

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.191 OF 2023

M/s.Abbott Healthcare Private Limited and Ors. ...Petitioners

vs.

Maharudra Chikane and Another ...Respondents

WITH

WRIT PETITION (ST.) NO.295 OF 2023

M/s.Abbott Healthcare Private Limited and Ors. ...Petitioners

vs.

Nitin Sharma and Another ...Respondents

WITH

WRIT PETITION (ST.) NO.407 OF 2023

M/s.Abbott Healthcare Private Limited and Ors. ...Petitioners

vs.

Santosh Kadam and Another ...Respondents

Mr. V.P. Sawant, Senior Advocate a/w. Ms. N.R. Patankar i/b. Mr. Prabhakar Jadhav, for the Petitioners.

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

CORAM : N. J. JAMADAR, J.

RESERVED ON : MARCH 13, 2023

PRONOUNCED ON : JUNE 5, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at the stage of admission.

2. The challenge in these petitions is to the identical orders passed by the Industrial Court at Mumbai in the Revision

Application preferred by the petitioners against the interim order passed by the Labour Court in the complaints under the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (the Act, 1971), filed by the employees of the petitioners, alleging unfair labour practices, in an identical fact situation. Hence, all these petitions were heard together and are being decided by a common judgment.

3. The background facts leading to these petitions can be stated as under:-

a) The petitioner No. 1 is a company incorporated under the Companies Act and is engaged in manufacturing and marketing of pharmaceutical products. Mr. Mahendra Chikne, respondent No. 1 in Writ Petition No. 191 of 2023 came to be appointed as a Professional Sales Manager (PSM) in the services of the petitioner company vide letter dated 12th October, 2018. He was posted at Ahmadnagar and continued to be posted thereat. Mr. Nitin Sharma, respondent No. 1 in Writ Petition (St.) No. 295 of 2023 came to be appointed as PSM vide letter dated 6th April, 2018 at Muzaffarnagar (UP) and has worked at Muzaffarnagar at all times. Mr. Santosh Kadam, respondent No. 1 in Writ Petition No. 407 of 2023 came to be appointed as PSM at Satara vide letter dated 7th April, 2018 and

has worked at Satara during the entire tenure of his service with the petitioners.

b} Respondent No. 2 is the union registered under the Trade Unions Act and claims to represent the Professional Sales Representatives (PSRs), Medical Representative (MRs) and Technical Representatives (Trs).

c} The petitioners assert due to unsatisfactory performance each of the respondents were put on notice. They were first put on a booster plan for work improvement and thereafter on performance enhancement plan with a view to provide an opportunity to the respondents/employees to improve their work performance. The employees were periodically informed that there was no improvement in their performance despite the measures to improve the performance by putting them on performance enhancement plan.

4. The petitioners thus claimed to have terminated the services of Mahendra Chikne, respondent No. 1 in Writ Petition No. 191 of 2023 by letter dated 24th February, 2021. Services of Nitin Sharma, respondent No. 1 in Writ Petition No. 295 of 2023 were terminated vide letter dated 20th February, 2020. Likewise, the services of Sanotsh Kadam, respondent No. 1 in Writ Petition No. 407 of 2023

were terminated vide letter dated 4th March, 2021. The petitioners assert that the services were terminated for poor work performance and failure to meet the level of performance despite the respondents/ employees having been provided adequate opportunity to improve the performance.

5. The respondents approached the Labour Court with a complaint of unfair labour practices under Item 1(a), (b), (d) and (f) of Schedule IV of the Act, 1971. Since the allegations in all the 3 complaints are almost identical, reference is made to the allegations in the complaint of Mr. Nitin Sharma, respondent No. 1 in Writ Petition (St.) No. 295 of 2023, as a lead case.

6. Respondent No. 1 claimed he was initially working as a Marketing Executive in Vertex Marketing Services, a franchise of the petitioner No. 1 from 2nd March, 2017. Vide appointment letter dated 6th April, 2018, the petitioner No. 1 gave him a dressed up designation of Professional Sales Manager. Petitioner No.1 employs about 5000 Sales Promotion Employees (SPEs) including about 120 SPEs at Respicare Division for the work of promotion of its products of whom about 3000 are the members of respondent No. 2 union. The later has signed settlement with the petitioner No. 1.

7. Petitioner No. 1 regularly organized cyclical meetings of sales promotion employees. In the said meeting, the petitioner No. 5 apprised that the management has decided to shift all the major branches from Respicare Division to other division and operations of the said division would be closed within 2-3 months. Thereupon, the respondent No. 2 union filed a complaint being Complaint (ULP) No. 21 of 2020 before the Industrial Court, Mumbai against apprehended termination faced by employees due to intended closure of Respicare Division.

8. During the course of hearing of the application for interim relief in the said complaint an allegedly false statement was made on behalf of the management that the operations of Respicate Division would continue with the existing six branches and no sales promotion employee would be victimized due to shifting of the brands. Based on the said statement, according to respondent No. 1, the Court did not grant any interim relief. Taking undue advantage of the said situation, according to respondent Nos. 1 and 2, the petitioner No. 1 continued to coerce the PSR to resign. Respondent No. 1 did not cave into coercive tactics and declined to tender the resignation.

9. Respondent Nos. 1 and 2 contended that the petitioner No. 1 thereupon created a bogey unsatisfactory performance. Despite the respondent No. 1 having explained the exigency of the situation which primarily arose on account of the shifting of the brands out of Respicare Division. The petitioner No. 1 illegally terminated the services of respondent No. 1 vide letter dated 20th February, 2022. The respondent No. 1 alleged, the petitioner No. 1 had not issued any show cause notice or charge sheet nor conducted any inquiry against respondent No. 1. The termination of the services of respondent No. 1 was in flagrant violation of the statutory provisions. Such termination was stigmatic and punitive. In substance, the alleged unsatisfactory performance was used as a ruse to illegally terminate the services of respondent No. 1. Hence, the complaint.

10. The respondents moved an application for interim relief.

11. The petitioners resisted the complaint and the application for interim relief. It was contended that the respondent No. 1 was not a workman and, thus, the recourse to the provisions contained in the Act, 1971 was not justifiable. Secondly, the respondent No. 1 having been appointed to work at Muzaffarnagar, pursuant to an order

issued from Lucknow Head Quarters, the respondent No. 1 could not take recourse to the Labour Court at Mumbai constituted under the provisions of the Act, 1971. Endeavour of the respondents was stated to be to have an extra territorial operation of the Act, 1971.

12. On merits it was contended that the respondent No. 1 was terminated for unsatisfactory work performance after providing an adequate opportunity to him under Performance Enhancement Programme. The allegations of unfair labour practices were categorically denied. The fact that no departmental enquiry was held was stated to be of no consequence. At any rate, the employer was entitled to justify the termination before the Labour Court. Since, the interim relief claimed by the respondents, if granted, would amount to grant of final relief, the prayer for interim relief was unsustainable. As the respondent No. 1 was already terminated from services, neither the relief of reinstatement nor payment of wages in the interregnum, could be granted.

13. The Labour Court, after appraisal of the pleadings, the documents tendered for perusal and the material on record, was persuaded to record a finding that the petitioners, prima facie, engaged in unfair labour practices under Item 1(a), (b), (d) and (f)

of Schedule IV of the Act, 1971 and direct the petitioners to deposit 50% monthly salary payable to respondent No. 1 in the said Court on or before 10th day of every month. Liberty was granted to respondent No. 1 to apply for permission to withdraw the said amount. In the process, the learned Presiding Officer, Labour Court repelled the challenge to the jurisdiction of the Labour Court to entertain, try and decide the complaint under the Act, 1971.

14. Being aggrieved, the petitioners preferred Revision Application (ULP) No. 44 of 2022 before the Industrial Court. By the impugned judgment and order, the learned Member, Industrial Court at Mumbai was persuaded to dismiss the Revision Application. The learned Member was of the view that the Labour Court has correctly exercised the discretion to grant interim relief in the nature of direction to deposit 50% of the wages. It was, inter alia, held that the respondent No. 1 was terminated in violation of the principles of natural justice and the provisions of Industrial Disputes Act, 1947, and the challenge to the jurisdiction of the Labour Court at Mumbai did not merit acceptance at that stage.

15. Being further aggrieved, the petitioners have invoked the writ jurisdiction.

16. At this juncture, it may be contextually relevant to note that in Writ Petition No. 191 of 2023 and Writ Petition (St.) No. 407 of 2023 the facts are almost identical with the change in the date of appointment of the respective employees and the dates of termination. In the said petitions, the territorial jurisdiction of the Labour Court at Mumbai was assailed on the ground that the respondent No. 1 in Writ Petition No. 191 of 2023 was posted at Ahmadnagar and respondent No. 1 in Writ Petition (St.) No. 407 of 2023 was posted at Satara, respectively, though the applicability of the Act, 1971 as such, was not put in contest.

17. I have heard Mr. V.P. Sawant, learned Senior Advocate for the petitioners and Ms. Jane Cox, learned counsel for the respondents in all the petitions. With the assistance of the learned counsel for the parties, I have carefully perused the pleadings, documents tendered before the Courts below and the impugned orders. I have also considered the judgments which the learned counsels have cited in order to lend support to their submissions.

18. Mr. Sawant, learned senior counsel for the petitioners, would urge that though the challenge to the territorial jurisdiction of the Courts at Mumbai is common in all the petitions yet, in Writ Petition

(St.) No. 295 of 2023, since respondent No.1 Nitin Sharma had all along been posted at Muzaffarnagar (UP), there is an additional issue of extra- territorial application of the provisions contained in the Act, 1971. Mr. Sawant strenuously submitted that a bare perusal of the complaint in each of the petitions would indicate that no cause of action has arisen at Mumbai. Indisputably, the respondents employees have never ever served at Mumbai. Both the situs of employment of the respondents-employees and the effect of the order of termination, was outside Mumbai. The endeavour on the part of the respondents to show that the Court at Mumbai has jurisdiction only on the ground that the termination orders were issued from Mumbai office does not merit acceptance.

19. What is of significance is the place where the employee has been posted and where the effect of the order under challenge is felt. Since none of these occurred within the territorial limits of the Court at Mumbai, the learned Presiding Officer, Labour Court as well as the learned Member, Industrial Court committed manifest error in assuming the jurisdiction where none exists, urged Mr. Sawant. To bolster up this submission, Mr. Sawant placed a strong reliance on a Division Bench judgment of this court in the case of **Glaxo Smith Kline Pharmaceuticals Limited vs. Abhay Raj Jain and**

Another¹ and the judgment of a learned single Judge of this Court in the case of Manish Ashok Badkas vs. M/s. Nobartis India Limited and Another².

20. Mr. Sawant would further urge that the place where the establishment of the employer is located is of no significance in the matter of determination of jurisdiction. To bolster up the submission that mere issue of letter of termination does not constitute a part of cause of action, Mr. Sawant placed reliance on a judgment of this Court in the case of Anil Murlidharan vs. Larsen and Toubro Limited³ wherein it was enunciated that merely because the order of termination was issued from the Head Office at Mumbai, that would not confer territorial jurisdiction on the Labour Court at Mumbai. It was further submitted that it is not the requirement of law that the employer should have an establishment at the place of termination. To buttress this submission, reliance was placed on a judgment of this Court in the case of Torrent Pharmaceuticals Limited, Ahmadabad vs. Member, Industrial Court, Chandrapur⁴.

21. Mr. Sawant, as a second limb of the submission, would urge

1 2008 SCC OnLine Bom 756.

2 WP.No.2007 of 2009, Dt.03-11-2009.

3 2019 SCC OnLine Bom 8688.

4 2009(2) Mh.L.J. 331.

that, in any event, the services of the respondents employees having been terminated, the Courts below could not have passed an interim order directing deposit of the 50% of the wages. Such direction, according to Mr. Sawant, is in teeth of settled legal position that where an order of dismissal of an employee was passed without holding the domestic enquiry, it is open to the employer to prove the misconduct in the Court. Thus, there can be no justification in directing the employer to reinstate the employee and pay him wages during the pendency of the complaint. Reliance was placed on a judgment of the Division Bench of this Court in the case of United Ink and Varnish Co. Ltd. vs. Chandrashekhar Kuvre and Others⁵. Looked at from any perspective, according to Mr. Sawant, the impugned order deserves to be quashed and set aside.

22. Ms. Jane Cox, the learned counsel for the respondents, submitted that objection to the territorial jurisdiction of the Courts at Mumbai is required to be appreciated keeping in view the settled position in law that the test of accrual of substantive cause of action is required to be applied. At best, the place where the respondents-employees were posted can be said to have concurrent jurisdiction. That, however, according to Ms. Cox, does not denude the Courts at Mumbai the jurisdiction to entertain the complaint. Ms. Cox

5 2006 SCC OnLine Bom 1431.

submitted that the reliance sought to be placed by Mr. Sawant on the Division Bench judgment in the case of Glaxo Pharmaceuticals (supra) is not of much assistance to the petitioners for two reasons. First, in the Special Leave to Appeal (Civil) No.(s) 26000/2008 wherein the said judgment was carried in appeal, while dismissing the said petition as withdrawn, the question of law was left to be decided in an appropriate case before the appropriate forum.

23. According to Ms. Cox, the issue of jurisdiction, arose before the Supreme Court in the case of Nandram vs. Garware Polyster Limited⁶. The Supreme Court, in the backdrop and facts of the said case where the decision to terminate the appellant, who was posted at Pondicherry was taken at Aurangabad, held that the Labour Court, Pondicherry may have the jurisdiction. However, that did not mean that the Labour Court at Aurangabad within whose jurisdiction the management was situated and where the management had taken the decision to close the unit at Pondicherry and pursuant to which the appellant was terminated from services, also did not have jurisdiction.

24. Ms. Cox invited attention of the Court to an order of this Court in Federation of Medical and Sales Representatives' Association of

6 (2016) 6 Supreme Court Cases 290.

India (FMRAI) and Anr. vs. M/s. Sun Pharmaceuticals Industries Limited and Ors.⁷ wherein a learned single Judge observed that the Supreme Court in the case of **Nandram** (supra) has taken a view which is directly contrary to the view of Division Bench in the case of Glaxo Pharmaceuticals (supra). In the said case, the learned single Judge observed that though the decision of Glaxo Pharmaceuticals (supra) was not in terms referred to in the Supreme Court decision in the case of **Nandram** (supra), the order impugned in the **Nandram** (supra) was itself based on the judgment of the Division Bench in the case of Glaxo Pharmaceuticals (supra).

25. Secondly, Ms. Cox would further urge that the import of the Division Bench judgment in the case of Glaxo Pharmaceuticals (supra) was also explained by the learned single Judge in the case of Abbott India Limited and Ors. vs. All India Abbott Employees Union and Ors.⁸ and the learned Member, Industrial Court, has rightly relied upon the said decision to hold that the Labour Court at Mumbai has the jurisdiction to entertain the complaint.

26. Ms. Cox made an endeavour to draw home the point that the premise of the petition that it was the individual grievance of the

7 2016 SCC OnLine Bom 8679.

8 Appeal No. 786/2011 Dt. 13/01/2012.

respondent employee is flawed. In fact, the respondent No. 2 union has espoused the cause of the employees much before the termination of the respondent employees apprehending the consequences which would entail the downsizing of the Respicare Division. The termination of the respondent-employees was inextricably connected with the downsizing of the Respicare Division and was with a design to smash the collective bargaining power. Therefore, it can not be said that the complaint represent the individual grievance of termination of respondent employees.

27. Ms. Cox further submitted that, in any event, having regard to the nature of the impugned interim order which directs the employer to deposit 50% of the wages, it does not warrant interference in exercise of the writ jurisdiction. Ms. Cox submitted that the respondents-employees will not withdraw the amount deposited by the employer and all the issues can be decided by the Labour Court.

28. I have given anxious consideration to the submissions canvassed across the bar.

29. In the backdrop of the afore-narrated facts and the

submissions canvassed on behalf of the parties, two questions arise for consideration. One, whether the Courts below were justified in recording a finding that the Labour Court, Mumbai has the jurisdiction to entertain the complaint of unfair labour practices based on the termination of the services of the respondent/employees ? Two, whether the Labour Court correctly exercised the discretion to direct the petitioner No. 1 to deposit 50% of the wages of the terminated employees ?

30. On the aspect of the jurisdiction, by and large, there is not much controversy over the fact that none of the terminated employees ever worked within the local limits of the jurisdiction of the Labour Court at Mumbai. Nor there is any controversy about their dates of appointment and termination. Purported cause for termination as put forth by the petitioner No. 1 is the poor work performance. Indisputably, petitioner No. 1 employer does not claim to have served any charge-sheet or conducted any disciplinary proceeding against any of the terminated employees. On the contrary, it is the bold defence of the petitioner No. 1 that petitioner No.1 is entitled to justify the termination before the Labour Court by adducing evidence.

31. In the light of the aforesaid, rather un-controverted facts, the learned Presiding Officer, Labour Court was of the view that the Labour Court at Mumbai has jurisdiction to entertain the complaint of unfair labour practice as the termination order qua respondent No. 1 employee was issued from the office of petitioner No. 1 situated at Mumbai and there were other disputes between the respondent No. 2 union and the petitioners subjudice before the Industrial Court and the petitioners had not questioned the jurisdiction of the Industrial Court. The learned Member, Industrial Court elaborated the aforesaid reasoning further by adding that various litigations regarding shifting of products from Respicare Division to other divisions of petitioner No. 1 were subjudice before the Industrial Court. Therefore, the Courts below took the view that Labour Court at Mumbai had requisite jurisdiction. Whether the aforesaid approach of the Labour Court and Industrial Court is justifiable ?

32. Section 6 of the Act, 1971 empowers the State Government to constitute one or more Labour Courts having jurisdiction in such local areas, as may be specified in the notification to be published in official gazette and to appoint persons having the prescribed qualifications to preside over such Courts. In exercise of the power

under section 6 of the Act, 1971 the State Government has issued a notification on 6th September, 2012 designating the territorial jurisdiction of the various Labour Courts in the State of Maharashtra.

33. Under section 7 of the Act, it shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in Item 1 of Schedule IV and to try offences punishable under the Act. Under section 26, unless the context requires otherwise, ‘unfair labour practices’ mean any of the practices listed in Schedules II, III and IV. Section 27 proscribes employer, union and employees from engaging in any unfair labour practice. Section 28 prescribes the procedure for dealing with complaints relating to unfair labour practices.

34. It would be contextually relevant to note Item 1 of Schedule IV, under which, in the case at hand, the petitioner No. 1 is alleged to have indulged in unfair labour practices.

Schedule IV
General Unfair Labour Practices on the part of employers

1] To discharge or dismiss employees -

- (a) by way of victimization;
- (b) not in good faith, but in the colourable exercise of the employer's rights.
- (c) by falsely implicating an employee in a criminal case

on false evidence or on concocted evidence;
 (d) for patently false reasons;
 (e) on untrue or trumped up allegations of absence without leave;
 (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
 (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.

35. The Act, 1971 does not, in terms, circumscribe the jurisdiction of the Labour Court. The test which is thus required to be applied is whether a substantial cause of action arose within the jurisdiction of the Labour Court. The cause of action, it is trite, is a bundle of facts which give rise to right to relief. Whether any such facts which gave right to relief occurred within the territorial limits of the Court, whose jurisdiction is questioned, is required to be examined, where the matter is in the realm of territorial jurisdiction as distinguished from subject matter jurisdiction.

36. In the case of Glaxo Pharmaceuticals (supra) the jurisdiction of the Industrial Court, was sought to be assailed on the ground that the transfer order was issued by the employer at Mumbai, though it was served on the employee at Delhi and was to take effect outside the State of Maharashtra. The Division Bench considered the following question.

6} The point which arise for determination in the case in hand is that:

Q. Whether the Industrial Court and the Labour Court under the MRTU & PULP Act have jurisdiction to entertain a complaint solely on the ground that an order allegedly having effect of unfair [11] labour practice is issued from a place situated within the territory of the State of Maharashtra even though the effects and/or consequences of such an order are to take place outside the territory of the State of Maharashtra and the person against whom such an order is issued for all purpose is employed in an area situated outside the State of Maharashtra?

37. After advertng to a number of judgments, which were cited in support of rival submissions, the Division Bench enunciated the legal position as under:-

30} It is thus clear that it is the situs of the employment which would be the relevant factor to decide the place of cause of action for initiating any legal proceedings. Once it is not in dispute that the respondent, at the relevant time, was employed at Udaipur and he was sought to be transferred from Udaipur to Imphal (Manipur), it is obvious that the situs of employment of the respondent was sought to be changed from Udaipur to Imphal, both the places beyond the territory of the State of Maharashtra.

31} In the case of unfair labour practice, which is sought to be employed by the employer on account transfer of the employee from one place to another, the actual adoption of the unfair labour practice would be at the place from where the employee is either sought to be transferred or at the place where the employee is sought to be transferred. It cannot, by any stretch of imagination, be said to have resulted at the place from where mere order of transfer of the employee is issued. It is not the issuance of the order but it is the consequence of the order issued that would result in unfair labour practice to the employee. Being so, in case of alleged harassment consequent to the transfer resulting into unfair labour practice to the employee can

result either at the place where the employee had been working prior to the issuance of the order of transfer or at the place where is actually transferred under such order. Being so, the cause of action on account of alleged unfair labour practice would arise only at one of these two places and not at any third place. Undoubtedly, in a case where an employee is merely sent to ascertain the possibility of having an establishment of the employer, till and until such establishment commences at any such place, it could not be said that the unfair labour practice would result at any place other than from where the employment of the employee is controlled. Considering the same, therefore, in Mohan Mhatre's case it was held that the place where the dispute substantially arises or where both the parties reside, that is the test to be applied to decide the issue of jurisdiction of the Court to entertain the proceedings relating to such dispute.

(emphasis supplied)

38. The case of **Manish Badkas** (supra) was of termination of the employee, who was at the Head Quarters at Sagar (MP), till his termination, on the ground of loss of confidence. After following the Division Bench decision in the case of **Glaxo Pharmaceuticals** (supra), a learned single judge of this Court held that the Labour Court cannot be said to have committed error in coming to the conclusion that the termination of the services of the petitioner who was employed in Madhya Pradesh would not give rise to a cause of action for instituting a complaint of unfair labour practices in the State of Maharashtra under the Act, 1971. It was expounded that the Division Bench in **Glaxo Pharmaceuticals** (supra) held that it is the situs of the employment which would be the relevant factor to

decide the place of cause of action for initiating any legal proceedings. Though the judgment in Glaxo Pharmaceuticals (supra) was in the context of an order of transfer, the principles of law laid down therein would be applicable to the case of termination also.

39. In the case of Anil Murlidharan (supra) the question of jurisdictional competence of Labour Court at Mumbai arose in the light of the fact that the employee therein, who was working at Silchar was terminated by an order issued from Mumbai office of the employer. A learned single Judge of this Court after referring to the judgment of the Supreme Court in the case of Workmen of Shri Rangvilas Motors (P) Limited vs. Shri Rangvilas Motors (P) Limited⁹ held that there should be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. It was thus concluded that, in the facts of the said case, since the petitioner therein was working at Silchar in a separate establishment of the employer the dispute would arise at that place and the mere fact that the order of termination was issued from Head Quarters at Mumbai would not confer territorial jurisdiction on Labour Court at Mumbai to entertain and decide the

9 AIR 1967 SC 1040.

complaint of unfair labour practices filed by the petitioner at Mumbai.

40. The aforesaid pronouncements, as is evident, proceed on the premise that the jurisdiction of the Court would depend upon the situs of the employment and if the effect of the impugned order is felt at a place other than situs of the employment, e.g. where the employee is sought to be transferred to another place, the Court exercising jurisdiction over the said area would also have jurisdiction. Conversely, the mere fact that the impugned order is issued from a place, which is neither the situs of employment nor the place where the effect of the impugned order is felt, would not confer jurisdiction on the Court within whose local limits such office is located.

41. As noted above, the binding efficacy of aforesaid line of decisions was sought to be assailed on the ground that the Supreme Court had kept the question of law decided in Glaxo Pharmaceuticals (supra) open for a decision in an appropriate case. An endeavour was made to draw home the point that the decision of the Supreme Court in the case of Nandram (supra) sets the controversy at rest.

42. In the case of Nandram (supra) the facts were that the appellant therein was employed initially at Aurangabad, in 1983. Post promotion, the appellant continued to be posted at Aurangabad till the year 2000. He was transferred first to Silvassa, in Gujrat, and then to Pondicherry. The appellant was terminated from services w.e.f. 15th April, 2005 on account of closure of the establishment at Pondecharry. It was not disputed that the registered office of the company was in Aurangabad and the decision to close the establishment at Pondicherry was taken by the company at Aurangabad.

43. Aggrieved by the termination, the appellant had moved the Labour Court at Aurangabad. The issue of jurisdiction was decided in favour of the appellant by the Labour Court. The Industrial Court ruled against the appellant. High Court concurred with the view of the Industrial Court holding that the situs of employment of the appellant being Pondicherry, the Labour Court at Aurangabad did not have territorial jurisdiction to act on the complaint filed by the appellant.

44. In the backdrop of the aforesaid facts, the Supreme Court held as under:-

4} Though, the learned counsel on both sides had addressed in detail on several issues, we do not think it necessary to go into all those aspects mainly because in our view they are only academic. In the background of the factual matrix, the undisputed position is that the appellant was employed by the Company in Aurangabad, he was only transferred to Pondicherry, the decision to close down the unit at Pondicherry was taken by the Company at Aurangabad and consequent upon that decision only the appellant was terminated. Therefore, it cannot be said that there is no cause of action at all in Aurangabad. The decision to terminate the appellant having been taken at Aurangabad necessarily part of the cause of action has arisen at Aurangabad. We have no quarrel that Labour Court, Pondicherry is within its jurisdiction to consider the case of the appellant, since he has been terminated while he was working at Pondicherry. But that does not mean that Labour Court in Aurangabad within whose jurisdiction the Management is situated and where the Management has taken the decision to close down the unit at Pondicherry and pursuant to which the appellant was terminated from service also does not have the jurisdiction.

(emphasis supplied)

45. It would be appropriate to immediately notice that in the case of **Sun Pharmaceuticals** (supra), a learned single Judge of this Court found substance in the submission on behalf of the employees that the Supreme Court in the case of **Nandram** (supra) has taken a view which is directly contrary to the view of the Division Bench in the case of **Glaxo Pharmaceuticals** (supra).

46. Ms. Cox would urge with tenacity that in the face of the decision in the case of **Sun Pharmaceuticals** (supra), the learned single Judge of this Court in the case of **Anil Murlidharan** (supra)

could not have taken a view that the issue of termination order from the office at Mumbai could not have conferred jurisdiction on Labour Court at Mumbai.

47. The correct question to pose is where does the dispute substantially arose ? By its very nature, answer to this question is rooted in facts. The answer which the Court arrives, in a given set of facts, in my view, cannot be imported to another set of facts. It is well recognized, an additional fact or absence thereof makes a world of difference. To put it in other words, where the Court has to find out as to where the dispute substantially arose, the facts of the case play a decisive role.

48. I find it rather difficult to accede to the broad submission on behalf of employees that the decision of the Supreme Court in the case of **Nandram** (supra) holds that the Court where the registered office of the employer is situated will also have concurrent jurisdiction in all the situations. If this Court correctly appreciates the factual backdrop in which the decision in the case of **Nandram** (supra) was delivered, two crucial factors assumed significance. One, appellant therein had all along been posted at Aurangabad till he was transferred to Silvassa and then to Pondicherry. And, two,

the termination of the appellant was on account of the closure of the unit at Pondicherry and the decision to close the unit was taken at Aurangabad. Therefore, in my considered view, the aforesaid decision in the case of **Nandram** (supra) is required to be considered in the totality of the facts of the said case and not as laying down a broad proposition that the Court where the registered office of the employer is situated will also have the concurrent jurisdiction for that reason only.

49. The reliance on the decision of this Court in the case of **Abbott India Limited** (supra) to assume the jurisdiction does not seem to be well founded. A learned single Judge of this Court distinguished the import of the decision in the case of **Glaxo Pharmaceuticals** (supra) as the fact-situation, with which the learned single Judge was confronted with, was completely distinct. The observations of the learned single Judge in paragraphs 33 and 34 in which the decision in the case of **Glaxo Pharmaceuticals** (supra) was distinguished, in the context of the facts of the case in **Abbott India Limited** (supra), make the position explicitly clear.

33} It is, therefore, apparent that the situs of employment would be relevant factor to decide the accrual of cause of action for any legal proceedings is a finding that the Division Bench reached in the backdrop of the allegations in the complaint of respondent No.1 Abhay Raj Jain and that is how paras 28 and 29 so also the ultimate and final

conclusion in para 30 must be read. In my view, the reliance placed by the petitioners on this decision is clearly misplaced.

34} In the instant case, the decision of the Division Bench cannot be of any assistance to the petitioners because what the petitioners are alleging is, that the Industrial Court at Mumbai lacked territorial jurisdiction to entertain and try a complaint of unfair labour practice, which complaint does not only project and raise the issue of transfer. The complaint has been referred to by me in details. The allegations in the complaint have been reproduced by me, with a view to appreciate the rival contentions. If the complaint is perused as a whole, it projects that the service conditions of the petitioners' employees are determined and decided by it at Mumbai. All policy decisions in relation thereto, are taken at Mumbai. Whenever such policy decisions are taken at Mumbai and they are known to all the member employees of the petitioners through the medium of the respondent No.1-Union, which is a recognised Union and the Undertaking of the petitioners and its registered office is at Mumbai, that the complaint has been filed at Mumbai. Each of the issues in relation to the service conditions have been raised by the respondent No.1-Union at Mumbai. There is a reference to the Charter of Demands and the prior settlement, each one of which is a event taking place at Mumbai. It is alleging breach of the terms of the settlement and the essential foundation of collective bargaining, that the unfair labour practice on the part of the petitioners have been extensively set out. The allegations in the complaint refer to Items 9 and 10 of the MRTU and PULP Act. These Items 9 and 10 in Schedule IV read thus:

“9. Failure to implement award, settlement or agreement.

10. To indulge in act of force or violence.”

50. This leads me to the thrust of the submission on behalf of the respondents that the termination of the services of respondents-employees is a part of a larger scheme of unfair labour practices.

The terminations cannot be viewed in isolation. The terminations have their genesis in the transfer of the brands from Respicare Division to other divisions of petitioner No. 1.

51. Indisputably, proceedings are pending before the Industrial Court. In Complaint (ULP) No.01 of 2022, consent terms were executed between the complainant and petitioner No. 1 and others wherein it was, inter alia, settled that the shifting of all products and sale and/or disposal of the existing products of the Respicare Division due to business needs and requirement will not result in termination, or shall adversely affect the service conditions of any of the Medical Representative (MRs) affiliated to complainant union and the employer would make endeavour to provide sufficient work to the MRs of Respicare Division.

52. In the complaint, there are allegations that with a design to close the Respicare Division PSEs were coerced to tender the resignation and those who did not toe the line, have been victimized.

53. Undoubtedly, the proceedings revolving around the shifting of brands/products from Respicare Division to other divisions of the

petitioner No.1, premised on apprehended adverse effect on the service conditions of the employees affiliated to respondent No. 2 union are subjudice. However, that by itself may not be a surer foundation to assume jurisdiction unless it could be demonstrated that the action against the individual employees emanates from the said dispute.

54. Prima facie the nexus between the action against individual employees and the larger dispute between the union and the employer over shifting of brands or for that matter the closure of Respicare Division, is required to be established. Mere fact that the offices of petitioner No. 1 and that of respondent No. 2 union are situated within the local limits of the jurisdiction of the Labour Court at Mumbai would not by itself be also sufficient unless such nexus between the larger dispute and the impugned action is prima facie established.

55. In the circumstances, in my view, since the challenge in the instant petition is to an interim order, it may not be permissible to delve deep into this issue in these petitions. It would therefore be appropriate to direct Labour Court to frame and decide the issue of jurisdiction as a preliminary issue, as the question is rooted in facts.

56. On the second point of the grant of interim relief, it is trite that in the event of termination of the services of an employee, without holding a disciplinary proceeding, the employer is entitled to justify the termination before the Court by adducing evidence. This Court, in the case of **United Ink** (supra) has, in terms, ruled that the Court in exercise of power under section 30(2) of the Act, 1971 would not be justified in directing the employer to reinstate the employee and pay him wages during the pendency of the complaint. The observations in paragraph 8, read as under:-

8} The legal position is no more res integra that interalia 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.

(emphasis supplied)

57. In the case at hand, the Labour Court was alive to the position in law that reinstatement in services which would partake the

character of final relief could not be granted at an interim stage. Thus, the Labour Court directed the petitioners to deposit 50% monthly salary of the respondent-employees.

58. The justifiability of the aforesaid direction is required to be tested in the backdrop of the facts that the termination of none of the employees is on account of any misconduct. Neither was it preceded by any show cause notice. Nor is it the case that the employees have been paid retrenchment compensation. Instead, the bold case of the petitioner No. 1 employer was that the services of the employees have been terminated for poor work performance.

59. The aforesaid ground is, in its very nature, fraught with subjective elements. Were the performance standards reasonable ? How the performance was measured ? Whether the performance was appraised on a uniformly applied measurable standard ? Were there extraordinary or extenuating circumstances affecting performance in a given situation ? Whether the explanation for poor performance was justifiable ? All these and like questions may bear upon the justifiability of termination on the ground of poor performance.

60. From this stand point, in my view, the interim order of deposit of 50% of the wages does not deserve interference. However, equities would intervene if the respondent-employees are permitted to withdraw the amount to be deposited by the petitioners. I am, therefore, persuaded to direct that the amount to be deposited shall abide the order which may be eventually passed by the Labour Court.

61. The conspectus of the aforesaid consideration is that the petitions deserve to be partly allowed.

Hence, the following order.

ORDER

1] The petitions stand partly allowed.

2] The learned Presiding Officer, Labour Court shall frame and decide the issue of jurisdiction as preliminary issue, as expeditiously as possible.

3] The impugned direction to deposit 50% of the wages of the respondent employees stand affirmed. The respondent-employees shall not, however, be permitted to withdraw the said amount.

4] The amount to be deposited shall be invested in an

interest bearing account. It would abide the final decision of the Labour Court.

5] Rule made absolute to the aforesaid extent.

6] In the circumstances, there shall be no order as to costs.

VISHAL
SUBHASH
PAREKAR

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PAREKAR
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(N. J. JAMADAR, J.)