

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4128 OF 2019

Force Motors Limited

...Petitioner

vs.

Bharat Jijaba Shinde

...Respondent

Mr. Sudhir Talsania, Senior Advocate a/w. Mr. Vishal Talsania, Mr. Netaji Gawade i/b. M/s. Sanjay Udeshi & Co., Petitioner.

Mr. Sanjay Singhvi, Senior Advocate a/w. Mr. Ghanashyam Thombare, Ms. Brazillia Vaz i/b. Mr. Rahul Kamerkar, for the Respondent.

CORAM : N. J. JAMADAR, J.

DATE : JULY 25, 2023

ORDER

1. Rule. Rule made returnable forthwith. 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 on an application for interim relief in Complaint (ULP) No. 203 of 2018 dated 18th September, 2018 passed by the learned Member, Industrial Court at Pune whereby the learned Member while partly allowing the application directed the petitioner, inter alia, to allow the respondent/ complainant to engage legally trained person or a or a well wisher as defence representative in the disciplinary inquiry and proceed with the inquiry by following principles of natural justice and not to

terminate the services of the complainant without following due process of law till the final decision of the complaint.

3. Now the challenge in this petition is, however, restricted to the direction to the petitioner to allow the complainant to engage a legally trained person or well wisher as defence representative.

4. The complainant has been working as an Assistant Tool and Die Maker with the complainant since 1993. It is the claim of the complainant that after about 11 years, the petitioner resorted to unfair labour practices with a view to victimize the respondent. As a part thereof, a charge-sheet was served on 21st November, 2017 alleging misconduct in the nature of addressing messages to company, Government officers etc. which carry false and untrue statement containing signatures of other co-workmen also, which constitute a serious misconduct under clause 24(a) and 24(i) of the Model Standing Orders applicable to the workmen of the complainant category. Inquiry commenced.

5. The complainant filed Complaint (ULP) No. 203 of 2018 alleging unfair labour practice under Item 4 (f) of Schedule II and Items 3, 5, 9 and 10 of Schedule IV of the Act, 1971. In the said

complaint the respondent took out an application (Exhibit U-2) seeking various interim reliefs.

6. By the impugned order, the learned Member, Industrial Court was persuaded to grant aforesaid interim reliefs and reject the rest. As regards the interim relief seeking direction to the employer to permit the workmen to engage a legally trained person or well wisher as the defence representative, the learned Member, Industrial Court was of the view that under clause 25(4) of the Model Standing Orders, the workman was permitted to either defend himself or be defended by workman working in the same department as himself or any office bearer of the trade union of which he is a member and, therefore, there was no impediment in allowing the complainant to engage a legally trained person or well wisher as defence representative.

7. Having regard to the limited nature of the controversy, the Court was anxious to ascertain as to whether the employer is willing to allow the workman to be represented by a legal practitioner in the disciplinary inquiry and also allow the workman to recall and cross examine all the witnesses who have been examined in the inquiry.

8. Mr. Talsania, learned senior advocate, on instructions, made a statement that the petitioner is willing to permit the workman to be represented by a legal practitioner and also allow him to recall and cross examine all the witnesses whose evidence has been recorded in the inquiry.

9. The respondent-workman, however, insisted that he be permitted to avail the service of Mr. Shishir Dhawale, an office bearer of another trade union. Indisputably, Mr. Shishir Dhawale is not an officer of the trade union, functioning in the petitioner's establishment.

10. Clause 25(4) of Model Standing Orders reads as under:-

A workman against whom an enquiry is proposed to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any office bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charge rest. A concise summary of the evidence led on either side and the workman's plea shall be recorded.

11. Mr. Singhvi, learned senior counsel for the respondent-

workman submitted that the right of the workman to be represented by a defence assistant of his choice cannot be defeated by placing restrictions. It was urged that under the Model Standing Orders, the workman has a right to be represented by an office bearer of a trade union. Such a right, cannot be whittled down by insisting that the workman should either be a Member of the trade union or such trade union must be functional in the employer's establishment.

12. I am afraid to accede to this submission. The prescription in the Model Standing Orders does not support the aforesaid broad proposition. The workman undoubtedly has a right to be defended by a workman working in the same department as himself or by office bearer of a trade union of which he is a member. Does clause 25(4) provide for representation by a person who is neither a legally trained person nor connected with the establishment ?

13. It was the stand of the workman before the Industrial Court, as recorded in the impugned order, that he was neither a member of any recognized union nor any co-worker was ready to defend him. In the face of such submission, the learned Member, Industrial Court was justified in holding that the workman was entitled to

have an effective representation. To the extent, the impugned order allows the workman to avail the services of a legal practitioner, no fault can be found as the learned Member has correctly noted that the management representative and inquiry officer are legally trained persons. However, the option given to the workman to be represented by a 'well wisher' appears to broaden the scope of the provisions in clause 25(4) of the Model Standing Orders. The representation through the office bearer of trade union of which the worker is a Member, cannot be equated with representation through a person wholly connected with either the workman or a trade union which functions in the employer's establishment.

14. Ultimately, fairness in action is the overarching principle in the disciplinary proceeding. Whether the workman gets a fair opportunity to defend himself is the moot question. If it is the claim of the workman that he is neither a member of any union nor any co-worker is willing to represent him, an option to be represented by a legally trained person provides an effective representation to the workman. The choice to be represented by a "well wisher" in the absence of the prescription in the Model Standing Orders, has the propensity to derail an orderly conduct of disciplinary proceeding and introduce extraneous elements in a domestic inquiry.

15. I am thus persuaded to allow the petition by modifying the impugned order to the extent it permits the respondent- workman to engage a “well wisher” as defence representative.

16. The respondent-workman shall be entitled to be represented by a legally trained person/ legal practitioner or a co-worker or an office bearer of the union functioning in the petitioner’s establishment.

17. The respondent-workman shall also be permitted to recall and cross examine the witnesses, examined by the employer in the disciplinary inquiry.

18. Subject to above directions, further inquiry be conducted in accordance with the rules and in adherence to the principles of natural justice.

19. Rule made absolute to the aforesaid extent.

20. Petition disposed.

21. No order as to costs.

(N. J. JAMADAR, J.)