

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 508 OF 2022

Suzlon Global Services Ltd thru
Authorized Sunil Sudhakar Joshi
and ors

.. Petitioners

Versus

Satara Zilla Mazdoor Sangh thru
General Secretary

.. Respondent

...

Mr. J.P. Cama, Sr. Counsel with Varun Joshi and Chetan Alai for
the petitioners.

Mr. Yogendra Pendse with Mr.Chaitanya Nikte for the
respondent.

CORAM: RAVINDRA V. GHUGE, J.
DATED : 25th JANUARY, 2022

P.C:-

1 By this petition, the petitioner has put forth prayer
clause (a) and (b) as under :-

(a) That this Hon'ble Court be pleased to issue writ
of certiorari and/or any other writ, order or directions
in the nature of certiorari and thereafter be pleased to
call for the record and proceeding in Complaint
(ULP) No.3 of 2021 pending before the learned

Industrial Court, Satara and after going through the same be pleased to quash and set aside the Interim Order dated 08.04.2021 passed by the learned Member, Industrial Court, Satara in Complaint (ULP) No.3 of 2021 whereby the application for interim relief made by the respondent was partly allowed and the transfer orders issued to 18 persons dated 05.02.2021 issued by the petitioner Company has been temporarily stayed till the final judgment of the complaint;

(b) That pending the hearing and final disposal of the present Writ Petition, the operation and implementation of the impugned order dated 08.04.2021 passed by the learned Industrial Court, Satara in Complaint (ULP) No.3 of 2022, Exhibit-A hereto, be stayed.

2 I have considered the strenuous submissions of the learned Senior Advocate Shri Cama along with learned Advocate Shri Joshi and Shri Chetan Alai on behalf of the petitioners and the submissions of Shri Pendse and Shri Nikte, the learned Advocates on behalf of the respondent Union. After a considerable hearing on 24/1/2022, this matter was posted today due to paucity of time for dictating the order.

3 The learned Advocate for the respondent Union has taken instructions that if this Court is inclined to set aside the impugned order and remand the Application Exhibit-U2 filed in

complaint ULP No.3 of 2021 to the learned Industrial Court at Satara for a re-hearing, the transferred employees would not seek wages for a period of two months or for the period during which the Industrial Court decides Exhibit-U2, afresh.

4 The learned Sr. Advocate has made a submission that in fact, the very complaint could be decided finally within a particular time frame. Considering the business exigencies and the non-availability of sufficient work at Satara that these employees were transferred. Rather than dispensing with their services, the Management has made an offer to rehabilitate them so as to enable them to be in employment and earn their livelihood. Today, the Management has work available at the places of transfer. This commitment cannot be continued in perpetuity as there may be a situation wherein the Management may not have work at certain locations.

5 The learned Senior Advocate has further submitted that if the complainants' desire that Exhibit-U2 should be re-heard, the Management would be opposing such a prayer since the Industrial Court has drawn conclusions in favour of the Management by holding that, *prima facie*, no ULP was made out by the complainants and the impugned transfer orders could not be branded as being malafide or being covered by item 3 of Schedule IV of the MRTU and PULP Act, 1971 at the interim

stage. He, therefore, canvassed that once the Industrial Court draws a conclusion that no ULP is made out at a prima facie stage, there would be no purpose in remanding the Application Exhibit U-2 for a re-hearing.

6 I have perused the impugned order passed by the Industrial Court. The issues framed under paragraph no.8 with the findings thereon, are as under :-

POINTS		FINDINGS
1)	Does complainant prove prima facie case ?	Partly affirmative.
2)	Does balance of convenience tilts in his favour ?	Partly affirmative
3)	Does he entitle the relief sought for?	Partly affirmative
4)	What order ?	As per final order.

7 While assigning reasons in support of the conclusions at a *prima facie* stage, the Industrial Court has not referred to even a Single Judgment out of the 11 cited by the Management. I find that the impugned order has been delivered more from the heart. The Industrial Court has recorded on internal page 7, below paragraph 11 that “*the Court can take judicial note that, now-a-days, a hardship pandemic situation is going on. Even several deaths have been occurred due to Covid-19, moreover, where transfers are malafide or otherwise is to be seen after leading evidence of both the parties. It is an interim stage.*

Therefore, the ratio laid down would not be strictly applicable at interim stage especially in the given scenario. Needless to state that, Court is not mere silent spectator. The Court has to see the entire situation. Considering the entire circumstances, especially the pandemic situation, I am of the view that, the transfer orders needs to be stayed”.

8 In paragraph no.12, the Industrial Court has observed as under :-

“12 So far prayer clauses (A) & (B) are concern, it are not tenable at interim stage because, whether respondents have engaged in unfair labour practice under item 2, 3, 6, & 7 of Schedule IV has to be seen at the time of final judgment. Therefore, those prayers are not maintainable at this juncture. Hence, I answer Point No.1 to 3 partly in the affirmative and proceed to pass following order :-

O R D E R

- 1) Application is partly allowed.
- 2) The impugned transfer orders issued by the respondents are hereby stayed till final judgment.
- 3) Rest of the prayers stands rejected”

9 With the above conclusions which can be said to be strange enough, the Industrial Court has stayed the transfer orders till the final judgment vide the impugned order dated 8/4/2021. Consequent to the above, the aggrieved complainants are drawing their wages over the past about 9 months.

10 It is well settled and would call for no debate that even at an interim stage, the Industrial Court has to arrive at a *prima facie* conclusion, which ought to be based on reasons in the light of the pleadings and material available, that an employer has engaged in unfair labour practices. Without such a *prima facie* declaration, there cannot be grant of interim relief.

11 What I find from the impugned order is, that the Industrial Court was convinced that the case before it, did not warrant a *prima facie* declaration of ULP. It was unable to make up it's mind even at a *prima facie* stage that the Management had indulged in unfair labour practices under Item 2, 3, 6 and 7 of Schedule IV of the MRTU and PULP Act, 1971. Yet, the Industrial Court concluded that since it cannot decide whether the transfers are *malafide* at this stage and this could be considered only by leading evidence, it proceeded to grant interim relief to the transferred employees on the ground of Covid-19.

12 Needless to state, this could not have been a reason to interfere with the transfer orders unless there was enough material before the Industrial Court to conclude that the individual comparative hardships being faced by the workers, were more grave and serious for which the transfers had been effected.

Transfer is a normal incidence of service and no transfer order could be stayed, unless it is found to be, *prima facie*, covered by Item 3 of Schedule IV. To say the least, considering the settled position of law, the impugned order is perverse and unsustainable.

13 The learned counsel for the Union, though strenuously defended the impugned order, submits on instructions that if the Industrial Court is directed to re-hear the Interim Application, within a period of two months, the workers would neither seek work nor would they seek their salary for the said period.

14 It would be in the interest of justice that the Industrial Court, in the peculiar facts and circumstances of this case, is requested to decide the complaint within three months since it is only a matter of examining whether the transfer is violative of item 3 of Schedule IV of the MRTU and PULP Act, 1971.

15 The learned Advocate for the Union Complainant submits, on instructions, that they are not agreeable for a decision in the complaint within 2 – 3 months and that they would be agreeable to sit idle without wages for a period of two months so as to enable the Industrial Court to re-hear Exhibit U-2.

16 In view of the above, this Petition is allowed. The impugned order dated 8/4/2021 is quashed and set aside.

17 Application Exhibit U-2 stands remitted to the Industrial Court, Satara in Complaint (ULP) No.3/2021 with the following directions :-

- (a) The Industrial Court, Satara shall list Complaint (ULP) No.3/2021 on 24/2/2022.
- (b) On the said date, all the parties are at liberty to place on record the documents which they find are relevant and would assist the Industrial Court in deciding Application Exhibit-U2.
- (c) The Industrial Court shall, thereafter, list this Complaint on 10/3/2022 to enable the parties to advance their submissions on 10/3/2022 and 11/3/2022.
- (d) Pursuant to the above, the Industrial Court shall endeavour to deliver it's judgment on or before 13/4/2022.
- (e) It is made clear that the Industrial Court would consider Application Exhibit-U2 on it's own merits and would keep in mind that it has to be *prima facie* assessed as to whether any of the items invoked by the complainants are attracted in the facts and circumstances of the case, so as to lead to a *prima facie* conclusion of unfair labour practices.

(f) The litigating parties are at liberty to tender written notes of submissions as well as compilation of case law and it is expected that the Industrial Court would consider the submissions of the parties and the case law while drawing its conclusions.

(g) The transferred employees would not seek work from the employer till 13/4/2022 and would not be entitled for wages in the peculiar facts and circumstances of the case, in view of the consenting statement.

(h) Alternatively, the transferred employees, without prejudice to their rights involved in the ULP Complaint, are at liberty to join at the place of transfer, and in the event they do so, they would be entitled for wages in view of the work performed.

RAVINDRA V. GHUGE, J