

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

WRIT PETITION NO.9200 OF 2019

Sarva Shramik Sangh	...	Petitioner
Versus		
City Industrial Development Corporation Limited	...	Respondent

**ALONG WITH
WRIT PETITION NO.1194 OF 2019**

City and Industrial Development Corporation Limited		
And Others	...	Petitioners
Versus		
Sarva Shramik Sangh		
And Another	...	Respondent

.....

Mr. Sanjay Singhvi, Senior Advocate a/w Karishma Rao i/b K. Prassanna Kumar for the Petitioner in Writ Petition No.9200 of 2019 and the Respondent in Writ Petition No.1194 of 2019.
Mr. Yogendra Pendse for the Respondent in Writ Petition No.9200 of 2019 and the Petitioner in Writ Petition No.1194 of 2019.

.....

CORAM : S.C. GUPTE, J.

DATE : 17 JANUARY 2020

P. C. :

. These two writ petitions, which are in the nature of cross petitions, challenge an order passed by the Industrial Court at Thane on an interim application made in a complaint of unfair labour practice.

2 The Petitioner in Writ Petition No.9200 of 2019, who is the respondent in the companion writ petition (Writ Petition No.1194 of 2019), was the complainant before the Industrial Court. The complaint was in respect of wages paid to canteen workers (about nineteen of them), who were working in the canteen of the Respondent-CIDCO and who were originally appointed through a canteen contractor. Originally, the issue of regularization of services of these canteen workers was before the Industrial Tribunal at Thane in a reference made to it under the Industrial Disputes Act, 1947. At that stage, CIDCO stated before the industrial tribunal that there were no posts sanctioned in that behalf by the State Government. It was submitted that CIDCO being a Government company, only in the event the Government permitted absorption of concerned workmen in its services by sanctioning posts for such absorption, that CIDCO would be in a position to absorb these workmen. CIDCO, however, stated before the court that it would take necessary steps for absorption of the concerned workmen, if the Government sanctioned these posts. In these facts, the industrial tribunal directed CIDCO to take initiative to move the State Government for absorption of canteen workmen in its services. In the meantime, CIDCO was directed to ensure that the services of the concerned workmen were not terminated, except by following due process of law, and for a justifiable reason, even if, in the meantime, there was a change of the contractor; continuance of the concerned workmen was to be a normal rule for the contractors/agencies as well as CIDCO.

3 The present complaint was moved by the Petitioner union after it learnt that, in fact, for absorption of canteen workmen, it was not necessary for the State Government to sanction any posts, but that the management of CIDCO had the requisite authority to do so on its own. The industrial court, before which this complaint has been pending, proceeded to make an interlocutory order (below Exhibit U-2), declaring that *prima facie* CIDCO had engaged in unfair labour practice under Item 9 of Schedule IV of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971, and in redressal, the canteen contractor was directed to submit bills regarding wages of nineteen workmen mentioned in Annexure 'A' to the complaint to CIDCO and CIDCO was directed to pay these bills pending decision of the main complaint. CIDCO was also directed to pay to the concerned workmen special allowance as declared by the Government under the Minimum Wages Act from time to time on the wages paid to them from the date of the order and till the decision in the main application. This order has been challenged in the petitions herein, as noted above, by both CIDCO and the representative union.

4 After the matter is heard at some length, it is agreed between learned Counsel for the parties that both petitions may be disposed of in terms of the following order. It is, accordingly, ordered as follows :

- (i) The order passed by the Industrial Court at Thane shall be complied with without prejudice

to the rights and contentions of the parties during the pendency of Complaint (ULP) No.56 of 2017 ;

(ii) The Industrial Court is requested to dispose of the complaint as expeditiously as possible and preferably within a period of six months from the date this order is pointed out to the court. Both parties, to that end, may appear before the Industrial Court, when either may produce an authenticated copy of this order, whereafter the Industrial Court may fix a schedule of hearings and dispose of the complaint accordingly ;

(iii) It is made clear that the original award dated 23 December 2011, passed by the Industrial Court at Thane, in Reference IT No.39 of 2005 to the extent it holds that the employment in CIDCO being a public appointment, the appointment could be made only against sanctioned vacant posts, that is to say, posts sanctioned by the State Government, shall not be treated as a finding, which is *res-judicata* for the purposes of Complaint (ULP) No.56 of 2017 ;

(iv) It will, however, be open to CIDCO to contend before the Industrial Court in reply to the complaint that the sanctioning of posts is indeed a pre-requisite for appointment/s to be made under CIDCO ;

(v) All rights and contentions of both parties on the issue of sanction of posts are kept open, to be debated before the Industrial Court in the pending complaint ;

(vi) It is made clear that wages shall be paid to the workmen represented by the Petitioner-union on the seventh day of each succeeding month in accordance with the interim order of the Industrial Court dated 30 August 2017 irrespective of whether the canteen is operated or not or whether the workmen can be engaged for any work or not;

(vii) Both petitions are disposed of accordingly.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

Digitally signed by
Rajesh V.
Chittewan
Date: 2020.01.21
18:09:06 +0530