

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

WRIT PETITION NO.8539 OF 2024

M/s. Saikripa Foods Services Pvt. Ltd. & Ors.Petitioners

V/S

Ramesh Devadiga & Ors.Respondents

Ms. Seema Chopda a/w Mr. T.R. Yadav for the Petitioners.

CORAM: SANDEEP V. MARNE, J.

DATE : 27 JUNE 2024.

P.C.:

1 By this Petition, Petitioners have challenged the judgment and order dated 10 April 2024 passed by Industrial Court, Thane, allowing Complaint (ULP) No.156 of 2015 and directing limited relief of payment of 25% back-wages in favour of the Respondents from the date of transfer order dated 18 June 2015 till the date of the judgment of the Industrial Court.

2 I have heard Ms. Chopda, the learned counsel appearing for the Petitioners and I have considered the submissions canvassed by her.

3 She would essentially contend that the Industrial Court has erred in determining the dispute relating to termination and awarding back-wages in a

Complaint challenging merely an order of transfer. She would further contend that Complaint (ULP) No.121 of 2015 filed by Respondents for seeking regularization of their services is still pending before the Industrial Court. That before decision of that Complaint, the Industrial Court, while deciding challenge to an order of transfer, has erroneously proceeded to award back-wages to the Respondents. She would further submit that despite work being offered to the Respondents, they have failed to accept the offer and that therefore Petitioners cannot be made to bear the burden of paying back-wages to the Respondents.

4 After having considered the submissions canvassed by Ms.Chopda, it is seen that the three workers (Respondent Nos.1 to 3) were essentially aggrieved by the transfer order dated 18 June 2015 and accordingly filed Complaint (ULP) No.156 of 2015. In that Complaint an interim order was passed on 11 August 2015 by the Industrial Court on Application Exhibit-U-2 and the transfer order was directed to be kept in abeyance and to allow the workers to join the duty on or before 30 August 2015. Admittedly the said interim order dated 11 August 2015 is not obeyed by the Petitioners by permitting Respondent Nos.1 to 3 to perform duties at the place prior to transfer. Though it is the contention of Ms. Chopda that work was not available at place prior to transfer and that an offer was made to Respondent Nos.1 to 3 for provision of work at another place, in my view, the said defence cannot be accepted. The interim order dated 11 August 2015 was passed after hearing the Petitioners. Therefore, the defence of non-availability of work at

place prior to transfer must have been raised before the Industrial Court. Despite that defence, the interim order was passed on 11 August 2015 directing the transfer order to be kept in abeyance. If Petitioners felt that the order dated 11 August 2015 was erroneous or unworkable, they could have challenged the said order, which they admittedly failed to do. Ms. Chopda submit that order dated 11 August 2015 is challenged in the present Petition. In my view, challenge to the order dated 11 August 2015 after nine long years is clearly fatal and such challenge cannot be maintained at such belated stage.

5 It thus appears that the Petitioners went on violating the interim order passed by the Industrial Court on 11 August 2015 and kept Respondent Nos.1 to 3 away from duties. For this act of Petitioners, the Industrial Court has thought it fit to award 25% back-wages to Respondent Nos.1 to 3 from the date of transfer. The amount of back-wages is apparently reduced on account of gainful employment of Respondent Nos.1 to 3 during the intervening period.

6 Considering the overall conspectus of the case, I do not find that there is any gross error committed by the Industrial Court while passing the judgment and order dated 10 April 2024 for this Court to exercise extraordinary jurisdiction under Article 227 of the Constitution of India.

7 The Writ Petition being devoid of merits is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

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