

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5310 OF 2023

PRECISE BIO PHARMA PVT. LTD.

& ANR.

....PETITIONERS

V/S

MAHARASHTRA GENERAL KAMGAR

UNION & ANR.

....RESPONDENTS

...

Dr. O.S. Hatle a/w Mr. Deepak Jamsandekar for the Petitioners.

Ms. Jane Cox i/b Mr. Ghanshyam R. Thombare for Respondent No.1-Union.

...

CORAM: SANDEEP V. MARNE, J.

DATE : FEBRUARY 02, 2024.

P.C.:

1 By this Petition, the Petitioners challenge is to the order dated 26 September 2022 passed by the Member, Industrial Court, Thane, partly allowing Application Exhibit-U-2 filed by the Respondent-Union in Complaint (ULP) No.192 of 2021. The Complaint is filed by the Respondent-Union seeking following prayers:

- “(a) That this Hon’ble Court may be pleased to hold and declare that the Respondents have engaged in and are guilty of unfair labour practices within the vice of items 1(a) & (b), item 4(a) & (f) OF SCHEDULE II & ITEMS 5, 6, 9 & 10 OF SCHEDULE IV of the MRTU & PULP Act, 1971;
- (b) That the Respondents be restrained from dismissing, discharging or otherwise terminating services of the employees enlisted at Annexure ‘A’, without following due process of law;
- (c) That the Respondents be directed to treat all the employees, enlisted at Annexure “A”, concerned in the

Complaint, as permanent employees on the roll of the real employer and classify them as per the provisions of the Model Standing Orders and treat the employees as permanent and extend the employees with status and benefits of permanent employees with effect from the date of this complaint;

- (d) The Respondents be directed to extend wages, perquisites, allowances and benefits as per the pay scales applicable to the employees on the permanent roll of the 1st Respondent Company to the employees concerned in the Complaint, enlisted at Annexure 'A' with effect from the date of this Complaint;
- (e) The Respondents be directed to provide the employees concerned in the Complaint, enlisted at Annexure 'A' with Overtime wages and benefits, documents, leave with wages, holidays as per provisions of the Factories Act, 1948, with effect from the date of the Complaint;
- (f) The Respondents be directed provide the employees with House Rent Allowances, overtime wages, bonus as per the statutory provisions of labour welfare legislations,
- (g) The Hon'ble Court may be pleased to appoint an Investigation Officer of the Court and direct the Investigation Officer to visit the factory premises along with a union representative and make necessary investigation about the nature of manufacturing process, benefits and wages paid to the employees, number of working hours of the employees in a week and the terms and conditions of employment of the employees and the nature of work discharged by the employees concerned in the present complaint and submit his report to the Court;
- (h) Any further reliefs as this Hon'ble Court deem fit in the circumstances of the case;
- (i) Cost of this Complaint may be quantified and the Respondents be directed to pay the same to the Complainant-Union."

2 By the impugned order dated 26 September 2022 the Industrial Court has passed the following order:

“ORDER

- i. Application Exh.-U-2, in the Complaint (ULP) No.-192 of 2021, is hereby Partly Allowed.
- ii. Respondent No.-1 and 2, so also, the Respondent No.-3 are hereby Directed Not To Terminate the Services of Member Employees of the Complainant Union, without following the Due Process Of Law, till Final Disposal of this Complaint.
- iii. The Respondent No.-3, alongwith Respondent No.-1 and 2 are directed to ensure that the Member Employees of the Complainant Union receive their Wages and Other Statutory Benefits, in time as per the Statutory Provisions.
- iv. No Orders as to Costs.”

3 I have heard Mr. Hatle, the learned Counsel appearing for the Petitioners and Ms. Cox, the learned Counsel appearing for the Respondent No.1.

4 Perusal of the impugned order dated 26 September 2022 passed by the Industrial Court would indicate that the Court has in fact held in paragraph 14 of the order that Complaint by contract workers is not maintainable against the principal employer. However it has held that Complaint to be maintainable only to the limited extent of ensuring that the statutory benefits are paid by the contractor to the contract workers. In this regard the findings recorded by the Industrial Court in paragraph 14 of its order read thus:

“14. Ld. Counsel for the Respondent No.1 & 2, have relied on the law laid down by the Hon’ble Supreme Court of India, in the case of *Cipla*

Ltd. v/s. Maharashtra General Kamgar Union And Others reported in *Manu/SC/0117/2001=AIR 2001 SC 1165*. In the said Authority, the Hon'ble Apex Court held that Complaint by Contract Labours is Not Maintainable against the Principal Employer. However, with due respect to the ratio laid down by the Hon'ble Supreme Court, I have held hear in above that, Complaint is Maintainable for claiming the Statutory Benefits like Overtime Wages, Weekly Off, House Rent Allowance, Etc., Etc. So also, as per the Provisions of Section 20 of the Contract Labour (Regulation and Abolition) Act, the liability lies upon the Principal Employer to make sure that the Statutory Benefits are being granted to the Contract Labours. As such, the Complaint against Principal Employer and the Contractor is Maintainable, at least for claiming the Statutory Benefits. As such, with due respect to the ratio laid down by the Hon'ble Supreme Court of India, in the case of *Cipla Ltd.* (Supra), at this Interim Stage, Complaint is Prima Facie held to be Maintainable, for Limited Purpose of deciding the Entitlement of Statutory Benefits."

5 When direction no.(ii) in the operative portion of the order is considered in the context of the findings recorded in paragraph 14 of the order, it is difficult to sustain the direction issued to the principal employer not to terminate the services of the members of the Respondent-Union.

6 Ms. Cox would however complain that the Petitioners ensuring that the contract workers are terminated by the contractor. She would submit that as many as 54 contract workers have been terminated from services after filing of the Complaint. She would further draw my attention to the report of the Factory Inspector to demonstrate the precarious conditions in which the contract workers are made to work in the factory. She would submit that in a case when there is gross exploitation of workers, the direction not to terminate the services by the principal employer is

warranted so as to ensure that the complaint alleging commission of unfair labour practices is not rendered infructuous by terminating services of members of Respondent-Union.

7 In my view, considering the findings recorded by the Industrial Court about maintainability of the Complaint qua the relief of termination, the Industrial Court, in ordinary course, ought not to have restrained the principal employer from terminating the services of members of the Respondent-Union. The contract workers are not directly employed by the principal employer and their termination would solely be in the realm of the contractor. The role of the principal employer is restricted only to ensure that the statutory benefits are paid by the contractor and in the event of failure on the part of the contractor to pay the statutory dues, the same are paid by the principal employer. In that view of the matter, direction no.(ii) of the impugned order is clearly unsustainable.

8 At the same time it is seen that several of the contract workers have been terminated since the filing of the Complaint. Mr. Hatle, the learned Counsel would draw my attention to the Affidavit filed on behalf of the Petitioners on 25 January 2024 stating that on an average the Petitioners needs about 153 contract workers in both of their factories and as of today there are 122 contract workers on an average every day. In the Affidavit it is further pointed out that out of 122 employees, 104 workers have already joined Maharashtra Rajya Rashtriya Kamgar Sangh and only

18 workers continue to be the members of the Respondent-Union. He would make a statement that as of now the Petitioners would ensure that all the 18 workers who are members of the Respondent-Union are continued in service through the contractor. So far as the balance 26 posts are concerned, he would submit that if the members of the Respondent-Union who were working with the Petitioners in past through contractor are willing to work, the Petitioners shall ensure that the contractor engages them. In view of the statements made by Mr. Hatle on behalf of the Petitioners about continuation of 18 contract workers who are currently employed as well as willingness to offer job to 26 more who were working in the past, the apprehension of the Respondent-Union about termination of services of contract workers is duly taken care of. The statements made on behalf of the Petitioners are recorded and accepted.

9 Accordingly the Writ Petition is disposed of by setting aside direction no.(ii) of the order dated 26 September 2022 and by recording the statements made on behalf of the Petitioners.

10 The hearing of the Complaint (ULP) No.192 of 2021 is expedited and the Industrial Court shall make an endeavour to decide the same as expeditiously as possible preferably within a period of nine months from today.

Digitally
signed by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
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(SANDEEP V. MARNE, J.)