

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13440 OF 2023

Bosch Ltd. & Others

... Petitioners

Versus

Sunanda Eknath Shelar & 17 Ors.

... Respondents

...

Mr. K. S. Bapat, Sr. Advocate a/w A. D. Patwardhan a/w C. D. Deolalkar and Mr. T. R. Yadav for the Petitioners.

Mr. T. K. Prabhakaran, i/b Mr. Satyadev R. Pandey for Respondent Nos.1 to 14.

...

CORAM : SANDEEP V. MARNE J.

DATED : 8 MAY 2024.

P.C.:-

1) Petitioners have filed this Petition challenging the Orders dated 11 August 2023 passed by Industrial Court, Nashik on Applications at Exhibit U-2, C-3 and C-5 in Complaint (ULP) No.11 of 2023. By Order dated 11 August 2023 passed on Application at Exhibit U2, the Industrial Court has granted Interim Relief in favour of Respondent-workers directing payment of full wages (as per G-1N category) to the respondents from the date of the Order upon they reporting for duty, irrespective of red light activation signal and marking attendance by alphabet 'B' against their attendance record. By separate Order passed on 11 August 2023 on Application at Exhibit C-3 filed by Petitioners, the objection of lack of territorial jurisdiction raised by

Petitioners is rejected. By another Order dated 11 August 2023, the application filed by the Petitioners at Exhibit C-5 seeking dismissal of the complaint on the ground of limitation is rejected.

2) So far as Petitioners' challenge to the Order dated 11 August 2023 at Exhibit U-2 granting interim relief is concerned, it is seen that the engagement of the Respondents was merely as "On Job Trainees" (OJT) that too for fixed tenure of 36 months. In this regard, Order dated 25 April 2018 issued to one of the Respondents is placed on record. As per that Order, Respondent No.14 was engaged as "On The Job Trainee" (OJT) with effect from 25 April 2018 for a total period of 36 months. He was to be paid stipend at the rate of Rs.5,500/- per month during first twelve months, Rs.6,000/- during second twelve months and Rs.6,500/- during third twelve months of training. On completion of overall total period of 36 months as OJT, after taking into consideration performance, the Order provided that Respondent No.14 could be taken on roles of the company as "New Entrant Temporary Workman" subject to availability of vacancies. The relevant clauses of the engagement Order are as under:

*We refer to your application for training as "On The Job Trainee" in our Company, we are pleased to engage you as "On The Job Trainee (OJT)" in our Company's Nashik Works **with effect from 25-04-2018**, for a total period of 36 months. Kindly note that you will be given break in training, if necessary, in the event of less workload & the Training period shall be exclusive of such breaks, if any, given.*

Please note that you will have no right or claim for any permanent position in the Company's Nashik factory or in any of the other units of the Company, after completion of your your training. Your engagement as "OJT will autocratically cease at the end of the stipulated period of your training.

However, on completion of an overall total period of 36 months as 'On The Job Trainee', subject to availability of vacancies, successful completion of training & upon satisfactory performance during the 'On The Job Training', you may be taken on rolls of the Company as a "New Entrant Temporary Workman" on such revised

terms as may be applicable and stipulated in the appointment letter that may be issued to you at that time.

The Management reserves the unconditional right to terminate your training at any time during the specified period of your training.

Your name will be entered and borne in the register of 'On The Job Trainee' of the Company at NaP.

Your engagement as an 'OJT', shall also be subject to the following terms & conditions and those conditions as may be introduced for 'OJTs' in future

1. During the period of Training, you will be paid monthly stipend as detailed below:

1) During the 1st Twelve months of training. Rs.5500/- p.m. (for 208 hours)

ii) During the 2nd Twelve months of training- Rs.6000/- p.m. (for 208 hours)

iii) During the 3rd Twelve months of training. Rs.6500/- p.m. (for 208 hours)

The above monthly stipend amount shall not be adjustable according to the variations in the Consumer Price Index Number.

3) Thus, initial engagement of Respondents was merely as trainees for a fixed tenure without any guarantee of permanent employment. There is nothing on record to indicate that upon completion of their training period, Respondents were taken on rolls of the company as “New Entrant Temporary Workman”. Despite this position, the Industrial Court has erroneously directed Petitioners to offer them work in G-1N category, which according to Mr. Bapat the learned senior Advocate appearing for the Petitioners, means “New Entrant Temporary Workman”. In my view, Respondent will have to first establish their right to be taken on rolls in Petitioner-Company as “New Entrant Temporary Workman” by demonstrating that vacancies exists/existed for their absorption. This issue can be decided only after parties lead their evidence. The case of the Respondents in the present Petition cannot be treated on par with the other workers involved in Writ Petition No.1169 of 2022 and Writ Petition No.1189 of 2022 or Writ Petition No.13441 of 2023,

where the concerned Respondents were already working as temporary workmen and not as mere trainees.

4) Mr. Prabhakaran the learned counsel appearing for Respondents would oppose the Petitions submitting that though Respondents are shown as OJT, they are treated as employees of Petitioners for all practical purpose. He would invite my attention to a stipulation in the Appointment Order, under which the OJTs are prohibited from carrying on any other job or business during training period. In my view, such prohibition would not *ipso facto* convert the status of OJTs to that of temporary or regular employees. In my view therefore Industrial Court is not justified in granting interim relief to the Respondents.

5) Mr. Bapat would invite my attention to the file Note signed by management and workmen's representatives under which the management had agreed to provide either apprenticeship or OJT to 27 wards of deceased employees. He would submit that though the management was not in a position to offer any job to the said 27 wards on account of non-fulfillment of eligibility criteria, the company had agreed to merely train them on account of Union's demands. This is something which needs to be taken into consideration by the Industrial Court at the time of final hearing of the Complaint.

6) In my view therefore, Order dated 11 August 2023 passed on application at Exhibit U-2 is thus unsustainable and is liable to be set aside. Instead, the Industrial Court can be requested to expedite the hearing of the Complaint so that Respondents' grievance about non-continuation can be decided

expeditiously, ofcourse considering the pendency of cases before the Industrial Court.

7) So far as Petitioners' challenge to the Order dated 11 August 2023 on Application at Exhibit C-5 is concerned, it appears that the said application was filed seeking dismissal of the Complaint on the ground of limitation. Perusal of the Order of the Industrial Court would indicate that it has arrived at a conclusion that limitation is a mixed question of law and fact and evidence is required to be led for deciding the said issue. I am therefore not in agreement with the contention of Mr. Bapat that the Industrial Court has decided the issue of limitation finally. The issue of limitation is kept open to be decided after recording of evidence. In that view of the matter, there is no reason to disturb the Order dated 11 August 2023 passed on Exhibit C-5.

8) Petitioners have also challenged Order dated 11 August 2023 passed on Application at Exhibit C-3 rejecting the objection of territorial jurisdiction. There is no dispute to the position that Respondents were working in the Plant of Petitioners at Nashik and therefore it is incomprehensible as to why and how Petitioners could question territorial jurisdiction of Industrial Court at Nashik. Mr. Bapat's contention is that in the Complaint filed by Respondents, Petitioner-Company with its Headoffice at Bangaluru as well as its Managing Director with address of Bangaluru are impleaded. That though Mr. B. Ananthraman posted at Nashik is also impleaded as third Respondent, he has already retired from service and is required to be deleted. I find this objection of territorial jurisdiction raised by Petitioners to be too technical, considering the fact that Respondents' claim

for provision of employment is ultimately in respect of Petitioners' plant at Nashik. Therefore, merely because Petitioners' address at Bengaluru is indicated in the cause title of the complaint, the same would not mean that the Industrial Court would not have jurisdiction to entertain the Complaint. The Industrial Court has rightly rejected Petitioners' Application at Exhibit C-5.

9) Writ Petition accordingly partly succeeds. Order dated 11 August 2023 passed by Industrial Court, Nashik on application at Exhibit U-2 is set aside. However, Orders dated 11 August 2023 passed on applications at Exhibit C-3 and Exhibit C-5 shall remain undisturbed. The Industrial Court is requested to expedite the hearing of the Complaint (ULP) No. 11 of 2023. With the above directions Writ Petition is partly allowed and disposed of. There shall be no order as to costs.

[SANDEEP V. MARNE J.]