

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13208 OF 2022

Bafna Bros. Pune

... Petitioner

V/s.

Petrol/Diesel Pump Kamgar Sangh,
Pune

... Respondent

Mr. Kiran Bapat, Senior Advocate i/by Mr. Gaurav
Gawande for the petitioner.

Mr. A. S. Rao, for the respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 15, 2024

PC.:

1. **Rule.** Rule is made returnable forthwith.
2. The petitioner is challenging judgment and award passed by the Industrial Tribunal in Reference (IT) No.3 of 2012 whereby demands raised by the respondent were partly allowed and the petitioner was directed to pay minimum wages and give wage rise of Rs.1,500/- from the date of passing of award.
3. The respondent-union issued a charter of demands dated 16th December 2010 in respect of wage rise and other conditions of the employees of respondent-union. The amicable settlement was not possible. The conciliation proceeding failed to fructify, hence, the appropriate government referred the matter for adjudication

before the Industrial Tribunal.

4. The respondent-union filed statement of claim raising various demands including wage rise. The respondent-union in support of the claim led evidence in the form of oral statements of the employees. The Industrial Tribunal, by the impugned award, directed the petitioner to pay minimum wages and give rise of Rs.1,500/- from the date of passing of award.

5. On perusal of the impugned award, it appears that the burden of proof was placed on record. In the context of said burden, the Industrial Tribunal recorded following admissions and findings which are as under:

“20. From bare perusal of oral evidence of second party it is admitted fact that, the second party union is not recognised union for the first party. The benefits of PF, ESI, bonus, leave encashment are already extended by first party therefore again not necessary to direct to pay. Further admitted fact that first party is authorized dealer of Indian Oil Corporation working on commission basis only. Further the witness of second party in affidavit at Exh.U-4 admitted that rates of petrol decided by government and there is no sufficient record in respect of rate of petrol, total sales of petrol and profit & loss calculations placed on record. Further it is admitted fact that second party failed to bring on record that other petrol pumps are paying Rs.15000/- to their workmen, and further failed to bring on record the comparable concerned of any petrol pump with sufficient data. Further admitted fact that the witness of second party Shri. Dagdu Pawar in his cross-examination at Exh.U-12 admitted that except his bare words there are no other documentary evidence to justify their demands.”

6. The Industrial Tribunal also referred to admissions by the witnesses of respondent that the members of the respondent were getting wage slips, bonus, facilities of PF and ESI and leave encashment from time-to-time. However, such evidence was not placed on record. The respondent failed to place on record materials to show similarly situated petrol pumps are paying more wages to their employees. The Industrial Tribunal further recorded a finding that the respondent failed to show that financial position of the petitioner is such that which can bear additional burden of wage rise.

7. However, the Industrial Tribunal directed payment of Rs.1,500/- as wage rise only for the reason that such burden is bearable by the petitioner.

8. It is well settled that the Industrial Tribunal need to grant relief passed on rights conferred by statute. On equitable consideration, the Industrial Tribunal has no power to grant relief. In the absence of proof entitling the claimant for the relief, the Industrial Tribunal cannot grant relief based on sympathy. Hence, the impugned award cannot be sustained. Hence, following order:

9. The rule is made absolute in terms of prayer clause (a).

(AMIT BORKAR, J.)