



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

WRIT PETITION NO.8676 OF 2023

M.N.Dastur and Company (P) Ltd. And Anr. ... Petitioners
versus
Vivek Shinde ... Respondent

**WITH
WRIT PETITION NO.8776 OF 2023**

M.N.Dastur and Company (P) Ltd. And Anr. ... Petitioners
versus
Kishori Shroff ... Respondent

Mr. Nikhil Mengde with Mr. Siddhesh Davi, for Petitioners
None for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 18 JULY 2023

P.C.

1. Heard the learned Counsel for the Petitioners.
2. The challenge in these Petitions is to the judgment and Order dated 4 May 2023 passed by the learned Member, Industrial Court at Mumbai in Revision Application (ULP) Nos.10 and 11 of 2023 in Recovery Application (ULP) Nos.2 and 3 of 2022 whereby the learned Member rejected the Revision Applications preferred by the Petitioners, affirming the order passed by the learned Presiding Officer, Labour Court, in Recovery Application Nos.2 and 3 of 2022 in Complaints (ULP) Nos.31 of 2020 and 30 of 2020, inter alia, permitting the Respondents-workmen to withdraw the

amount to be deposited by the Petitioners in terms of the order below Exhibit U-2 dated 11 November 2021.

3. Respondents herein preferred complaints of unfair labour practice under Item 1 (a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the Act, 1971). In the said complaints, the Respondents preferred applications for interim reliefs. By an order dated 11 November 2021, the Presiding Officer, Labour Court, allowed the said applications and directed the Petitioner to pay 50% of the last drawn wages to the Respondents-complainants from the month of January 2020 till the final decision of the complaints.

4. It is not in dispute that the said order has not been assailed.

5. The Respondents – complainants preferred Recovery Applications (ULP) Nos.2 and 3 of 2022 seeking recovery certificate under Section 50 of the Act, 1971. During the course of the hearing of the said applications, the Petitioner had shown willingness to deposit the amount in terms of the order dated 11 November 2021 on the condition that the Respondents – complainants shall not be permitted to withdraw the said amounts. By an order dated 12 January 2023, the Labour Court did not accede to the prayer of the Petitioner and directed that, upon deposit, the Respondents-complainants be permitted to withdraw the same. The learned Member, Industrial Court did not find any reason to interfere with the said order.

6. The learned Counsel for the Petitioners submitted that the Respondents-complainants have moved applications seeking withdrawal of the amounts deposited by the Petitioners and, in the event, the Respondents-complainants are permitted to withdraw the amounts, the Petitioners would be left in lurch, if eventually, the Respondents-complainants are held not to be workmen and entitled to the reliefs under the Act, 1971. It was submitted that the Labour Court could have put certain terms subject to which the Respondents-complainants may be permitted to withdraw the amounts.

7. Since the order passed by the Labour Court on 11 November 2021 directing the Petitioners to pay 50% of the last drawn wages has not been assailed, at this stage, there is no propriety in entertaining these Petitions. However, interest of the Petitioners can be protected if the Labour Court, while releasing the amounts deposited by the Petitioners, obtains an undertaking from the Respondents-complainants that, in the event, the respective Respondent-complainant is held not entitled to the amounts, the Respondent-complainant would bring back the said amount along with interest at such rate as may be awarded by the Court.

8. Hence the Petitions stands disposed with a direction to the Presiding Officer, Labour Court, to consider imposing condition of furnishing an undertaking by the respective Respondent-complainant to bring back the amount in the event it is held that the Respondent-complainant is not entitled to the said amount, along with

interest at such rate as may be determined by the Court, while releasing the said amounts.

(N.J.JAMADAR, J.)