

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7441 OF 2023

L.G. Balakrishnan & Bros Ltd
Through its IR Manager-HRD

...Petitioner
[Orig. Respondent]

VERSUS

Aurangabad Mazdoor Union (CITU)
CITU Bhavan, Shivaji High School Road,
Ajabnagar, Aurangabad & Others

...Respondents
[Orig. Complainants]

.....

Mr. Sudhir Talsania, Senior Advocate i/by. Mr. S.V. Dankh,
Advocate for petitioner.
Mr. T.K. Prabhakaran h/f. Mr. Ashutosh Kulkarni, Advocate for
respondent Nos. 2 to 21.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 7th SEPTEMBER, 2023
PRONOUNCED ON: 10th OCTOBER, 2023

ORDER :

1. This petition filed under Article 226 and 227 of the Constitution of India takes exception to the order dated 31.01.2023, passed by learned Member, Industrial Court, Jalna, below Exhibit-U-15, in Complaint (ULP) No. 225/2019.

2. Background facts leading to this petition can be summarized thus:

Respondent No. 1/Union and 125 workers filed

Complaint (ULP) No. 225/2019, seeking following prayers:

- "a) Declare that the Respondent, prima facie, has committed Unfair Labour Practice falling under Item - 1(a), 1(b), 4(a) of Scheduled II and Item 2, 5, 6, 9 and 10 of Scheduled IV of MRTU & PULP Act, 1971;*
- b) Direct respondents, temporarily, to cease and desist from indulge in such in such unfair labour practices, during the pendency of the Complaint;*
- c) Direct the respondents, forthwith allow the Complainant-workmen to resume work without the precondition of executing the good conduct bond, during the pendency of the Complaint;*
- d) Direct the Respondent to remove the immigrant workers brought from Tamil-Nadu who are working in the place of Complainant-Workmen, during the pendency of the Complaint;*
- e) Direct the Respondent to pay wages for the period from 15.11.2019 till such time they are so allowed to resume work in the Factory, during the pendency of the Complaint;*
- f) Grant any other such relief as this Hon'ble Court may deem fit.*
- g) Allow the application in above terms."*

3. Along with complaint application Exhibit- U-2 is filed for interim relief. Petitioner/Company opposed the complaint and application by filing a detail say, raised preliminary objection as to the maintainability of complaint. By order dated 11.12.2019, application U-2 is allowed by the Industrial Court as follows:

- "1. The complainants, excluding complainant Nos. 20, 44, 49, 60 and 72, are hereby directed to unconditionally join their respective work with the*

respondent.

2. The respondent is also hereby directed to allow the complainants, excluding complainant Nos. 20, 44, 49, 60 and 73, unconditionally to resume their respective work from 13.12.2019 as per the shifts chalked out by the respondent for smooth working of the company.

3. The daily wages of the complainants shall commence from the date of their reporting and joining the respondent.

4. The complainants are strictly directed to maintain peace and tranquility during their work, in and around premises of the respondent-company, and to ensue to perform their duties for the better prospects of the company.

5. The respondent is also directed not to change the service conditions of the complainants, except complainant Nos. 20, 44, 49, 60 and 73, without following the due process of law.

6. Matter be listed on board on 03.01.2020.

7. Costs in cause."

4. Respondent-Union and complainants thereafter filed application Exhibit-U-15 contending that by orders passed below Exhibit- U-2 on 11.06.2019 and 26.06.2019 in Complaint (ULP) Nos. 125/2019 and 130/2019, Industrial Court has restrained petitioner/company from making any change in service condition of complainants. Petitioner/company is also restrained from terminating, discharging, dismissing or transferring complainants, without following due process of law. Since, complainants raised demand for wage rise, which resulted into

certain proceedings petitioner/Company refused to allot work to complainants. Though, petitioner/company was directed to allot work to complainants, on 30.01.2020, 29 complainants were terminated. At the time of engaging complainants they were never asked to produce documents. Other workers were not asked to produce documents as they are not members of Union. After observing their work they were made permanent. Now, petitioner/company is digging into the past conduct and records of complainants to terminate them under specious plea of loss of confidence. This is being done to demolish the workers' union and in doing so, petitioner/company has violated the interim orders passed by the Industrial Court. Therefore, complainants prayed for restoration of their status on the date of filing of complaints.

5. Petitioner/Company opposed the application by filing a detail say. Industrial Court has allowed the application, as follows;

- "1) *Application at Exhibit U-15 is allowed.*
- 2) *The respondent shall pay 50% of the monthly wages to the complainants excluding complainant No. 20, 44, 49, 60 and 73 that were being paid to them, from the date of their disengagement by depositing the said amount before this Court on or before the 7th day of each months.*

3) *As an alternative to the above, the respondent is at liberty to re-engage the aforesaid complainants on the same terms and same monthly wages without prejudice to the rights of the litigating sides and extract work from them.*

4) *In the event, the respondent opt for option No. 3, the 50% back wages for the period of disengagement would be deposited in this Court and regular 50% payment would continue on month to month basis.*

5) *The complainants/workers are permitted to withdraw 50% of the said back wages amount and the remaining be invested in a fixed deposit with a nationalized bank.*

6) *The respondent to comply aforesaid order within 30 days from today."*

This order is impugned in the present petition.

6. Heard learned Senior Advocate for petitioner and learned advocate for respondent Nos. 2 to 21.

7. Learned Senior Advocate for petitioner/company assailed the impugned order on various grounds. He submits that clause 17 of the appointment letters issued to complainants provides that, *'if any certificate of your qualification etc., produced by you at the time of appointment found to be not genuine or any suppression of any material information while seeking employment, this appointment order will stand cancelled automatically with immediate effect and you shall not be entitled*

for any compensation whatsoever.' He submits that when ITI certificates produced by complainants were sent for verification it was informed that these certificates are fake and they are not issued by concerned ITI and, therefore, their services are rightly terminated. He submits that though training is given to complainants, there were continuous complaints of rejection of product by clients. Main client M/s. Bajaj Auto was reluctant to continue further relationship with petitioner/company in the month of January-2019. He submits that complainants have not replied to the final notice of termination dated 25.01.2020, and, therefore termination notice dated 31.01.2020 issued to complainants is just, legal and proper. Industrial Court has erroneously exercised discretion in partly allowing the application Exhibit-U-15, ignoring the relevant factors. Therefore, the impugned order is liable to be quashed and set aside.

8. In reply, learned advocate for complainants submits that the Industrial Court has considered all the relevant aspects and has passed well reasoned order, which is not liable to be interfered with in extra ordinary writ jurisdiction. He further submits that in the complaint issues are already framed and he is likely to examine only one witness and is ready for expeditious

disposal of the complaint.

9. I have given due consideration the rival submissions of the parties and perused the memo of writ petition, annexures thereto and the impugned order.

10. It is evident from the record that complainants are working with petitioner from the year 2015. After joining, training was imparted to them and thereafter they were working on the machines at the factory of petitioner. There appears substance in the contention of complainants that only when they joined union and raised demands, dispute arose. Petitioner's contention that it had given work performance increments to the employees, supports the case of complainants.

11. By orders passed below Exhibit-U-2 in Complaint (ULP) Nos. 125/2019 and 130/2019, Industrial Court has restrained petitioner/company from making any change in the service condition of complainants. Petitioner/company is also directed not to terminate, discharge, dismiss or transfer any of the complainants without following due process of law. Industrial Court has directed petitioner/company to unconditionally allow complainants to resume their work. However, petitioner-

company did not allow complainants to resume work and deputed them for training. In both these complaints it is not claimed by petitioner that complainants were not qualified. From the documents placed on record Industrial Court has held that, *"qualifications mentioned therein is 9th standard passed and for other posts, two years of experience."* Considering the documents placed on record Industrial Court has rightly held that these documents prima facie do not support the contention of petitioner-company that ITI qualification was required in respect of complainants. In support of contention that ITI qualification was necessary requirement for the posts on which complainants are working, petitioner-company has not placed on record any document like advertisement, correspondence seeking workmen from employment exchange etc. Thus, prima facie petitioner-company has failed to substantiate its contention that ITI qualification was necessary requirement for the posts on which complainants are working.

12. There appears substance in the contention of complainants that only after interim orders are passed in their favour on 11.12.2019, verification process of educational qualification was started by petitioner on 17.12.2019 and by

order dated 31.01.2020, services of complainants were terminated. It is clear that after five years of service petitioner started checking educational qualification of complainants. After passing of interim order on 11.12.2019, there are no allegations that complainants have committed breach of peace. Record indicates that petitioner removed complainants within one and a half months of passing interim order.

13. Petitioner has considered cases of other complainants and/or similarly situated workers on humanitarian grounds. No reason is assigned by petitioner as to why complainants' case was not considered on humanitarian grounds, though they are similarly circumstanced like that of other complainants/workers.

14. Ground of loss of confidence raised by petitioner is prima facie unacceptable in view of the fact that complainants are working with petitioner since 2015 and petitioner has failed to substantiate its contention that requisite qualification for the post on which complainants are working was ITI pass. There is no merit in the contention of petitioner that final relief at interim stage is granted by the Industrial Court, in view of the fact that interim relief is already operating in favour of complainants by order passed below Exhibit-U-2. In fact, action of petitioner

prima facie appears to be in defiance of the interim orders passed by the Industrial Court.

15. Perusal of impugned order shows that sound reasons are assigned by the Industrial Court while passing the impugned order. Industrial Court is justified in granting 50% of monthly wages to complainants, and in the alternate granted liberty to petitioner to engage complainants on same terms on which they were earlier working and pay them same salary, subject to the result in pending complaint, by relying on the order passed in Writ Petition No. 386/2018. Industrial Court has properly appreciated the facts, circumstances and record, so also previous litigation and has rightly exercised discretion in favour of complainants by relying on *Mahindra and Mahindra Ltd. vs. Dwarkanath Babaji Dalvi*, 2006 (4) Mh.L.J. 88. This Court while exercising jurisdiction under Article 226 and 227 of the Constitution of India is not sitting in appeal over the order of Industrial Court.

16. There is no illegality or perversity in the order impugned in the present petition. No jurisdictional error or error of law is committed by the Industrial Court. No case is made out by petitioner to exercise extra ordinary writ jurisdiction. Writ

petition being devoid of merit is dismissed with no order as to costs.

17. Taking into consideration the fact that the complaint is pending since 2019 and as the issues are framed and parties are ready to lead their evidence and complete it within two months, Industrial Court shall decide the complaint within three months from the date of receipt of writ of this order. Parties to co-operate.

18. It is made clear that observations in this order shall not influence the Industrial Court while deciding the complaint on merits.

[NITIN B. SURYAWANSHI, J.]