

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15457 OF 2022

BHARTIYA KAMGAR SENA

... Petitioner

Versus

M/s.MANNAPURAN FINANCE LTD. & Ors.

...Respondents

Ms.Gayatri Singh, Senior Advocate with Mr. V. G. Sreeram, for the
Petitioner.

Mr. Y. M. Pendse, for the Respondents.

CORAM: G. S. KULKARNI, J.

DATED: FEBRUARY 07, 2023

PC.

1. Heard Ms.Gayatri Singh, learned Senior Counsel for the petitioner
and Mr.Pendse, learned Counsel for the respondents.

2. This petition assails an order dated 2 December 2022 passed by
the learned Member, Industrial Court, Thane, whereby the applications
filed by the petitioner for interim relief below Ex. U-2 and Ex.U-9 have
been rejected. The consequence of the impugned order is that the
transfers which are effected by the respondent/employer of the
concerned workmen who are stated to be 28 in number, are required to
be accepted by these workmen and they would be required to join their
duties at the transferred places. These employees were working at
Aurangabad, Pune, Mumbai, Kolhapur, Nagpur branches of the
respondent establishment.

3. Ms.Singh would submit that there existed a memorandum of settlement entered between the Union and the respondent-employer of March 2020 which covered the terms and conditions in regard to the transfer policy. She has drawn Court's attention to paragraph (5) of the said settlement which interalia provides that big cities like Mumbai, Pune, Nagpur, Aurangabad and Kolhapur are divided in the suitable zones and transfer are to be effected in the same region. It was also agreed by the respondent-employer that the transfers would be effective to the nearby region and promotion transfer will be as per the company policy subject to the employee accepting the promotion. Ms.Singh's first contention is that the impugned transfer orders are not in the same region and there are certainly other regions namely in the State of Telangana, Rajasthan, Gujrat, Karnataka, Kerala, Madhya Pradesh, Tamil Nadu, Odisha, Delhi etc. Her submission is that on the face of it, the transfer orders are contrary to the settlement.

4. The second contention as urged by Ms.Singh is that in passing the impugned order, the learned Member of the Industrial Court framed the following four issues/points for determination and recorded the findings thereon which reads as under:

NO.	POINTS	FINDINGS
1	Whether prima facie case is made out by the complainant for granting interim relief?	In the negative
2	Whether balance of convenience lies in favour of the complainant ?	In the negative
3	Whether the complainant shows that he will be put to great hardship if interim relief is rejected ?	In the negative
4	What Order ?	As per final order.

Her contention is that there is no issue framed by the Industrial Court

insofar as the objection as raised by the petitioner is concerned namely that the workmen in question are not the workman within the definition of 'Workman' under Section 2(s) of the Industrial Disputes Act 1947 (for short "**the ID Act**"). She submits that there was sufficient material on record of the Industrial Court which would go to show that the concerned employees were in fact workmen as contemplated under Section 2(s) of the ID Act and Section 3(5) of the MRTU & PULP Act so as to maintain the proceedings before the Industrial Court. She submits that the learned Member of the Industrial Court, however, without framing an issue to this effect has observed that the employees are not workmen. The Court's attention was drawn to paragraph 32 of the impugned order, wherein the Industrial Court has observed thus:

"... .. There is Memorandum of Settlement between the union and the respondents. In the said settlement, it was decided that the employees should not be transferred outside the region. If they are transferred on promotion outside the region, then with the consent of the employees only. Though that settlement is binding on union and the respondents but as discussed above reliefs can be claimed before this Court by the persons who are workmen as contemplated under Section 2(s) of the Industrial Disputes Act and there is no pleadings on the part of the complainants and the union that they are workman as contemplated under Section 3(5) of the MRTU & PULP Act and they are entitled to claim reliefs from this Court. The complaints are filed presuming that the complainants are workmen. In such circumstances, in my view the complainants failed to prove that they are workmen and there is unfair labour practice against them. Hence, in my view the complainants failed to establish prima facie case in their favour. The balance of convenience is not in favour of the complainants. If the transfer order is not stayed, the complainants will not suffer irreparable loss. Hence, I answer point No.1 to 3 in negative."

It is her contention that the above findings could not have been recorded and in any event it could not have been the sole basis for rejecting the

interim reliefs, as no opportunity was given to the parties to lead any evidence to that effect by framing an issue. He submits that this was also a mixed question of law and fact. It is her contention that the impugned order on these counts is required to be set aside.

5. Learned Counsel for the respondents has supported the impugned order. He would submit that there was sufficient material on record of the tribunal to consider that the concerned employees were not workmen within the meaning of Section 2(s) of the ID Act and, therefore, settlement itself would not be applicable to such category of employees. It is his submission that the Industrial Court has appropriately passed the impugned order and no interference is called for. He submits that the petition ought to be rejected.

6. Having heard learned Counsel for the parties and having perused the impugned order and the relevant record in my opinion, there is substance in the contention as urged on behalf of the petitioner. It clearly appears that the learned Member of the Industrial Court has not framed an issue, as to whether the concerned employees were 'workman' within the meaning of Section 2(s) of the ID Act. On a perusal of the materials on record, learned member of the Industrial tribunal ought not to have recorded an observation that the employees are not workmen. This appears to be the sole basis on which the interim relief has been rejected. In my opinion, such approach on the part of the Industrial Court was certainly inappropriate. If the respondent contested that the proceedings at the behest of the concerned employees were not maintainable, in view of the fact that they are not workmen, the same ought to have been decided in the manner known to law and by framing an issue in that regard. Certainly on such issue the parties would be

required to lead appropriate evidence documentary and oral, and a well considered decision would be required to be taken by the Industrial Court in such context. However, no such opportunity was made available to the parties and accepting the objection as raised by the respondent / employer, the learned Member of the Industrial Court, having noted that the transfers in question are beyond the region refused to grant interim relief.

7. In my opinion this was far from a sound approach which was required to be adopted by the Industrial Court, as also it was fatal to the interest of the litigating parties, for the reason that it was not a crystal clear case wherein the Industrial Court at the threshold, at the interim stage without the parties being permitted to lead any evidence on the issue whether the concerned employees were “workman”, a conclusion could be drawn that they are not workman so as to reject interim relief. Certainly for such reason the impugned order cannot be sustained. It may be a situation that assuming such issue is framed and the petitioners succeed in meeting the objection as raised on behalf of the respondent/employer that the concerned employees were workmen within the meaning of Section 2(s) of the ID Act, in that event these transfers were *ex facie* beyond the respective region and were contrary to the settlement between the Union and the respondents. In such event, it would certainly be a situation of injustice caused to the concerned employees. Thus, adjudication on interim reliefs ought to have been after taking into consideration such eventuality, as to whether a prima facie case was made out for interim relief.

8. For the aforesaid reasons, the impugned order is required to be quashed and set aside and the interim applications as filed by the

petitioner (Exhibit U-2 and U-9) would be required to be restored to the file of the Industrial Court for a decision afresh in accordance with law, which would be on determining the objection of the respondents that the concerned employees are not the workmen with the meaning of Section 2(s) of the ID Act. Such exercise be undertaken as expeditiously as possible within four months from the date the parties appear before the Industrial Court with the present order. Ordered accordingly.

9. Till the interim application is decided afresh as ordered above, the impugned transfers of the concerned workmen shall remain stayed. The concerned workmen are directed to join their duties at their respective place from where they were transferred within two weeks from today. Needless to observe that some workmen have already joined the transferred place, it is their choice whether to join the duties at their respective places from where they transferred. This shall be without prejudice to the rights of the respondents to raise all contentions on the issues as may be permissible in law.

10. Needless to observe that the petitioner is permitted to make an application for arrears of wages. All contentions in that regard are expressly kept open.

11. It needs no clarification that the respondents are at all material times entitled to transfer the concerned employees as per the terms and conditions of settlement.

12. The petition is disposed of in the above terms. No costs.

(G. S. KULKARNI, J)