By a letter dated 28 July 2018, the Petitioner granted leave and medical benefits to the complainants at par with other officers for future. By this means, benefits, such as leave, medical benefits, leave encashments and annual increments originally applicable to the complainants were withdrawn. The complainants' challenge is to this act on the part of the Petitioner hospital. They allege unfair labour practice under items 5, 9 and 10. On the interim application of the complainants (Exhibit U-2), by impugned order dated 18 February 2019, implementation of the communication of 6 August 2018 issued to the complainants by the Petitioner hospital was stayed, pending hearing and final disposal of the complaint. This order has been challenged in the present writ petition.

3. The Petitioners most certainly have an arguable prima facie case. Prima facie, the communication issued to them on 27 July 2019, whilst promoting them to the post of Supervisor – Medical Social Work with effect from 1 January 2009, indicates that besides the benefits referred to in the letter of 27 July 2009, all other terms and conditions were to remain the same as per the initial appointment letters. The complainants continued to work in these promoted posts till date. On 20 April 2017, there was re-designation of their posts, but the terms and

conditions of their employment remained unchanged. In the face of these facts, by the impugned communication of 28 July 2018 (wrongly mentioned as 8 August 2018 in the impugned order), the service benefits applicable to the complainants were sought to be changed by the hospital. It is prima facie difficult to believe that for over eight years, the Petitioner hospital continued to extend the alleged benefits to the complainants through oversight. Besides, the complaint is of 2018; two years have since passed. The impugned order is also of February 2018; one whole year has passed thereafter. In the premises, and considering the prima facie merits, it is in the interest of justice to direct the Industrial Court to dispose of the main complaint itself, which is very much ripe for hearing in any way, expeditiously rather than entertaining a challenge to the interim order at this stage. Besides, even if such challenge were to be entertained and the petition were to be admitted, it is not possible, in the circumstances, to stay the impugned order, which itself is a stay of the circular impugned as unfair labour practice in the original complaint.

4. Accordingly, the petition is disposed of by directing the Industrial Court at Mumbai to hear and dispose of Complaint (ULP) No.336 of 2018 expeditiously and preferably within a period of eight months from today. Both parties to appear before the Industrial Court on 24 February 2020 at 11.00 a.m. and produce an authenticated copy of this order.

5. The Industrial Court may, thereupon, fix the schedule of hearings and dispose of the complaint accordingly. The observations made in the order are for the purposes of considering the writ petition.

The Industrial Court may, whilst disposing of the complaint, consider the merits of the case independently of this order.

Smita
Gonsalves

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(S.C. GUPTE, J.)