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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2547 OF 2019

Dachser India Pvt. Ltd.

...Petitioner

vs

Umesh Vithal Teli And 9 Ors.

...Respondents

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Mr. Sudhir Talsania, Senior Counsel, a/w. Mr. Anand Pai and Ms. Aditi Hambarde, i/b. Haresh Mehta & Co., for the Petitioner.

Mr. Arshad Shaikh, a/w. Mr. Bennet D'Costa, for Respondent Nos.1 to 8.

Mr. Kiran Bapat, i/b. Desai & Desai Associates, for Respondent Nos. 9 and 10.

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CORAM : S.C. GUPTE, J.

DATED: 16 JANUARY, 2020

P.C. :

. Heard learned Counsel for the parties. This writ petition challenges an order passed by the Industrial Court at Mumbai on a miscellaneous application (Exhibit U-66) made in a complaint of unfair labour practice filed by Respondent Nos. 1 to 8 herein.

2. The subject complaint was originally filed by a representative union on behalf of Respondent Nos. 1 to 8 against Respondent No.9 herein. Respondent Nos. 1 to 8 claimed to be employees of Respondent No.9, who claimed to be carrying on business of international freight clearing and forwarding. By a business transfer agreement dated 1 February 2007, Respondent No.9 *inter alia*

transferred its employees (who were 24 in number and who included Respondent Nos. 1 to 8 herein) to the Petitioner. The employees were asked to report for duty with the Petitioner. 13 out of these 24 employees reported on duty, whilst 11, who included Respondent Nos. 1 to 8 herein, did not so report. The Petitioner, thereupon, communicated by a letter dated 25 November 2008 addressed to these 11 employees (including Respondent Nos. 1 to 8) that though their services had stood transferred to the Petitioner through business transfer agreement, since they had not actually reported for duty with the Petitioner, they would not have any lien over their posts. At that stage, one Maharashtra Samarth Kamgar Sanghatana, claiming to be a representative union, filed a complaint against Respondent No.9, being Complaint (ULP) No.96 of 2011, challenging the purported transfer of services of the employees (including Respondent Nos. 1 to 8 herein) to the Petitioner. Pending this complaint, a charge-sheet was issued by Respondent No.9 against Respondent Nos. 1 to 8 and the latter were terminated from service in pursuance thereof, purportedly on the ground that they had not reported for duty. (There was no interim relief in the complaint filed by the union concerning such termination.) The complaint was, thereupon, amended by the union and a prayer of temporary injunction against termination of service of Respondent Nos. 1 to 8 was included in the complaint. By a further order passed by the Industrial Court in the complaint, individual workmen were substituted in place of the original complainant, namely, the union. The Industrial Court, by its order dated 28 April 2012, granted interim relief to the complainants as against Respondent No.9. Respondent No.9, thereupon, challenged that order by way of a writ petition (Writ Petition No.2457 of 2012). That writ

petition was disposed of in terms of Consent Terms filed by the parties. The Consent Terms envisaged quashing of the impugned interim order of the Industrial Court of 28 February 2012.

3. After the matter is heard at some length, it is agreed between learned Counsel for the parties that the writ petition may be disposed of by keeping all issues on merits of the amended complaint, including the questions of jurisdiction and limitation urged orally before this Court by learned Counsel for the Petitioner herein, open and to be debated before the Industrial Court at the hearing of the complaint. It is, however, agreed that all these issues should be considered at the hearing of the amended complaint and not pressed as preliminary issues concerning maintainability of the amended complaint. The petition is disposed of accordingly. Liberty to put in an additional written statement or, in the alternative, amend the written statement of the Petitioner herein to the amended complaint.

Smita
Gonsalves

Digitally signed by
Smita Gonsalves
Date: 2020.01.22
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(S.C. GUPTE, J.)