

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

WRIT PETITION NO. 12414 OF 2018

Municipal Mazdoor Union Mumbai & Anr. ...Petitioners
vs.
The Municipal Corporation of Greater Mumbai & Ors. ...Respondents

Ms.Neeta Karnik for Petitioners.
Mr.Rajesh Patil with Vinod Mahadik for Respondents.

CORAM : S.C. GUPTE, J.

DATE : 25 FEBRUARY 2020

PC. :

Heard learned Counsel for the parties.

2 This writ petition challenges two separate interlocutory orders passed on applications for interim relief filed by the Petitioner union. The first impugned order, i.e. order dated 14 September 2017, was passed in a complaint of unfair labour practice. The impugned order was passed below Exhibit U-2, which was for interim relief pending the complaint. The relief sought was for a temporary injunction restraining the Respondent corporation from reverting the employees represented by the complainant union to their original posts. The second order, based on the same complaint, was below Exhibits U-9 and UA-5, which were applications for similar interim relief, but by two different unions representing employees of the Respondent corporation. The second impugned order, which is a common order on these two applications, was passed on 5 October 2018.

3 The subject matter of the complaint concerns about 154

employees working for the Respondent corporation as Inspectors. They were originally appointed as Clerks. Vide an office order No. 857 passed on 8 March 2017, they were appointed as Inspectors in the Assessment and Collection Department of the Respondent corporation, originally designated as Octroi Department, on an ad-hoc basis. After the Central Government came up with the Goods and Services Tax (GST) with effect from 1 July 2017 and in pursuance of which the Respondent corporation stopped collecting octroi, the corporation took a decision to revert these Inspectors to their original posts of Clerks. This reversion has been challenged in the complaint by the representative union, who is the Petitioner herein, as an unfair labour practice.

4 The main contention of the complainant union before the Industrial Court in the complaint was that the appointments of 154 employees as Inspectors in the Assessment and Collection Department of the Respondent corporation was a case of regular appointments. It was submitted that the appointments were made in vacant posts; there was even a reserved categories' list for the posts; all appointees had cleared written examination after inviting applications from them for appointment to the posts of Inspectors; and the appointments were made on the basis of a merit list maintained in accordance with the performance of the candidates in the written examination. In its impugned order (order dated 14 September 2017), the Industrial Court found that the subject appointments were made on the basis of a circular of 22 July 2016 and that this circular had made it clear that the appointments were to be made on an ad-hoc basis and also subject to repatriation to the original posts. The court noticed that even if one were to treat the circular of 22 July 2016 and office orders of appointment of 2 December 2016 as an agreement between

the parties, such agreement itself provided for appointments on an ad-hoc basis and subject to repatriation and accordingly, there was no question of failure to implement the agreement by the Respondent corporation and thus, no *prima facie* case for a complaint of unfair labour practice under Item 9 of Schedule IV of MRTU and PULP Act, 1971 ('Act'). So also, the court was of the view that there was no case of favouritism and thus, no unfair labour practice under Item 5 of Schedule IV of the Act. The second impugned order (order dated 5 October 2018) of the Industrial Court also proceeds more or less on the same footing. The applications for the posts of Inspectors were invited from all departments and not only from the Octroi Department. The invitation itself made it clear that the applications were for appointment to the posts of Inspectors on an ad-hoc basis. The circular also communicated to all Applicants that in all cities in Maharashtra having Municipal Corporations, there was a proposal to abolish octroi duty. It was also communicated that though there was no direction for abolishing octroi duty within the jurisdiction of the Respondent corporation, Mumbai, there was a possibility of such direction being issued at any time in future and that there was likelihood of the requisite number of employees in the advertised posts going down. The Applicants were informed that, in the premises, whether and how long the ad-hoc appointments were to be maintained as such and whether any appointees were to be made permanent or to be repatriated to their original departments or their original posts would be decided by the administration according to the circumstances. The appointees were also given an option to decide during the course of their ad-hoc appointments to select between continuing on the posts of Inspector or to be repatriated to the original posts. All appointees, thus, had a clear notice, when they applied for the appointments, that the appointments were merely on an ad-hoc basis and

were subject to repatriation as the Respondent corporation would be deciding depending on exigencies. The impugned orders of the Industrial Court have, accordingly, *prima facie* concluded that there was no unfair labour complaint in the Respondent corporation repatriating the concerned Inspectors in the Assessment and Collection Department to their original Departments and posts.

7 No infirmity is to be found in either of the impugned orders. The circular of 22 July 2016, through which applications were invited from employees of the corporation working as Clerks or Junior Accountants or Account Assistants, etc. for the posts of Inspector in the Assessment and Collection Department, indeed gave a clear idea that the posts were ad-hoc and subject to repatriation. The repatriation, eventually ordered, cannot be termed as breach of any agreement.

8 The writ petition, accordingly, is dismissed. It is, however, clarified that since the complaint itself is pending before the Industrial Court, the issues as to whether the impugned circular / direction of the Respondent corporation amounts to repatriation or reversion and the effect that it would have on the service conditions of the concerned employees, are matters to be debated before the Industrial Court. All rights and contentions of the parties in that behalf are kept open.

9 Learned Counsel for the Petitioner seeks stay of this order. Learned Counsel submits that so far her clients have been protected by an interim order. There has been no interim order in the complaint. When the application for interim relief was rejected by the Industrial Court, the order was stayed on their application. Such stay, however, does not imply that the

Petitioner union actually have an ad-interim protection against the impugned action of the Respondent corporation. There is, accordingly, no question of protection of the employees represented by the Petitioner after the petition is comprehensively heard and dismissed. The application for interim stay is, accordingly, rejected.

(S.C. GUPTE, J.)

Sanskruti
A.
Thakur

Digitally signed
by Sanskruti A.
Thakur
Date:
2020.03.15
23:41:20 +0530