

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**Writ Petition No. 6051 of 2017**

**M/s Kailash Poly Industries Vs. Rashtiya Polymers Kamgar Sangh**

-----  
Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
-----

Court's or Judge's orders

-----  
Mr. S.S.Ghate, Advocate for the petitioner  
Mr. R.B. Khan, Advocate for the respondent  
-----

**CORAM : MANISH PITALE, J.**

**DATED : MARCH 09, 2020**

By this writ petition, the petitioner has challenged impugned order dated 03/12/2014, passed by the Industrial Court at Nagpur, whereby an application at Exh. U-3 filed by the respondent was allowed and impugned order dated 19/04/2017, is also challenged, whereby Review Application filed by the petitioner at Exh. C-12, seeking stay order in respect of three employees was rejected.

2. The petitioner filed Complaint ULP No.193/2014, before the Industrial Court, claiming that respondent – Union had indulged in unfair labour practice under Item Nos. 1, 2 and 5 Schedule III of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (M.R.T.U. & P.U.L.P. Act), as according to the petitioner, respondent – Union was illegally instigating

the workmen of the petitioner - industry to indulge in strikes. In the said Complaint, the respondent – Union moved an application Exh. U-3, seeking a direction to the petitioner to allow 13 employees to join their duties. The said application was allowed, primarily on the basis of a list of workers prepared by the Government Labour Officer.

3. The petitioner filed a Review Application before the Industrial Court, as it was aggrieved by the impugned order dated 03/12/2014, to the extent that according to the petitioner, three employees at Sr. Nos. 5, 7 and 8 of the aforesaid list did not deserve the relief of joining duties, because their services already stood terminated on 31/10/2014. According to the petitioner, they were no longer required in employment due to lack of availability of work and, therefore, the said three persons did not deserve a direction in their favour as granted by the Industrial Court and to that extent it was prayed that the Review Application deserved to be allowed.

4. The Industrial Court by impugned order dated 03/12/2014, held that the question, as to whether the employment of said three workers had ceased, could be said to be an incidental issue in the aforesaid Complaint that was pending. On this basis, the Review Application was rejected.

5. This Court while issuing notice in the present writ petition on 25/09/2017, stayed the impugned orders. The learned counsel appearing for the petitioner submitted that the Industrial Court had committed an error in rejecting the Review Application, because the three employees in respect of whom the petitioner had sought review of earlier order of the Industrial Court had nowhere challenged the termination of their service dated 31/10/2014. According to the learned counsel appearing for the petitioner the Complaint filed by respondent – Union for grant of benefits of regular employees to the employees of the petitioner – industry, including the aforesaid three employees was already pending before the Competent Court and that, therefore, the said employees could have raised a grievance with regard to termination of their services on 31/10/2014, in such pending Complaint. Having failed to do so, they could not have got relief of rejoining duties in such a back door manner, particularly when the issue regarding termination of their services could not be said to be even an incidental or ancillary issue in the Complaint filed by the petitioner before the Industrial Court in which the impugned order was passed.

6. On the other hand, the learned counsel appearing for the respondent – Union submitted that the list of employees on record dated 04/09/2014, clearly included the names of aforesaid three

employees also, which was even counter signed by the respondent and, therefore, there was no substance in the contention raised on behalf of the petitioner. It was further submitted that the Complaint filed on behalf of the Union pertained to subject matter regarding entitlement of the employees of the petitioner – industry to facilities available for regular employees and, therefore, there was no question of pendency of the said Complaint having anything to do with the nature of the impugned order passed in the present case. It was further submitted that the respondent – Union did not agree with the claim made by the petitioner that services of the three employees were terminated on 31/04/2014 and that, the vouchers placed on record for the first time before this Court on the basis of which the petitioner claims that services of the said three employees were terminated, are denied and in any case, they were not part of the record of the Court below. On this basis, it was submitted that the petition deserves to be dismissed.

7. The observations made by the Industrial Court in the impugned order while rejecting the Review Application to the effect that alleged termination of services of three employees on 31/10/2014, was an incidental issue when considering the nature of interim relief sought by the respondent – Union in the Complaint filed by the petitioner – industry, appear to be erroneous. But, such findings

can be rendered only after the claim made by the petitioner to the extent that services of the aforesaid three employees were terminated on 30/10/2014, can be even prima faice acceptable. It appears that in the list dated 04/09/2014, prepared by the Competent Authority, the names of the aforesaid three employees at Sr. Nos. 5, 7 and 8 thereof indicated that they were indeed in employment on 04/09/2014. At the time when the Industrial Court was called upon to decide the application at Exh. U-3 in the Complaint filed by the petitioner, according to the petitioner, the services of the aforesaid three members stood terminated on 31/10/2014. It is an admitted position that the vouchers on which much reliance was placed by the petitioner before this Court, were not placed before the Industrial Court, and this shows that it would not be proper to claim that the Industrial Court had committed an error by relying on the said documents.

**8.** This Court is of the opinion that even if the issue concerning alleged termination of services of the aforesaid 3 employees may not be incidental to the main dispute in the Complaint filed by the petitioner regarding alleged illegal strike, the issue would arise only after there is at least some material on record to reach prima facie conclusion that the services of the aforesaid employees could be said to have been terminated on 31/10/2014. In the absence of any documentary material before the Industrial Court, it

cannot be said that the said Court erred in refusing to grant the Review Application of the petitioner in so far as the aforesaid three employees were concerned.

9. In view of above, it would be appropriate that the impugned order dated 19/04/2017, passed by the Industrial Court, rejecting the Review Application is set aside and the matter is remitted to the Industrial Court for fresh decision on the Review Application, by granting opportunity to rival parties to place on record appropriate evidence and material.

10. Accordingly, the writ petition is partly allowed.

11. The impugned order dated 19/04/2017, passed by the Industrial Court on Exh. C-12 is quashed and set aside. The Industrial Court is directed to consider the Review Application afresh by granting opportunity to rival parties to place on record relevant material and evidence, particularly on the aspect of alleged termination of services of the aforesaid three employees on 31/10/2014. Till such time, as the Review Application is decided afresh by the Industrial Court, the impugned order dated 03/12/2014, passed by the Industrial Court shall remain stayed only with respect to the aforesaid three employees shown at Sr. Nos. 5, 7 and 8 in the list dated 04/09/2014, prepared by the Government Labour Officer.

**12.** The Industrial Court shall decide the Review Application afresh in view of observations made above, within a period of six weeks from today.

**13.** The writ petition is disposed of in above terms.

JUDGE

*MP Deshpande*