

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.- 5517 OF 2023

Sulzer Pumps India Pvt Ltd and Others ...Petitioners

Vs.

Maheshwar Dinkar Kocharekar and Others ...Respondents

Mr. J. P. Cama a/w Ms. Shweta R. Rathod i/b Elixir Legal Services, for Petitioner.

Ms. Jane Cox i/b Mr. Ghanshyam Thombare, for Respondents.

CORAM:- N. J. JAMADAR, J.

RESERVED ON:- 25th JULY, 2023

PRONOUNCED ON:- 1st AUGUST, 2023

JUDGMENT:-

- 1) Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, heard finally.
- 2) This Petition calls in question the legality, propriety and correctness of an order dated 6th January, 2023, passed by the learned Member, Industrial Court at Thane on an application for interim relief (Exhibit-U-2) in the complaint (ULP) No. 109 of 2022, directing the petitioner-respondents therein to allow the respondent Nos. 1 to 6 – complainant Nos. 7 to 12 therein to resume their duties, allot work to them and to pay wages as paid

to them prior to the ad-interim order dated 6th June, 2022, and to continue the employment of complainant Nos. 7 to 12 till the final disposal of the complaint, save and except in case of proved misconduct.

3) Background facts leading to this Petition can be stated in brief as under:-

(a) For the sake of the convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the Industrial Court in complaint (ULP) No. 109 of 2022.

(b) The complainants Nos. 1 to 12 assert *inter alia*, that they have been employed with respondent No. 1 – Company since years. Around 145 workers are employed by respondent No. 1 on permanent basis. The complainants and other employees are discharging the same duties as that of the permanent employees. However, the respondents are indulging in unfair labour practices by designating them casual workmen. The complainants and other similarly circumstanced workmen are entitled to the status of permanent workmen and benefits, which the permanent workmen are enjoying, at least from the date they completed 240 days of work in the first calendar year. The respondents are, however, exploiting the labour by not extending the permanency benefits. The complainants further alleged that

the respondents illegally terminated the services of complainant Nos. 1 to 6 and threatened to terminate the services of complainant Nos. 7 to 12 as well. Thus, the complainants filed the complaint of unfair labour practices under Items 5 ,6 and 9 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the Act, 1971”).

(c) Apprehending termination of services of complainant Nos. 7 to 12, the complainants filed an application for interim relief and moved the Industrial Court without notice to the employer. By an order dated 6th June, 2022, the learned Member Industrial Court was persuaded to grant an *ex parte* ad-interim relief as the learned Member was of the view that a strong *prima facie* case to protect the services of complainant Nos. 7 to 12 was made out. The Industrial Court, thus, restrained respondents from terminating the services of complainant Nos. 7 to 12, without following due process of law, till the respondents entered appearance before the Industrial Court.

(d) The respondents-employer resisted the complaint and application for interim relief by filing written statement. The tenability of the complaint at the instance of the complainant in the absence of the recognised union of employees or elected

representatives having moved the Court, was called in question. It was denied that the employer indulged in any unfair labour practice and the complainants were entitled to the benefit of permanency, as claimed. It was contended that the complainants were working as casual workmen and were provided work as an when available. The complaint of unfair labour practice, in the context of the completion of 240 days work in a given calendar year, was also stated to be barred by law of limitation.

(e) The employer categorically asserted that even the complainant Nos. 7 to 12 were also disengaged by the respondent No. 1 much prior to the service of the ad-interim order dated 6th June, 2022 on the respondents. The complainants had *mala fide* moved the Industrial Court and served an *ex parte* ad-interim order on the employer having been fully aware that they were already disengaged of their services with the respondent No. 1-Company. At any rate, according to the respondents, in a matter of this nature where the services of the complainants were already terminated, no interim relief could be granted as it would partake the character of a final relief.

(f) By the impugned order, the learned Member, Industrial Court repelled the challenge to the tenability of the complainant of unfair labour practices at the instance of the complainants.

However, the complainant Nos. 1 to 6, whose services were terminated before filing of the complaint, were held not entitled to any interim relief as that would amount to grant of final relief. As regards complainant Nos. 7 to 12, the learned Member was of the view that the material on record *prima facie* indicated that the respondents-employer had raised a false plea that the services of the complainant Nos. 7 to 12 were also disengaged prior to the service of the ad-interim order dated 6th June, 2022. In any event, there was no material to show the procedure followed by the respondents to terminate the services of complainant Nos. 7 to 12 nor any document to evidence the same. Since it was not the case of the respondents that the work was not available, the learned Member considered it appropriate to direct the respondents to allow the complainant Nos. 7 to 12 to resume the duties especially in view of the ad-interim order dated 6th June, 2022.

(g) Being aggrieved the employer has preferred this Petition.

4) I have heard Mr. J. P. Cama, the learned Senior Counsel for the petitioner and Ms. Jane Cox, the learned Counsel for the respondents at some length. With the assistance of the learned Counsel for the parties, I have perused the pleadings and material on record.

5) Mr. Cama submitted that the impugned order is an instance of a jurisdictional error into which Labour and Industrial Court often fall. Amplifying the submission, Mr. Cama would urge that it is well neigh settled that during the pendency of challenge to the termination of the services of an employee, the industrial adjudicator can not direct reinstatement of the employee by way of interim relief as that would amount to granting the final relief. In a situation of this nature, according to Mr. Cama, if eventually the industrial adjudicator finds that the employee had been illegally terminated, appropriate orders for reinstatement and backwages can be passed. However, during the pendency of the challenge to the legality and validity of the termination, the employer cannot be forced to employ the terminated employee by way of an ad-interim order.

6) In the facts of the case, according to Mr. Cama, the material on record indicates that *ex parte* ad-interim order was not served on the employer till 7.50 pm on 9th June, 2022. However, before the said *ex parte* ad-interim order could be served on the employer, the services of complainant Nos. 7 to 12 were already terminated. Mr. Cama would further urge that the learned Member, Industrial Court committed a manifest error in negativating the said claim of the employer on the ground that

there was no material to show the procedure adopted by the employer in terminating the services of complainant Nos. 7 to 12 and documentary evidence in support thereof as the complainants were casual workmen and the employer was not required to do anything but intimate verbally that they need not report to duty as work was not available.

7) Mr. Cama made a further grievance that the employer could have established that the complainant Nos. 7 to 12 were already terminated and, in fact, few of them were working in other establishment. Without providing such an opportunity, the employer cannot be saddled with the liability to employ the complainants and pay wages to them.

8) To bolster up the submission that, by way of interim relief, the industrial adjudicator cannot direct the employer to reinstate the employee by an interim order, Mr. Cama placed reliance on a Division Bench judgment of this Court in the case of **Maharashtra State Road Transport Corporation, Nagpur Vs. Raju Mahadeorao Bhagwatkar¹**.

9) Per contra Ms. Cox, submitted that it is not an inviolable rule of law that in no case an interim order protecting the employees from termination of their services, or for that matter,

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reinstatement of the services of an employee whose services have been terminated in a high handed manner and in flagrant breach of the orders of the Court, cannot be passed. Ms. Cox submitted ordinarily where an employee has already been terminated from service and such termination is questioned before the Labour Court, reinstatement by way of interim relief is not granted as that would amount to granting a final relief. However, where the employee approaches the Court with a case of apprehended termination, different considerations come into play. In such a situation, the Court is empowered to protect the services of the employee under the provisions of Section 30 (2) of the Act, 1971.

10) In the case at hand, according to Ms. Cox, the situation is exacerbated by the fact that despite the Industrial Court granting an ad-interim relief, the respondents took a brazenly untrue stand that the services of the complainant Nos. 7 to 12 were also terminated. However, the irreconcilable inconsistency in the stand of the respondents- employer as to the time of termination brings out the falsity in the employer's claim, submitted Ms. Cox.

11) The legal position is absolutely clear. If the services of an employee are terminated either post disciplinary enquiry or

otherwise and such termination is questioned before the Industrial Adjudicator, ordinarily it is not open for the Court/Tribunal to direct the reinstatement of the employee and payment of wages to such employee as the said relief would partake the character of final relief, which can only be granted after adjudication of the legality and validity of the termination order. The employee, in normal circumstances, cannot be said to be prejudiced by not granting the interim relief as in the event the Court/Tribunal finds that the termination was illegal appropriate redressal cannot be granted. Conversely, an order of reinstatement by way of interim relief would lead to an undesirable consequence of foisting of an employee where there may be grave allegations of misconduct or ample justification for termination of the services.

12) A useful reference can be made to the decision of the Division Bench of this Court in the case of **United Ink and Varnish Co. Ltd Vs. Chandrashekhar Kurve and Others²**, wherein it was observed, *inter alia*, as under:-

“...8. The legal position is no more *res integra* that *inter alia* where an order of dismissal of an employee on the ground of misconduct is passed without holding the domestic enquiry, it is open to the employer to prove the misconduct in the court. That being the legal right available

with the employer, we hardly find any justification in the order of the Industrial Court directing the employer to reinstate the complainant and pay him wages during the pendency of the complaint. That order, in our view, is not justified even in exercise of the power under section 30(2) of the MRTU & PULP Act. The order passed by the Industrial Court, if allowed to stand, would occasion in failure of justice in as much as despite the right having been given in law to the employer to prove the misconduct in the court in a case where the order of dismissal was not preceded with by the domestic enquiry, such legal right would be seriously prejudiced. On the other hand, if ultimately, the employer fails to establish the misconduct and the complaint is allowed; the order of dismissal is set aside, obviously, an appropriate consequential order shall be passed by the court.....”

13) The aforesaid enunciation, however, cannot be construed as an immutable rule of law that Labour and Industrial Court cannot grant interim relief even when a strong prima facie case is made out. Section 30 (2) of the Act, 1971 empowers the Court to pass such interim orders including any temporary relief or restraining order as it deems just and proper, which may include directions to the person to withdraw temporarily the unfair labour practice, which is complained of, pending final adjudication of the complaint. In the face of the aforesaid explicit statutory provision, it cannot be urged that there is an absolute prohibition for granting an interim order restraining the employer

from terminating the service or in a deserving case which inexorably warrants the grant of interim relief, directing the employer to allow the employee to resume duty. If a very strong prima facie case is made out, the Labour/Industrial Court would be justified in granting interim relief of aforesaid nature.

14) This position was clarified by a learned Single Judge of this Court in the case of **Dombivlinagari Sahakar Bank Ltd and Others Vs. Lahu Keshav Rewale³** as under:-

...8. Under section 30(2) of the MRTU & PULP Act, the Industrial Court and the Labour Court have power to grant interim orders including directions to the person to withdraw temporarily from the unfair labour practice which is complained of in the proceedings. Thus, if the Industrial Court finds that there is a strong prima facie case regarding an Unfair labour practice, it has power to issue interim relief to withdraw the unfair labour practice. Neither the decision of the Division bench in the case of United Ink and Varnish Co. Ltd. v. Chandrashekhar Kuvre and Others (supra) nor the decision of the learned Single Judge in the case of Mumbai Cricket Association v. Pramod G. Shinde (supra) has laid down any absolute proposition of law that no interim relief can be granted moment the employer seeks to justify its conduct. If the industrial court can grant interim relief even where there has been an properly held inquiry, to hold that if the employer holds no inquiry or a faulty inquiry, the industrial court cannot grant interim relief, even if facts so warrants, will be an absurdity. There no dispute about the proposition that as far as right to lead

evidence is concerned there is no distinction between no inquiry and defective inquiry. Ultimately it will depend upon whether a strong prima facie case and balance of convenience, is made out.

9. It is no doubt true that for grant of relief such as one granted in the present case high degree of case must be established and such relief is not to be granted casually. The Labour Court or Industrial Court must be convinced that the prima facie case is of such nature that it is equitable to grant such relief.....”

15) It is also of significance to note that the enunciation of law in the case of United Ink (supra) would govern a case where the factum of termination of service is indisputable. In the instant case, the complainants approached the Court with a grievance that the services of complainant Nos. 1 to 6 were illegally terminated, and apprehending the termination of the services of complainant Nos. 7 to 12 interim relief was sought. As would become evident from the discussion which follows, the very fact as to whether the services of complainant Nos. 7 to 12 were terminated before the ad-interim protection was granted is in serious dispute, nay, the weight of the material *prima facie* suggests to the contrary.

16) At this juncture, reference to the decision in the case of **Raju Mahadeorao** (supra), on which reliance was placed by Mr. Cama, becomes necessary. The respondent therein was

dismissed from service with effect from 23rd June, 1994. The dismissal was set aside by the Labour Court on 17th June, 1996. The Industrial Court interfered in revision and upheld the dismissal. In a Writ Petition, the learned Single Judge of this Court, by an order dated 11th February, 2002, directed the parties to maintain status quo. In the meanwhile, the order of termination dated 9th February, 2002, came to be served on the respondent on 11th February, 2002 at 2.45 pm before the status quo order was served on the appellant-Corporation at about 5.30 pm on 11th February, 2002. When the Writ Petition was again listed before the Court on 30th April, 2002, the learned Single Judge directed the appellant to reinstate the respondent within three weeks.

17) In the Letter Patent Appeal, the Appeal Bench of this Court noted that, in fact, a wrong statement was made in the Petition that the Labour Court had reinstated the respondent by way of interim relief and since then the respondent was in the employment of the Corporation and the said incorrect statement appeared to have weighed with the learned Single Judge in granting ad-interim relief of reinstatement.

18) The Division Bench went on to observe that, in the facts and circumstances of the said case, the direction to reinstate the

respondent by interim order was not proper. If at all, the respondent succeeded in the Petition, he would be entitled to get reinstatement with other reliefs as may be available in law.

19) There can be no duality of opinion about the aforesaid propositions. However, it does not advance the cause of the submission on behalf of the petitioner, to the extent desired by Mr. Cama. Evidently, in the said case, the Division Bench recorded with certainty that the termination order was passed on 9th February, 2002 and served on the respondent therein on 11th February, 2002 at 2.45 pm before the order of *status quo* was served on the appellant-Corporation at about 5.30 pm on 11th February, 2002. The facts of the said case clearly indicate that the termination order preceded the ad-interim order of *status quo* as the former was passed on 9th February, 2002 and latter on 11th February, 2002.

20) Reverting to the facts of the case, it is pertinent to note that the date on which the complainant Nos. 7 to 12 were allegedly disengaged was not specifically pleaded by the respondents-employer in the written statement. In paragraph No. 19 of the written statement, it was contended that the complainant Nos. 7 to 12 were already disengaged by the respondent No. 1-Company much prior to intimation of ad-interim order dated 6th June,

2022. Evidently, the respondent No. 1- Company did not specifically state the date and time of disengagement of the complainant Nos. 7 to 12. In contrast, in ground 2 (n) (pg. Nos. 12 & 13) and the affidavit in support of the Petition sworn on 21st July, 2023, an endeavour has been made to assert that the complainant No. 7 and other three casual workmen were informed on 9th June, 2022 at about 7.06 pm that they were not required to report to duty on the next day i.e. 10th June, 2022, and, thereafter, under 45 minutes, the respondents were served with the copy of the *ex parte* ad-interim order vide e-mail (Exhibit -B to the affidavit).

21) In the face of the aforesaid stand, which was not placed before the learned Member Industrial Court, it cannot be said that the learned Member Industrial Court committed any error in recording a *prima facie* finding that the respondents-employer took an untrue stand that the services of the complainant Nos. 7 to 12 were terminated much before the *ex parte* ad-interim order. Even at this stage, it is not a case of the respondent that the services of complainant Nos. 7 to 12 were terminated before passing of the *ex parte* ad-interim order on 6th June, 2022. On the contrary, the Respondent No. 1-employer has now made an endeavor to demonstrate that the services of complainant Nos. 7

to 12 were terminated barely quarter to an hour prior to the service of the *ad-interim* order. The time lag is too short for comfort.

22) It is in this context, I find substance in the submission of Ms. Cox, that inconsistency in the stand of the employer as regards the alleged termination of the services of complainant Nos. 7 to 12, *prima facie* works out retribution of the employer's case.

23) On the merits of the matter, the learned Member, Industrial Court found that the fact that the complainant Nos. 7 to 12 were working with the respondents for a length of time could not be disputed. Nor was it the case of the respondents that the work was not available. From the perusal of the written statement, it becomes abundantly clear that the respondents claimed, albeit in support of the ground that the complaint was barred by limitation that the complainant No. 7 had joined the respondent No. 1- Company in January, 2011 and complainant No. 12 in October, 2009. This stand lends *prima facie* credence to the claim of the complainants that their services were extracted as casual workmen for years together without extending the benefit of permanency. No allegation of misappropriation or grave misconduct is attributed to the complainant Nos. 7 to 12. The

element of balance of convenience thus tilts in favour of the complainant Nos. 7 to 12. Nor the respondents-employer would suffer an irreparable loss.

24) In the totality of the circumstances, where the learned Member, Industrial Court has exercised the discretion to grant interim relief, especially in the context of the apparent non-compliance of the *ex parte* ad interim order dated 6th June, 2022, and appropriately moulded the relief, I do not find any justifiable reason to interfere with such discretionary order.

25) Resultantly, the Petition fails.

26) Hence, the following order.

ORDER

- i)** The Petition stands dismissed.
- ii)** Rule discharged.
- iii)** No order as to costs.

[N. J. JAMADAR, J.]