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Date: 2023.01.24
11:38:39 +0530**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.1169 OF 2022**

Bosch Ltd.,Through the Board of Directors & Ors. ..Petitioners

Versus

Suvarna Bhaurao Borale & Ors. ..Respondents

WITH**WRIT PETITION NO.1189 OF 2022**

Bosch Ltd.,Through the Board of Directors & Ors. ..Petitioners

Versus

Dattatraya Eknath Mandlik & Ors. ..Respondents

Mr. Kiran Bapat i/b Rahul Oak a/w Mr. M.V. Joglekar for the
Petitioners in both the above Petitions.Mr. Vijay Vaidya a/w Mr. Mahendra Agvekar a/w Ms. Shraddha
Chavan for Respondent No.15 in WP No. 1189 of 2022 and for
Respondent No.471 in WP No.1169 of 2022.Mr. T.K. Prabhakaran i/b Satyadev R. Pandey for Respondent Nos. 2 to
4 in WP No.1189 of 2022 and Respondent Nos. 1 to 11, 13 to 299,
301 to 367, 369 to 470 in WP No.1169/2022.

CORAM : NITIN W. SAMBRE, J.**DATE : JULY 1, 2022**

P.C.:-

1] Both these Petitions are under Articles 226 and 227 of the
Constitution of India preferred by the Employer, thereby questioning
the impugned orders dated 03/01/2022 passed in Complaint (ULP)
No.106 of 2021 (*Suvarna Bhaurao Borale and Others vs. Bosch*

Limited and others) and Complaint (ULP) No. 164 of 2021 (*Dattatraya Eknath Mandlik and Others vs. Bosch Limited and Others*). The impugned orders are passed by the Industrial Court in exercise of powers under sub-section (2) of Section 30 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as 'the Act of 1971')

2] By way of impugned order, Industrial Court has prima facie held that the Petitioners-Employers have indulged in unfair labour practices under Item Nos. 5, 9 & 10 of Schedule-IV of the Act of 1971 and further directed them to cease and desist from indulging in such unfair labour practices. Further directions are issued to the Petitioners to pay full wages (as per G-1N category) to the Respondents-employees from the date of the impugned orders, irrespective of the red-light activation signal by the Employer from the date of their reporting

3] Heard Mr. Kiran Bapat, learned Counsel for the Petitioners-

Employers assisted by Mr. Rahul Oak and Mr. M. V. Joglekar as also Mr. T.K. Prabhakaran and Mr. Vijay Vaidya assisted by Mr. Mahendra Agvekar and Shraddha Chavan for the Respondents-employees.

4] Mr. Bapat would invite my attention to certain developments which took place prior to preferring of the ULP Complaints. According to him, last Respondent to the Petition is a recognized Union. He would urge that on 21/03/2003, a settlement was entered into between the Petitioners and the Respondent-Union under the provisions of Section 12(3) read with Section 18(3) of the Industrial Disputes Act, 1947. It is further claimed that on 13/01/2006 and 28/04/2014 subsequent settlements were arrived at with recognized Union on 14/02/2016 as On Job Trainees claimed to have addressed the recognized Union to plead and act on their behalf and accordingly on 18/02/2016 Complaint (ULP) No.30 of 2016 came to be initiated in relation to which a settlement was entered into on 22/03/2018 under section 2(p) read with Section 18(1) of the Industrial Disputes Act. It is further claimed that on 03/05/2020, long term settlement was entered into with Respondent-recognized Union under the

aforesaid provisions which has led to passing of an Award dated 10/02/2021 in Reference (IT) No.01 of 2020. According to him, on behalf of On Job Trainees (“OJTs”) and New Entrant Temporary Workmen (“NETWs”), Complaint (ULP) No. 07 of 2021 was preferred in which ad-interim order was passed on 15/03/2021. Prayer in the said complaint was, declaration of status as that of permanent employee and not to terminate services. Industrial Court passed an order not to terminate services without following due process of law on 15/03/2021. Subsequent to the above, he would urge that another complaint being Complaint (ULP) No.10 of 2021 was preferred by 120 OJTs/NETWs in which on 31/03/2021 below Exhibit-U pursuant to the powers under sub-section (2) of Section 30 of the Act of 1971, an order came to be passed not to terminate services of complainants without following due process of law. A prayer for additional relief was moved by the Respondents.

5] According to Mr. Bapat, Complaint (ULP) No. 07 of 2021 and Complaint (ULP) No.10 of 2021 though were pending, new complaints were preferred by the Respondents-employees i.e.

Complaint (ULP) No.106 of 2021 and Complaint (ULP) No.164 of 2021. Both these complaints were registered in which pursuant to the reliefs claimed under sub-section (2) of Section 30 of the Act of 1971, impugned orders were passed. As such, these Petitions.

6] Mr. Bapat, learned Counsel for the Petitioners would urge that complaints itself were not maintainable, particularly when Complaint (ULP) No.07 of 2021 and Complaint (ULP) No.10 of 2021 were pending. His contentions are, settlement entered into between the Respondent-recognized Union and the Petitioners is binding on the Respondents-employees. So as to substantiate the same, he would invite attention of this Court to the long term settlements dated 13/01/2006, 28/04/2014 and 03/05/2020. In addition, his contentions are, once authorization was given by the Respondents-employees to the recognized Union to enter into settlement and the grievance was redressed, complaint itself was not maintainable. In addition, his contentions are, Industrial Court while granting interim relief has virtually granted final relief without considering status of the Respondents-employees, particularly when irreparable loss is not

likely to be caused to Respondents-employees as, in case, if complaint is allowed they can be adequately compensated. He would further urge that orders impugned as such are passed contrary to the aforesaid long term settlements and the impugned orders take away right of the Petitioners to terminate services of the Respondents-employees. As such, he would urge that orders impugned are liable to be quashed and set aside.

7] Learned Counsel for Respondents-employees would urge that complaints at the behest of Respondents-employees are very much maintainable, particularly when they have already applied for withdrawal of earlier complaints. According to him, interim relief granted by the Industrial Court is in tune with rights of Respondents-employees. So as to substantiate their claim, he has invited my attention to the admission of employer-employee relationship, settlement which led to passing of an Award in the matter of conversion of On Job Trainees to that of New Entrant Temporary Workmen. He would urge that in view of the terms of appointment order, restriction of not permitting entry in the factory premises is

without any authority. He would urge that wages are required to be paid as per the appointment order. It is claimed that complaint itself can be expeditiously decided. As such, Counsel would urge that Petitions are liable to be dismissed with costs.

8] I have appreciated the aforesaid submissions. Amongst other, facts which are not disputed are, existence of employer-employee relationship between the Petitioners and Respondents-employees. Respondents-employees have come out with a case that they have lost faith in the recognized Union and its office bearers and as such in their individual capacity have taken out proceedings under the provisions of the Act of 1971. In the complaints which are preferred by the Respondents-employees, reliefs are claimed based on aforesaid undisputed relationship, terms of settlement viz. conversion from OJTs to NETWs and the appointment orders.

9] It is specifically claimed by the Respondents-employees in their complaint that they are workmen and classified and designated as NETWs referred above and are entrusted to do skilled and operational

work in relation to manufacturing activities. They have further pleaded that they are doing similar work as is done by the permanent workmen and are working with the Petitioners since 8 to 12 years. It is also claimed that they are in continuous service of the Petitioners and even if break is given, fact remains that each year, they have worked for more than 240 days. It is further claimed that a new series of employees code came to be started from 21/10/2021 in spite of the fact that they were doing the work of similar nature which they have discharged for last more than 6 to 7 years based on the same qualification. Based on above, in ULP Complaint declaration of unfair labour practice was sought and directions were prayed to the Petitioners to permit the Respondents-employees to resume the work.

10] It appears from the pleadings that Respondent No.4 – Union has 792 permanent workers as its members, whereas OJT/NETW, Apprentices, Contract Workers who are about 3000 are not permitted membership. It is specifically claimed in the complaint that Respondent-Union is acting hand-in-glove with the Employer who is indulging in unfair labour practice. As such, they have preferred the

complaint independently.

11] Conversion plan from On Job Trainees to New Entrant Workmen which is in the form of settlement under sub-clause (p) of Section 2 of the Industrial Disputes Act in express terms confers New Entrant Temporary Workmen status. Conferment of such status can be inferred from the factual matrix viz. date of entry as On Job Trainees and completion of 48 months as mentioned in the aforesaid settlement. These employees are working in various shifts and are discharging their duties out of perennial work available with the Petitioners. It appears that Petitioners with an intention to extract perennial/permanent nature of work from the temporary employees at much cost saving have allegedly indulged into unfair labour practice as is claimed. Based on the above, they have specifically alleged in the complaint that they are in continuous service as contemplated under Section 25-B of the Industrial Disputes Act and Section 2(g) of the Model Standing Order in preceding 12 months period. It has been also claimed by them that in spite of there being regular work available, Petitioners are enforcing forced idleness on the workmen or

sought of creating lay off. What is narrated in the pleadings i.e. para 3.17 of the complaint in categorical terms speaks of very conduct of Respondent-recognized Union.

12] In the aforesaid backdrop, it cannot be said that Respondents-employees cannot pursue their complaint on their own and has to approach the Tribunal against the Petitioners through Respondent-Union only. Once it is brought on record by the Respondents-employees that Respondent-Union is ineffective and not willing to pursue the claim of Respondents-employees with the Petitioners-Employers, it shall always be open to the employees to prefer the complaint. A support can be drawn from the judgment of the Bombay High Court in the case of *Carona Ltd vs. Sitaram Atmaram Ghag* reported in **2000-III-LLJ-296-Bom.**

13] This takes me to the next submission of Mr. Bapat as to settlements arrived at and status of the Respondents-employees as that of temporary workmen. The appointment order dated 21/04/2016 issued to one of the Respondents-employees by the Petitioners is referred to in the impugned orders for the purpose of establishing

prima facie case. Said order appears to have been issued upon successful completion of training. The order does not speak of a specific period of appointment and fact remains that names of the Respondents-employees are included in the Muster Roll. It appears that Respondents-employees were performing perennial and permanent nature of work. Employees were offered monthly payment of wages with further assurance of 208 hours of work per month alongwith other incentives HRA etc. Appointment of the Respondents-employees is governed by certified standing order. Aforesaid fact is not disputed by the Petitioners.

14] In this backdrop, if we appreciate the claim put-forth by the Petitioners as to the status of the Respondents-employees as that of New Entrant Temporary Workmen, still prima facie it is demonstrated that Respondents-employees were offered perennial nature of work with necessary statutory benefits. As far as reliance placed by Mr. Bapat on various settlements are concerned, Petitioners are unable to demonstrate as to how settlements arrived at with Respondent-Union binds Respondents-employees and as to how they are not

entitled to prefer independent complaint. Rather, this Court has held that Respondents-employees' independent complaints are very much maintainable, particularly when recognized Union has not espouse their cause and as such they cannot be left remedy-less. In the aforesaid backdrop, it cannot be said that impugned orders which are of interim nature are illegal or warrant any interference in extraordinary jurisdiction.

15] Reliefs granted by way of impugned orders is considering rights conferred in Respondents-employees by virtue of their appointment orders and also their long standing employer-employee relationship. In this backdrop, it cannot be said that by granting interim relief, Court has almost granted final relief in the matter.

16] In this backdrop, I hardly see any reason which warrants interference under Article 227 of the Constitution of India. As such, both these Petitions san merit and are accordingly dismissed.

[NITIN W. SAMBRE, J.]