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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3855 OF 2019

General Secretary, Aurangabad Mazdoor Union
CITU Aurangabad

PETITIONER

VERSUS

Manager M/s Seth Nandlal Dhoot Hospital,
Aurangabad

RESPONDENT

.....
Mr. Ashutosh S. Kulkarni, Advocate for the petitioner
Mr. N. B. Dhoble, Advocate for the respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th JULY, 2023

ORDER :

1. This petition, filed under Article 226 and 227 of the Constitution of India, impugns the decision of the learned Member, Industrial Tribunal, Aurangabad in Reference (IT) No. 5 of 2010 dated 17th January, 2018 .

2. Members of the petitioner union are working on different posts like *Aaya*, Nurse, Ward boy and Technicians. A Dispute is raised by the petitioner, a minority union, in respect of payment of wages to its members. The said dispute was referred for adjudication to the learned Member, Industrial Tribunal, Aurangabad under section 12 (5) of the Industrial Disputes Act.

By filing statement of claim, the petitioner contended that there is disparity in payment of wages to its members and the members of the majority union. The respondent, by filing written statement, opposed the claim of the petitioner. After recording evidence and hearing the parties, the reference is dismissed by the Member, Industrial Tribunal. Hence, the present petition.

3. Heard learned advocate for the petitioner and the learned advocate for the respondent. Perused the memo of writ petition, the documents annexed along with it and the impugned order and the citations relied upon by the learned advocates.

4. Learned advocate for the petitioner has assailed the impugned decision contending that the Tribunal has erred in recording a finding that the petitioner being a minority union, has no right to raise wage dispute, by relying on "***M/s Tata Chemicals Ltd V/s The Workmen Represented by Chemicals Kamdar Sang***" (1978) 3 SCC 42 and "***Associated Cement Companies Ltd. V/s Workmen and Others***" AIR 1960 SC 777. He further submits that the comparative chart relied on by the Tribunal, while dismissing the Reference, is not a correct chart and there is disparity in payment of wages, some of the members of the petitioner union are shown as members of the

majority union. The Tribunal has passed the impugned judgment on surmises and conjectures. He pointed out the observations of the Tribunal in paragraph No. 26, *"In my view due to length of service there might be some difference in the wages of the employees"*. He submits that since, there is no evidence before the Tribunal in respect of dates of joining of the workers, therefore, this finding is perverse. By relying upon the admission given by the witness of the respondent that - *"The 1st Party is ready to pay difference if there is any discrimination in the wages. Witness volunteers that, there is difference due to dates of joining and their performance. We have not produced evidence in respect of date of joining of the employees. We have not produced evidence in respect of the performance of the employees."* He submits that in absence of this evidence, the Tribunal has erred in dismissing the reference. According to him, there is *prima facie* material on record to show discrimination in wages paid to the members of the petitioner union and the majority union and the respondent has failed to substantiate its contention that the difference is due to dates of joining.

5. Learned advocate for the respondent, on the other hand, supported the impugned judgment. He submits that the Tribunal is justified in coming to the conclusion that the members of the

petitioner union are getting equal pay, at par with the employees of majority union, on the basis of the evidence led before it. He, therefore, submits that there is no substance in the writ petition and the writ petition may be rejected.

6. There appears substance in the submission of the learned advocate for the petitioner that the respondent has failed to lead evidence in support of its contention that the disparity in payment of wages between the members of the two unions, is on account of dates of joining. There is no material placed on record, by the respondent to substantiate its contention that the disparity in payment of wages to the members of the minority union and majority union is on account of dates of joining of the members of the respective unions.

7. The observation of the Tribunal that there might be some difference in wages of some of the employees due to length of service, is based on surmises and conjectures. The Tribunal has committed error in dismissing the reference without there being any evidence in respect of date or year of joining of the members of the unions. The contention of the petitioner that the workers mentioned at Serial No. 5 and 6 of the right hand side of the column of the chart at page 108, are the members of the petitioner union and not the members of the majority union, is

also not appreciated by the Tribunal.

8. Submission of the learned advocate for the petitioner that the Tribunal has erred in coming to the conclusion that the respondents are increasing wages of their employees each year and are giving benefits to every employee, every year and there is no discrimination in the wages of the members of the petitioner union and members of majority union is *prima facie* acceptable.

9. It is evident from the record and the impugned order that the impugned decision is rendered in absence of any evidence in respect of date of joining and any evidence to show that there is no discrimination in payment of wages to the members of both the unions. The impugned order, therefore, cannot be sustained.

10. In the result, following order:

ORDER

- A. Writ Petition is allowed.
- B. Impugned Award dated 17th January, 2018 passed by learned Member Industrial Tribunal, Aurangabad in Reference (IT) No.5 of 2010 is hereby quashed and set aside.

- C. The matter is remanded back to the Tribunal. The Tribunal shall record evidence in respect of dates of joining and in respect of disparity in payment of wages to the members of the petitioner union and the members of the majority union and shall decide the matter afresh on merits.
- D. It is not necessary for the Tribunal to record finding on issue No.3 again.
- E. Hearing of the reference is expedited and it shall be decided within a period of 6 months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE