

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2618 OF 2024

M/s. Fiat India Automobiles Pvt.
Ltd.

....Petitioner

V/s.

Lok Kalyan Mazdoor Union

....Respondent

Mr. Varun Joshi with Mr. Chetan Arvind Alai, Mr. Bhushan Bhadgale, Ms Rahi Patil, Mr. Ashutosh Karangutkar i/b. Mr. Chetan Arvind Alai for the Petitioner.

Mr. Nitin Kulkarni with Mr. Avinash Belge for the Respondent.

CORAM : SANDEEP V. MARNE, J.

DATED : 28 November 2024.

P.C.:

1) The Petition is filed challenging orders dated 18 October 2023 passed by the Industrial Tribunal, Pune, rejecting Applications at Exhibits-192 and 193. The Application at Exhibit-192 was filed by the Petitioner seeking issuance of witness summons to Regional Provident Fund (**RPF**) Commissioner and Employees' Provident Fund (**EPF**) Organisation for production of various documents relating to the five named employees. The Application at Exhibit-193 is filed for issuance of witness summons to the three employees named therein for production of documents

as set out in paragraphs 3 to 5 of the said Application.

2) I have heard Mr. Joshi, the learned counsel appearing for the Petitioner and Mr. Nitin Kulkarni, the learned counsel appearing for the Respondent -Union.

3) The Reference has been made with regard to the termination of 26 Trainees/workers of the Petitioner and for their reinstatement. The Respondent-union has closed its evidence by examining the office bearers of union as well as all the 26 individual workers. During the course of cross-examination of the said workers, suggestions are given with regard to the gainful employment of some of them. However, it appears that the Petitioner was not successful in securing any admissions from most of the workers about their alleged gainful employment. When the stage arrived for the Petitioner to file its own evidence, it was advised to file Applications at Exhibits-192 and 193 for issuance of witness summons to the Provident Fund Commissioner and Employees' Provident Fund Organisation seeking information relating to employment of some of the workers as well as for issuance of witness summons to the three workers for the purpose of producing documents relating to their gainful employment. So far as Application at Exhibit-193 is concerned, there appears to be error in the prayer made therein. Prayers in the said Application read thus:-

- a) Witness Summons may kindly be issued to Mr. Nishant Namdeo Nalawade, Mr. Santosh Abasaheb Walunj and Mr. Santosh Ramchandra Gade to produce the documents as set

out in para 3 to 5.

- b) Any other order in the interest of justice, equity and good conscience may kindly be passed.

However, in paragraphs 3 to 5 of Application at Exhibit No.193, the Petitioner pleaded as under:

3. The Company submits that Mr. Nishant Naindeo Nalawade is working in NORD DRIVE SYSTEMS HINJEWADI. The company submits that a Witness summons may be issued to the H.R. Manager or authorized person who is in exclusive custody of the employment documents pertaining to the said Mr. Nalawade. The said persons may kindly be directed to produce letter of appointment issued, salary slip from the date of commencement of employment with the organization till date, any other documents forming part of the employment record.
4. The Company submits that Mr. Santosh Abasaheb Walunj working in BEAKART INDUSTRIES, MIDC, RANJANGAO. The company submits that a Witness summons may be issued to the H.R. Manager or authorized person who is in exclusive custody of the employment documents pertaining to the said Mr. Walunj. The said persons may kindly be directed to produce letter of appointment issued, salary slip from the date of commencement of employment with the organization till date, any other documents forming part of the employment record.
5. The Company submits that Mr. Santosh Ramchandra Gade working in OHSUNG ELECTRONICS, MIDC, RANJANGAO. The company submits that a Witness summons may be issued to the H.R. Manager or authorized person who is in exclusive custody of the employment documents pertaining to the said Mr. Gade. The said persons may kindly be directed to produce letter of appointment issued, salary slip from the date of commencement of employment with the organization till date, any other documents forming part of the employment record.

4) Thus, what is sought by the Petitioner in paragraphs 3, 4 and 5 is issuance of witness summons to the manager /authorised persons of the employers of the three individuals-Mr. Nishant

Namdeo Nalawade, Mr. Santosh Abasaheb Walunj and Mr. Santosh Ramchandra Gade. However, instead of making a prayer for issuance of witness summons to the manager /authorised person, the prayer is erroneously couched for issuance of witness summons to three workers.

5) Mr. Joshi would submit that Petitioner has secured reliable information with regard to gainful employment of the said 8 (5+3) workers and that the Applications at Exhibit Nos.192 and 193 are aimed at bringing on record correct factual position about gainful employment, if any, of those workers.

6) On the other hand, Mr. Kulkarni would submit that Petitioner is deliberately delaying decision of the Reference, which has been made time bound by this Court and which is directed to be decided on or before 7 September 2024. He would submit that Petitioner has cross-examined each of the workers and has given suggestions about their alleged gainful employment. That the Petitioner has deliberately filed Applications at Exhibits 192 and 193 for the purpose of delaying the proceedings.

7) In my view, the Petitioner has given some details about possible employment of 8 workers in their Applications at Exhibits-192 and 193. Therefore, the observations made by the Tribunal that there was nothing on record to show the employment of the workers, do not appear to be in tune with the contentions of both the Applications. Production of relevant information through the

witnesses, sought to be summoned, would enable the Industrial Court to arrive at correct conclusion as to whether members of Respondent -union are gainfully employed or not. At the same time, the stage on which the Applications are filed by the Petitioner is not appreciated. Filing of such Applications at a belated stage in September-2023 would definitely delay decision of the Reference. Therefore, while allowing the prayer for issuance of witness-summons in pursuance of Applications at Exhibits 192 and 193, the Petitioner is required to be saddled with costs as the delay in decision of the Reference would ultimately affect the concerned workers.

8) Writ Petition is accordingly partly allowed by setting aside orders dated 18 October 2023 filed on Applications at Exhibits 192 and 193. The Industrial Tribunal shall issue witness summons to the RPF Commissioner and EPF Organisation for production of documents set out in paragraph Nos.3(A)(B) and (C). Similarly, the Industrial Tribunal shall issue witness-summons to the managers/ authorised persons of M/s. Nord Drive Systems Hinjewadi, M/s. Beakart Industries, MIDC, Ranjangaon and M/s Ohsung Electronics, MIDC, Ranjangaon, seeking production of documents in respect of three workers viz. Mr. Nishant Namdeo Nalawade, Mr. Santosh Abasaheb Walunj and Mr. Santosh Ramchandra Gade. However, for causing delay in decision of the Reference, Petitioner shall pay to each of the 26 workers costs of Rs.10,000/- within a period of three weeks. The demand drafts towards costs drawn in the names of each of the worker shall be handed over to the

Advocate for the Complainant-Union. Payment of costs shall be condition precedent for issuance of witness summons.

9) With the above directions, Writ Petition is **partly allowed** and disposed of.

[SANDEEP V. MARNE, J.]