



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12564 OF 2023

V T BADE AND ANOTHER
VERSUS
FERNANDEZ FRANSIS LALZARE

Mr. V. J. Dhage, Advocate for the petitioners
Mr. S. V. Dankh a/w Ms. Shrutika Deshpande h/f Mr. R. B. Muley,
Advocate for the respondent

CORAM : R. M. JOSHI, J.
DATE : 11th JUNE, 2024

PER COURT :-

1. Heard.
2. This petition takes exception to the order passed by the Industrial Court, Aurangabad in Revision Application (ULP) No. 7 of 2023 dated 1st July, 2023 whereby the application filed by the petitioners herein for quashment of the proceeding under Section 48(1) of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'MRTU and PULP Act'), stood rejected.
3. The facts as they appear from the record indicate that the respondent and others had filed complaint ULP No. 128 of 2013 claiming permanency from the date of completion of 240 days of continuous service which consequential benefits. The learned Industrial Court

granted ad-interim relief by passing order dated 30th September, 2013 whereby the respondents in the original complaint were restrained from changing service conditions of the complainant therein. This order was confirmed by the Industrial Court on 10th March, 2022. The operative part of the said order reads thus:

"ORDER

- 1) The application is hereby partly allowed.*
- 2) The ad-interim order dated 30.09.2013 passed earlier by this Court is hereby confirmed subject to direction that the service conditions of the complainants should not be changed without following due process of law, till the disposal of the present complaint.*
- 3) The present application is disposed of in above terms."*

4. The respondent thereafter filed complaint under Section 48(1) of the MRTU and PULP Act alleging the non compliance of the order. It is averred in the complaint in paragraph 6 that the respondent/petitioner herein have failed to pay the wages of the respondent which amounts to change in his service condition. The respondent has recorded his verification in tune of complaint under provisions of Section 200 of Code of Criminal Procedure on 24th May, 2022.

5. The learned Labour Court in compliance with the necessary

procedure contemplated by MRTU and PULP Act and Code of Criminal Procedure had issued show cause notice calling upon the petitioners to why process should not be issued against them. Petitioners were heard and by passing order dated 21st November, 2021 process was issued against the petitioner-accused for the offence punishable under Section 48(1) of the MRTU and PULP Act.

6. Being aggrieved by the said order the petitioners have preferred Revision Application (ULP) No. 7 of 2023 before the Industrial Court, Aurangabad. The Industrial Court after hearing both sides passed order dated 1st July, 2023 rejecting the revision application. This order is impugned in this petition.

7. Learned counsel for the petitioner submits that the complaint filed by the respondent under Section 48(1) of the MRTU and PULP Act is vague with no specific allegation that the respondent had worked for particular period and has not been paid wages for the said period. He also drew attention of the Court to the response given by the petitioner to the show cause notice issued by the Labour Court and the contentions raised therein. According to him, a similar order passed by the Industrial Court which was carried to this Court in Writ Petition No. 2824 of 2020, wherein this Court has made certain observations with regard their being no documentary evidence placed before the Industrial Court to indicate

the dates on which the complainant therein have worked etc. He also placed reliance on the judgment of the Hon'ble Apex Court in case of ***Prithawi Nath Ram Vs. State of Jharkhand and others, 2004 AIR SCW 4742***, wherein the Hon'ble Supreme Court has held that the Court dealing with application for contempt of Court cannot traverse beyond the order. It cannot test corrections of the order, or give additional directions or delete any directions. Thus, sum and substance of his arguments is that this is not a fit case wherein the process could have been issued by the Labour Court against petitioner.

8. Learned counsel for the respondent vehemently opposed the said submissions by drawing attention of the Court to the observations made by the Industrial Court while passing order dated 10th March, 2022, which records the employment of complainant and *prima facie* case is made out about unfair labour practices being committed by respondents in complaint. According to him the defences sought to be taken by the petitioner could not be considered by the Labour Court at this stage. According to him, once there is a pleading in the complaint supported by the verification stating that the respondent has not been paid wages, which amounts to change in service condition, case is made out to issue process.

9. There cannot be any dispute with regard to the proposition of the law that the Court dealing with an application for contempt of Court cannot traverse beyond the order. This Court also therefore is required to consider the order of Industrial Court on its literal meaning to ascertain apparent contempt thereof. It is necessary to take note of the fact that the order dated 10th March, 2022 passed by the Industrial Court in Complaint (ULP) No. 128 of 2013 has not been taken exception by the petitioner before any Court of law. Thus, as of today the said order holds the field. Perusal of the operative part of the said order indicates that the respondent i.e. the employer was restrained from changing the service conditions of the complainant without due process of law. At this *prima facie* stage it can be seen that a specific plea has been raised by the complainant in the complaint with regard to non payment of wages, which would amount to change in condition of service, if proved.

10. The defences sought to be raised by the petitioner in response to the show cause notice would not be available for the petitioner to agitate at this stage, though the same could be taken up by the petitioner during the trial of Criminal (ULP) No. 23 of 2022, in order to show that there is no contempt of Court or non compliance of the order.

11. At this stage it needs to be recorded that for the purpose of

issuance of process the Court is required to satisfy itself *prima facie* about the non compliance of the order. The averment in paragraph 6 of the complaint of non payment of wages/salary is sufficient to indicate the non compliance at this stage. No fault therefore can be found with the order of issuance of process against the petitioners under Section 48(1) of the MRTU and PULP Act, and said order is rightly upheld by Industrial Court.

12. In view of above discussion, the petitioners have failed to make out any case for causing interference in the impugned orders. Hence, petition stands dismissed.

13. After pronouncement of this order, the learned counsel for the petitioners seeks stay of this order for a period of six (06) weeks. He, drew attention of the Court to the order passed by this Court dated 11th January, 2024 whereby though Trial Court was permitted to proceed with the trial but prevented from passing final judgment. Learned counsel for the respondents opposed the said prayer on the ground that the workers are without wages.

14. Since there is order passed by this Court on 11th January, 2024 restraining the Trial Court to pass final judgment in the Criminal Complaint (ULP) No 23/2022, this Court finds it appropriate to give

reasonable time to the petitioners to test this order before Hon'ble Supreme Court. Hence, this order is stayed for a period of four (04) weeks.

(R. M. JOSHI, J.)

ssp