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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5512 OF 2022

Jaydeep Shivaji Mate

... Petitioner

Versus

Elanco India Pvt. Ltd.,

... Respondent

...

Mr.P.V. Barde – Advocate for the petitioner

Mr. D.V. Changade – Advocate for respondent no.1.

....

CORAM : GAURI GODSE, J.

DATE : 6th January, 2023

PER COURT :

1. This writ petition challenges the order dated 11th April, 2022 passed by the Industrial Court, Ahmednagar. By the said order, application for interim relief filed by the petitioner is rejected. By application for interim relief, the petitioner had prayed to stay the transfer order dated 2nd February, 2022. By order dated 25th February, 2022, the Industrial Court had stayed the transfer order passed by the respondent thereby transferring the petitioner from Ahmednagar to Tumkur in Karnataka State.
2. Learned counsel appearing for the petitioner states that though this order dated 25th February, 2022 was passed till 2nd March,

2022, the same was continued from time to time. Thereafter, by the impugned order dated 11th April, 2022, the application for interim relief was rejected. Hence the petitioner has filed the present writ petition.

3. It is the case of the petitioner that he is in employment of the respondent. Learned counsel for the petitioner states that he was appointed as Business Executive by the respondent. He states that he was appointed for the purpose of giving services for Ahmednagar district. He further submits that only to harass the petitioner the respondent is insisting that the petitioner should work at Tumkur in Karnataka State. Hence, he submitted that the respondent has engaged in unfair labour practices, and therefore, he filed the complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, “MRTU and PULP Act”). He further submits that if the transfer order is not stayed during the pendency of the complaint, the same will render his complaint infructuous.
4. Learned counsel for the petitioner has relied upon the definition under section 2(3)(d) of the Sales Promotion Employees (Conditions of Service) Act, 1976 (for short, “the said Act,

1976”). He further also relies upon section 6 of the said Act 1976. It is the submission on behalf of the petitioner that learned Industrial Court has erroneously relied upon section 24 of the Act 46 of 1982, by which sub-section 2 of section 6 of the said Act of 1976 is omitted. He however, states that the said section 24 of Act of 1982 is not yet enforced by issuing notification. He states that though omission of sub-section 2 of section 6 of the said Act, 1976 is not yet enforced, learned Industrial Court has relied upon the said omission and prima facie, held that the petitioner’s complaint under the MRTU and PULP Act, 1971 is not maintainable and the Court has no jurisdiction to entertain his complaint. It is contended on behalf of the petitioner that in view of this prima facie findings and certain observations made with respect to working condition of the petitioner in Karnataka State and Maharashtra State, learned Industrial Court has rejected the application for interim relief. He thus, states that if the order of transfer is not stayed, he will face hardships and complaint itself will be rendered infructuous.

5. Learned counsel appearing for the respondent submits that the learned Industrial Court has rightly relied upon the omission of sub-section 2 of section 6 of the said Act, 1976 as well as the

decision of the Hon'ble Supreme Court in the case of *H.R. Adyanthaya and others Vs. Sandoz (India) Limited and others* {AIR (SC) 1994-0-2608} and held that the petitioner being the Medical Representative will not be covered under the definition of workman and his complaint under the MRTU and PULP Act will not be maintainable. He further submits that the section 24 of the Act 46 of 1982 has come into force and sub-section 2 of section 6 of the said Act of 1971 is omitted and hence submissions made on behalf of the petitioner are incorrect. Nothing is produced before me to show that the omission of sub-section 2 of section 6 of the said Act of 1972 is enforced.

6. I have perused the documents annexed to the petition as well as the impugned order. The issue with respect to whether the petitioner will be covered under the definition of workman or not is a question, which will be decided after the parties will lead evidence and that on prima facie finding, the interim relief can not be refused to the petitioner. In the event, the transfer order is made effective, the same will render the complaint of the petitioner itself to be infructuous. Learned Judge in paragraph no.13 of the impugned order has also recorded that from the facts and circumstances it appear that the transfer of

the petitioner from Ahmednagar to Tumkur, Karnataka State is inconvenient to the petitioner, as the petitioner is Maharashtrian and unknown to Kanadi language and so also the place Tumkur is far away from his native place. The transfer may involve several other difficulties to be faced by the petitioner. The learned Judge has relied upon the service agreement which states that the petitioner will be liable to be transferred to any place in India or abroad. Hence with these observations, the interim relief has been refused to the petitioner.

7. The transfer order is dated 2nd February, 2022, which was made effective from 1st March, 2022. By order dated 25th February, 2022, the transfer order was stayed. By the order dated 24th May, 2022, this Court has granted interim protection to the petitioner. Considering the aforementioned facts and circumstances, I find that the said order of stay to the transfer order can be continued during pendency of the complaint. In the event, transfer order is made effective, the petitioner's complaint itself may be rendered infructuous.
8. In view of the same, the order of transfer dated 2nd February, 2022 will remain stayed during the pendency of the Complaint (ULP) No.7/2022.

9. It is made clear that the petitioner will not be entitled to claim any equity in view of this order. Observations made in the impugned order as well as the present order are prima facie and will not affect the final decision of the complaint.
10. The Petition is allowed in the above terms.

[GAURI GODSE, J.]