

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5084 OF 2019

Ordinance Factory Kamgar Union,  
Bhusawal-03, Thr. its President  
Rajendra Jha

... Petitioner

-vs-

The Presiding Officer,  
Central Government Industrial  
Tribunal Cum Labour Court, Nagpur-01  
And ors.

... Respondents.

Shri B. Lahiri, Advocate for petitioner.  
Shri U. Aurangabadkar, Assistant Solicitor General of India with Shri S. A.  
Choudhari, Advocate for respondent Nos.2 and 3.

**CORAM : A. S. CHANDURKAR, J.**

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| Date on which the arguments were heard | : December 05, 2020  |
| Date on which the order was pronounced | : January, 10, 2020. |

Order :

The challenge raised in this writ petition is to the order dated 31/05/2019 that has been passed by the learned Presiding Officer, Central Government Industrial Tribunal, Nagpur on the application for grant of interim relief. By the said order the Tribunal did not permit the petitioner-Union to address Gate-meetings of workers through its President.

2. The facts giving rise to the present proceedings are that according to the petitioner which is a registered trade union formed in June 1953

under the Trade Unions Act, 1926 (for short, the said Act). Its members are employed with the Ordinance Factory. One Shri Rajendra Jha was holding the office of General Secretary and was thereafter elected as its President. Shri Jha however was dismissed from service on 27/09/1992. The respondent Nos.2 and 3 sought to withdraw the facilities that were available to a recognised Union on the ground that the President of the Union was a dismissed employee and as per the Rules of Recognition, 1995, a dismissed employee could not be an office-bearer of the Union. The Union being aggrieved by the said stand taken by the respondent Nos.2 and 3 as communicated on 26/02/2015 filed Writ Petition No.4602/2015 before the Aurangabad Bench of the High Court. By order dated 19/06/2015 the Court did not entertain the writ petition and granted liberty to the Union to file appropriate proceedings before the appropriate forum under provisions of the Industrial Disputes Act, 1947. Pursuant thereto the Union approached the Ministry of Labour, Government of India which resulted in a reference being made on account of existence of an industrial dispute. The reference included the question as to whether the recognised Union could negotiate collectively in the presence of its President/office bearer irrespective of the fact that he was a dismissed employee. The Union accordingly filed its Statement of Claim before the Tribunal and took the stand that the benefits of recognition of a registered Union could not be withdrawn on the ground that an office-bearer of the Union was a dismissed employee. Along with

the said Statement of Claim an application dated 22/03/2019 seeking interim relief so as to restrain the respondent Nos.2 and 3 from committing any unfair labour practice on the premise that the office- bearer was a dismissed employee came to be moved. Affidavit in reply was filed by the respondent Nos.2 and 3 denying any unfair labour practice to have been committed. By the order dated 31/05/2019 the learned Presiding Officer held that the interim relief sought could not be granted as the Recognition Rules did not permit a dismissed employee to be an office- bearer of the Union and also on the ground that the Ministry of Defence which had recognised the Union was not a party to the proceedings. Being aggrieved by said order the Union has challenged the same.

3. Shri B. Lahiri, learned counsel for the petitioner-Union submitted that there was no bar for a dismissed employee to act as an office-bearer of the Union. The recognition to the union was granted by the Ministry of Defence under the Rules of 1950 in the year 1956. Since the Union merely sought to hold Gate-meetings outside the factory premises there was no reason for the respondent Nos.2 and 3 to prevent holding of such Gate-meetings only on the ground that the President of the Union was a dismissed employee. It was further submitted that the procedure of Recognition Rules, 1995 was applicable only to those Unions who were seeking fresh registration and Unions which were already recognised could not be bound

by the conditions imposed by the Procedure for Recognition in the year 1996. This position was clarified by revising the said procedure in 1997. Referring to the provisions of Section 22(2) of the said Act it was submitted that a dismissed employee was not prevented from acting as an office-bearer. Reference was made to the order passed by the Madhya Pradesh High Court in Writ Appeal No.600/2010 (*K. K. Dubey and ors vs. West Central Railways (WCR) Thr. General Manager and ors.*) decided on 22/07/2011 wherein it was held that a retired or retrenched employee was not barred from being an office-bearer of a registered trade union. This order was affirmed by the Honourable Supreme Court on 06/07/2015 and thus on the same analogy in absence of any bar for a dismissed employee to act as an office-bearer, the interim relief as prayed for ought to have been granted. It was thus submitted that the impugned order was liable to be set aside and the relief as prayed for ought to be granted.

4. Shri U. M. Aurangabadkar, learned Assistant Solicitor General of India for respondent Nos.2 and 3 relied upon the affidavits on record filed on their behalf and supported the impugned order. According to him in the light of the Rules of Recognition, 1995 and especially Rule-10(c) thereof an employee who has been dismissed from service on disciplinary ground is not entitled to be an office-bearer of the registered Union. He submitted that there was a distinction in the office memorandum dated 06/09/1995 which

prescribed the Rules of Recognition and the office memorandum dated 23/06/1996 which prescribed the Procedure for Recognition. By the subsequent office memorandum dated 04/03/1997 it was only the Procedure of Recognition that was revised and the Rules of Recognition dated 06/09/1995 continued to operate. Though the recognition of the Union continued same did not permit a dismissed employee to be an office-bearer. He therefore submitted that the learned Presiding Officer rightly considered the aforesaid position and refused to grant any interim relief. He also sought to distinguish the order passed by the Madhya Pradesh High Court in *K. K. Dubey* (supra) on the ground that the question therein was in respect of a retired or retrenched employee and not a dismissed employee. It was thus submitted that the writ petition was liable to be dismissed.

5. I have heard the learned counsel for the parties at length and after giving due consideration to their respective submissions I find that the impugned order does not deserve to be interfered with. It is to be noted that the challenge as raised is to an interlocutory order refusing to grant interim relief on the ground that the Rules of Recognition, 1995 do not permit a dismissed employee to be an office-bearer of the registered Union. If it is found that on a prima facie consideration of the relevant Rules a possible view has been taken by the learned Presiding Officer then there would be no reason to interfere with the same. However if it is found that the view as

taken is an impossible view or is not found to be supported by any material whatsoever then a case for interference would be made out.

The petitioner-Union has been recognised under the said Act in May 1956. The said recognition has been granted in the light of the Rules of Recognition, 1950 dated 01/06/1950. The Rules of Recognition came to be revised on 06/09/1995. It was stipulated therein that after giving an opportunity to the Union in question the recognition could be withdrawn. The documents required to be submitted were stipulated and as per Rule 10(c) a list of office-bearers of the executive committee of the Union was to be given so as to confirm that none of them was a person dismissed from government service on disciplinary grounds. Thereafter by office memorandum dated 23/06/1996 the procedure for recognition of an Union was prescribed. As per Clause-2 thereof even existing recognised Unions were required to submit various documents including a list of office-bearers to confirm that none of the office-bearers was a person dismissed from government service on disciplinary grounds. This office memorandum was subsequently revised on 04/03/1997 but the revised procedure included the submission of the aforesaid information by the Unions who wished to be recognised and whose applications were pending for recognition. According to the petitioner-Union since the revised procedure of recognition was sought to be applied only to those Unions who were seeking recognition or Unions whose applications were pending for recognition and as the earlier office

memorandum dated 23/06/1996 had been superseded, there was no bar for a dismissed employee to be an office-bearer of the registered Union. This contention raised by the Union prima facie does not deserve acceptance in view of the fact that the revised Rules of Recognition, 1995 require a registered Union to supply various documents as stipulated and the same include list of office-bearers to confirm that none of them is a person dismissed from service on disciplinary ground. It cannot be the position that the Unions which are already recognised prior to 1995 could have an office-bearer who was a person either dismissed/removed/discharged from government service on disciplinary ground. A Union which was recognised after 1995 was barred from having such office-bearer who was dismissed/removed/discharged from government service on disciplinary ground. Prima facie, the stand taken by the respondent Nos.2 and 3 that in the light of the Rules of Recognition, 1995 a recognised Union was not permitted to have an office-bearer who was a person dismissed from service on disciplinary grounds appears reasonable.

6. The object for preventing such person to be an office-bearer is obvious for being stated. An employee dismissed/removed/discharged from service would naturally not be acceptable to an employer to act as a representative of the workmen. On the same ground the order passed by the Madhya Pradesh High Court in *K.K. Dubey* (supra) is distinguishable. In

the said case the question that fell for determination was with regard to an employee who had either retired or who had been retrenched from service. Referring to the explanation to sub-section (2) of Section 22 of the said Act it was observed that the said explanation clarified the provisions of Section 22 and hence a retired or retrenched employee was not debarred from becoming an office-bearer of the registered trade union. In the present case the employee in question has admittedly been dismissed from service and therefore the ratio of the aforesaid order cannot be made applicable to the case in hand. A retired or retrenched employee would stand on a different footing than an employee who is dismissed/removed/discharged on disciplinary ground.

7. Though it has been observed by the learned Presiding Officer in the impugned order that the Ministry of Defence was not a party in the reference proceedings that aspect is not very relevant while considering the question of grant of interim relief. However it is found that on a plain reading of the Rules of Recognition, 1995 along with the Procedure of Recognition, 1996 as revised in 1997, the Tribunal has taken a possible view of the matter. The interim relief has been refused on the ground that the President of the Union was a dismissed employee and the Rules of Recognition did not permit such dismissed employee to be a member of the executive committee of the recognised Union.

8. In the light of aforesaid discussion I do not find any case made out to interfere in writ jurisdiction. By clarifying that the observations made by the Tribunal in the impugned order as well as the observations in the present order are only for the purposes of deciding the question of interim relief, the writ petition stands dismissed with no order as to costs. The Tribunal shall answer the reference on its own merits without being influenced by any passing observations as made.

**JUDGE**