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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3259 OF 2023

M/s Premium Transmission Pvt. Ltd.,
Through Dy. Manager, HR MR. Shoib Irfan Shaikh PETITIONER

VERSUS

Kishan Subhash Rathod and Others RESPONDENTS

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Mr. B. R. Kawre, Advocate for the petitioner
Mr. T. K. Prabhakaran h/f Mr. Ashutosh S. Kulkarni, Advocate for
respondents No. 1 to 119

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st MARCH, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner challenges order dated 17th January, 2023, passed by learned Member, Industrial Court, Aurangabad below Exhibit-U-2 in Complaint (IT) No. 1 of 2022, filed by respondent under section 33 (2) (b) / 33-A of the Industrial Disputes Act, 1947.

2. For the sake of convenience, hereinafter, petitioner is referred as "company", respondents No.1 to 118 are referred as "workmen", respondent No.119 is referred as "union" and

respondents No.120 and 121 are referred as "contractors".

3. The company is engaged in manufacturing of engineering products, by erecting highly technical machines. For carrying out manufacturing activities, the company has engaged several trained manpower, including manager, supervisor and workmen. From the year 2012, apart from regular workmen, labourers were engaged through registered labour contractors (respondents No.120 and 121).

4. Complaint (ULP) 64 of 2020, 106 of 2020, 107 of 2020 were filed by the workmen before the Industrial Court, under Item 9 of Schedule IV of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, alleging contravention of section 33 of the Industrial Disputes Act, 1971. In the said complaints, the Company filed applications Exhibit-C-11 and C-18 for deciding the issue as to maintainability of the complaints, as a preliminary issue. This Court, vide order dated 18th March, 2021 passed in Writ Petition No. 8080 of 2020 dismissed the said complaints and the said order is confirmed by the Supreme Court.

5. The Union, on behalf of the workmen, raised industrial dispute by raising claim therein, which was admitted by the

Conciliation Officer on 11th June, 2019. After failure of conciliation / settlement, report dated 22nd January, 2020 was submitted to the appropriate forum. The demands were referred to the Industrial Tribunal, vide order dated 28th January, 2020. Accordingly, dispute was instituted before the Industrial Tribunal, by Reference (IT) No. 1 of 2020.

6. It is the case of the company that after lapse of 28 months of alleged termination or change in service conditions, the Union filed Complaint (IT) No. 1 of 2020, annexing the list of 118 workmen, before the Industrial Tribunal (for short "Tribunal") under section 2 (k) read with section 11 and 10 of the Industrial Disputes Act for various reliefs including permanency from the date of their respective joining, equal wages for equal work and injunction from discharging / dismissing the workmen.

7. Along with the Complaint (IT) 1 of 2020, application U-2 for interim relief under section 33-A of the Industrial Disputes Act was also filed. The Company opposed the interim application, by filing a detail say and raised a preliminary objection as to the maintainability of the said complaint, contending that the workmen are contractual labours and they are not under direct employment of the Company. It is further claimed that the workmen have failed to produce any documentary evidence

including appointment orders to show that the workmen are in direct employment of the Company. No demand notice was submitted by the workmen and there was no conciliation on the alleged demands and in absence of notice, the dispute was admitted in conciliation proceedings for 66 people. No hearing was given by the Conciliation Officer and no prescribed procedure was followed. The demands in conciliation, failure report submitted by the Conciliation Officer as well as the order of reference is challenged before this Court in Writ Petition No.7158 of 2020. Said petition is pending for hearing. The workmen have failed to make out *prima facie* case and hence, the interim application is liable to be rejected.

8. In parawise reply, to the contentions of the workmen in application Exhibit-U-2, the Company has stated that in absence of employer employee relationship, the Company was not required to take prior permission under section 33 of the Industrial Disputes Act, while changing service conditions. Since, appointment orders were not issued in favour of the workmen, there is no supervision and control over their activities and, therefore, the contentions regarding change of service condition are vague, ambiguous and violation of section 33 A of the Industrial Disputes Act is also denied. Say to the interim

application is filed by reserving right of the Company to file written statement. It is contended by the company that the contractors' manpower used to vary on day to day basis, based on work exigency, requirements and fluctuation in production. Due to unprecedented Covid-19 pandemic, factory work was affected and the company was constrained to reduce its overheads.

9. After hearing the parties, the Tribunal allowed the application and directed the Company to provide work at the factory to the workmen who are part of Annexure-A of reference No.1 of 2020 (except deleted names) during pendency of the complaint, within one month of passing of the order and it is further directed to pay wages to the workmen regularly during pendency of the complaint. The Company is aggrieved by this order.

10. Learned advocate for the Company strenuously urged that the Tribunal has committed an error apparent on the face of record, by granting interim relief, which is in fact a final relief, claimed by the workmen. He submits that there is no employer-employee relationship between the Company and the workmen. The complaint itself is not maintainable in law. The workmen

have failed to prove on record the employer-employee relationship and, therefore, interim relief ought not to have been granted by the Tribunal. He has referred to the contentions in the complaint, written say filed by the Company, interim application, correspondence and documents annexed to the petition as well as the findings recorded by the Industrial Tribunal in the impugned order. According to him, the Industrial Tribunal has misread and misconstrued the authorities cited before it. In support of his submissions, he relied on ***"Delhi Cloth and General Mills Co. Ltd V/s Shri Rameshwar Dayal and Another"*** LAW Finder DOC ID # 111734.

11. Per contra, learned advocate for the workmen submits that the Company ought to have approached the Industrial Tribunal under section 33 (1) of the Industrial Disputes Act. According to him, the Conciliation Proceedings commenced on 11th June, 2019 and notice of the said proceedings was issued to the Company on 28th January, 2020. In view of pendency of the conciliation proceedings, the Company ought to have approached the Industrial Tribunal and ought to have sought permission before changing service conditions of the workmen. He supports the impugned order and submits that there is no merit in the writ petition and the writ petition may be dismissed.

12. Heard learned advocate for the Company and the learned advocate for the workmen. Perused the grounds raised in the writ petition, documents annexed with the same and the impugned order and the citation relied on by the learned advocate for the Company.

13. Admittedly, the Company has filed Writ Petition No. 7158 of 2020, challenging maintainability of the conciliation proceedings and Reference (IT) No.1 of 2020. It is informed that this petition was heard for admission and the matter is closed for orders. This Court, therefore, is not inclined to go into the merits of maintainability of the reference.

14. It is evident from the record that the workmen were engaged by the company, by signing agreements with registered / licenced contractors. The said contracts were extended from time to time. This fact is admitted by the company in para 7 of its say.

15. It is further clear from the documents produced by the Company that 130 labours were doing assembly, deburring, operator, material movement, loading-unloading, housekeeping and causal work and 130 were engaged for setup, trouble shooting,, skilled work force, machinist, turner, welder, loading-

unloading and material movement. These documents *prima facie* indicate that large number of workmen were hired by the company for said duties and the workmen were discharging their duties on production work.

16. Documents placed before the Tribunal by the Company, *prima facie* indicate that the workmen were discharging their duties on production work. Therefore, the Tribunal has rightly observed that they could not have been hired on contractual basis.

17. Tribunal, after considering the pleadings of the parties and the documents placed before it, has come to a conclusion that - *"Prima facie, it is reflected that many workmen were employed through contractors for technical work and the workmen have categorically stated that they were discharging technical work"*.

18. As per documents filed by the company, contract of the workmen was till 31st December, 2020. The company has stopped providing work to the workmen between April and July 2020. It is thus, clear that the workmen were discontinued before their term of contract was over. Though the company has claimed that due to Covid-19 pandemic, company stopped providing work to the workmen, yet since reference is made to

the Tribunal on 21st January, 2020, it was incumbent on the part of the company to approach the Tribunal in terms of section 33 (1) of the ID Act, before altering service conditions of the workmen and / or stopping providing work to them.

19. There is merit in the contention of the workmen that as per section 33 (1) of the ID Act, there is complete ban on altering service conditions of the workmen, to their prejudice. Admittedly, there is no express permission from the Tribunal, which was dealing with the pending proceedings.

20. The Industrial Court has properly appreciated the material on record and has rightly come to a conclusion that-

“The Records prima facie reflect that the workmen were working at the factory of the respondent No.1 but through mere exchange of letters between respondent No.1 and respondent No.3 and 3, they were removed from services. The respondent No.2 and 3 failed to make any submission controverting the contentions of the workmen. The workmen are without any work and they had been pursuing their remedies before the Industrial Court, High Court and the Hon’ble Supreme Court.”

21. It is further held that -

“If the workmen are denied any interim relief and are made to go through the litigation, they are bound to suffer great hardship..... Workmen are without work and definitely their families are suffering.”

22. Decision in ***Hussainbhai, Calicut V/s The Alath Factory*** (1978) 4 SCC 257 is relied on by the Industrial Court, while

granting interim relief.

23. Industrial Court has granted interim relief, considering the breach of section 33 (1) of the ID Act and by observing that "*It is definitely workmen who will suffer irreparable loss if they are denied interim reliefs*". So the balance of convenience is in favour of the workmen.

24. Considering the attending facts, pleadings of the parties and the documents on record, this Court is of the view that the Tribunal has rightly passed the impugned order thereby directing the company to provide work to the workmen, who are part of Annexure-A of Reference No.1 of 2020 (except deleted names). While partly allowing application Exhibit-U2, the Tribunal has recorded cogent reasons. Hence, the directions of the Tribunal to provide work to the workmen cannot be faulted with.

25. In "*Delhi Cloth and General Mills Co. Ltd*" (*supra*), application under section 33A of the Industrial Disputes Act, was filed on account of dismissal of the workman from service. Interim relief of reinstatement was granted, which was challenged and it is held that interim relief of reinstatement should not be granted because that amounts to giving final relief. Facts of the said case are different from the facts of the present

case and, therefore, in my view, said ruling would not help the Company.

26. This Court, while exercising jurisdiction under Article 227 of the Constitution of India, cannot interfere in the discretion exercised by the Tribunal in favour of the workmen. The scope of jurisdiction of this Court is limited. This Court cannot, under the guise of exercising jurisdiction under Article 227 of the Constitution, convert itself into a court of appeal. In "***Bathutmal Raichand Oswal V/s Laxmibai R. Tarta and Another***" (1975) 1 SCC 858, the Supreme Court has observed thus -

"The jurisdiction of High Court under Article 227 is limited only to seeing that the subordinate court functions within the limits of its authority and does not extend to correction of mere error of fact by examining the evidence and re-appreciating it. An error of fact, even though apparent on the face of the record, is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. An error of fact can be corrected only by a superior court in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts.

The High Court acted beyond the limits of its jurisdiction under Article 227 in interfering with the findings of fact reached by the District Court. Even if the special civil application had been under Article 226, that would have made no difference and the High Court would still have

had no jurisdiction to disturb these findings of fact. This is because so far as exercise of jurisdiction under Article 227 is concerned, the Supreme Court has pointed out that a writ or order of certiorari could be issued by the High Court only if there was an error of law apparent on the face of the record and no error of fact howsoever apparent on the face of the record could be a ground for interference by the High Court exercising its writ jurisdiction”.

27. In view of the above ratio and for the aforesaid reasons, there is no illegality or perversity in the order impugned in the present writ petition. Tribunal has rightly exercised discretion in favour of the workmen. There is no merit in the challenge raised by the company and no case is made out for exercising extraordinary writ jurisdiction. Writ petition being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE