

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8947 OF 2024**

M/s. Mitsu Chem Plast Ltd. }Petitioner

: Versus :

1. Mr. Yashwant Shankar Birvadkar and anr. }Respondents

**ALONGWITH
WRIT PETITION NO. 7875 OF 2024**

M/s. Mitsu Chem Plast Ltd. }Petitioner

: Versus :

1. Mr. Vijay Mahadu Gurav and anr. }Respondents

Dr. D.S. Hatle a/w. Mr. Deepak Jamsandekar, for the Petitioner.

Mrs. Anjali Purav, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 10 July 2024.

P.C. :

1) Writ Petition No. 7875 of 2024 is not listed today. At the request of the learned counsel appearing for parties, the petition is taken on board and decided alongwith Writ Petition No. 8947 of 2024. Facts and pleadings of Writ Petition No. 8947 of 2024 are discussed for the sake of convenience.

2) The challenge in the present petitions is to the order dated 3 August passed by the Member, Industrial Court, Thane on application at Exhibit-U-2 which is allowed and certain interim directions are issued by the Industrial Court. It appears that the Respondent No.2-Contractor had filed an

application seeking review of the order dated 3 August 2023 which is rejected by order dated 15 December 2023 which is unnecessarily challenged by the Petitioner in the present petition.

3) By the impugned order dated 3 August 2023, the Industrial Court has issued the following directions :

- i. Application Exh.- U-2, in the Complaint (ULP) No.- 84 of 2023, is hereby Allowed.
- ii. The Respondent No. 1 is directed to allow the Complainant to Resume his Duties w.e.f. 21-08-2023.
- iii. Respondent No.- 1 is further directed to Deposit the Wages of Complainant from March - 2022 in this Court as is stated by the Respondents in its Communication dated 08-08-2022 filed on record as Document No.-9 (Page No.- 28) with List Exh.- U-4, within a period of 30 Days from the date of receipt of this Order.
- iv. Respondent No.- 2 being Principal Employer is hereby directed to see that its Contractor i.e. the Respondent No.- 1 does not play mischief with the Complainant and to further see that (a) the Complainant is being Allowed to Resume his Duties and his Wages are paid and (b) the Respondent No.- 1, deposits the Wages as directed in Clause - iii above, within a period of 30 Days from the date of receipt of this Order.
- v. Respondent No. 1 further Restrained from taking any Action against the Complainant on the basis of Inquiry Report, without 15 Days Advance Notice upon the Complainant along with Findings of the Inquiry Officer.
- vi. No Orders as to Costs.

4) Perusal of the Complaint (ULP) No. 83 of 2023 filed by Respondent No.1 would indicate that the following prayers are sought therein :

- a) Hold and declare that the Respondents have engaged in and continue in unfair labour practices under Item 9 and 10 of Schedule IV of M.R.T.U. AND P.U.L.P Act.
- b) Pending the hearing and final disposal of the Complaint this Hon'ble Court may be pleased to direct the Respondents to allow the Complainant to resume on his duty or to pay him usual wages every month in the event the Respondents failed to utilize the services of the Complainant.
- c) Direct the Respondents not to take final action against the Complainant on the basis of the Reports and Findings of the Enquiry Officer without the permission of Hon'ble Court.
- d) Interim and ad-interim relief in terms of prayer (b) and (c) above.
- e) The cost of this Complaint.
- f) Such other relief as this Hon'ble Court may deem fit and proper to meet the ends of justice.

5) Thus there is only one substantive prayer in the main complaint for restraining both the Respondents from taking final action against the Complainant on the basis of reports and findings of the Enquiry Officer without the permission of the Industrial Court. It is common ground that Respondent No.1 is neither direct employee nor Petitioner has initiated any disciplinary action against him. Therefore, there is no question of the Petitioner taking any final action against Respondent No.1 on the basis of report of the Enquiry Officer. Thus, prayer clause (c), which appears to be the only substantive prayer in the complaint, is wholly directed against Respondent No.2 alone. If the interim application at Exhibit-U-2 is perused, it is seen that following interim reliefs were sought in the application :

- a) Pending the hearing and final disposal of the Complaint this Hon'ble Court may be pleased to direct the Respondents to allow the Complainant to resume on his duty or to pay them usual wages every

month in the event the Respondents failed to utilize the services of the Complainant.

b) Direct the Respondents not to take final action against the Complainant on the basis of the Reports and Findings of the Enquiry Officer without the permission of Hon'ble Court.

c) Interim and ad-interim relief in terms of prayer (b) and (c) above.

d) The cost of this Complaint.

e) Such other relief as this Hon'ble Court may deem fit and proper to meet the ends of justice.

6) Thus, in respect of the main complaint filed only for restraining the Contractor from taking final action on the Enquiry Report, Respondent No.1 sought prayer for direction to allow him to resume duties and pay him wages also. In the main complaint, however there is no prayer relating for continuation in service and for payment of wages. Therefore, grant of interim relief relating to continuation in service and payment of wages clearly appear to be outside the scope of the prayer made in the main complaint. Be that as it may. So far as Petitioner is concerned, it is merely a principal employer and Respondent No.1 admittedly is the employee of Respondent No.2. Petitioner has admittedly not sought any relief for declaring the contract between the Petitioner and Respondent No.2 to be sham and bogus nor any declaration is sought to the effect that Respondent No.1 is a direct employee of the Petitioner. In that view of the matter, the Industrial Court could not have passed any interim order against the Petitioner. Considering the nature of reliefs sought in the main complaint, in my view, direction (iv) in the order dated 3 August 2023 is clearly unsustainable and is liable to be set aside.

7) So far as direction no.(ii) is concerned, the same uses the word '*Respondents*' which may give rise to an inference that direction for deposit of wages is also directed against the Petitioner. It therefore needs to be clarified that nothing directed in the order dated 3 August 2023 shall apply to the Petitioner.

8) Accordingly, the Writ Petitions are allowed. Direction No.(iv) of the orders dated 3 August 2023 passed by the Industrial Court, Thane are set aside.

9) It is further clarified that nothing directed in the orders dated 3 August 2023 shall apply against the Petitioner.

10) With the above directions, the Writ Petitions are **partly allowed and disposed of**.

[SANDEEP V. MARNE, J.]

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