



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 932 OF 2024
AND
WRIT PETITION NO. 941 OF 2024

WRIT PETITION NO. 932 OF 2024

Satish s/o Upasrao Kalambe,
aged about 36 yrs, occ. Nil,
R/o Nursiya Ansari House No. 61,
Rake Layout, Digdoh Hingna,
Nagpur 440 016.

...**PETITIONER**

...V E R S U S...

Agrofab Machineries (I) Pvt. Ltd.
EL 32 MIDC Area, Hingna Road,
Nagpur 440 016 (MS) India
through its Director/Manager

...**RESPONDENT**

WRIT PETITION NO. 941 OF 2024

Anil s/o Hemraj Wasade,
aged about 36 yrs, occ. Nil,
R/o at Post Patansawangi,
Tah. Saoner, Dist. Nagpur

...**PETITIONER**

...V E R S U S...

Agrofab Machineries (I) Pvt. Ltd.
EL 32 MIDC Area, Hingna Road,
Nagpur 440 016 (MS) India
through its Director/Manager

...**RESPONDENT**

Ms. Asavari Kale & Mr. R.N. Deshpande, Advocate for petitioners.
Mr. A.J. Pathak, Advocate for respondent.

CORAM:- M.W. CHANDWANI, J.
DATE :- 10.02.2026

ORAL JUDGMENT:

Heard the learned counsels for the respective parties.

2. Since, both petitions pertain to similar issue and respondent – establishment in both petitions is same, the matter is decided vide this common judgment.

3. The order dated 20.10.2023 passed by the Industrial Court, Nagpur, is challenged in both writ petitions wherein the matter at hand was remanded back to the Labour Court, Nagpur.

4. The petitioner in both the petitions were appointed by respondent-establishment as Operator on CNC machines. Since, there was no trade union in respondent-establishment, the employees working with respondent-establishment conducted election under Section 28 of the Maharashtra Industrial Relations Act, 1946 (for short, “the Act”) for electing five workers to represent them. The petitioners were amongst the five elected representatives. A certificate was issued by the Government Labour Officer and Election Officer under the Act to them. In the capacity of elected representatives, the petitioners along with other elected representatives made representation before the management of respondent-establishment for providing facilities under various laws

along with a demand of application of minimum wages to the workers. The Management of respondent-establishment issued retrenchment order dated 30.12.2014 against forty workers including the petitioners without following mandatory provision of Section 25-F & G of the Industrial Disputes Act, 1947 (for short, "I.D.Act") and Rule 81 of the Industrial Disputes (Bombay) Rules, 1957 (for short, "I.D. Rules") and therefore, a complaint came to be lodged by the petitioners.

5. Learned Labour Court after finding that the petitioners were amongst the elected representatives of the workers of respondent-establishment, stated that they fall within the ambit of protected employees under Section 101 of the Act read with Rule 71-A(2) of the Maharashtra Industrial Relations Rules, 1947 (for short, "I.R. Rules") and are immune from dismissal under Section 101 of the Act. Learned Labour Court allowed the complaint and directed respondent-establishment to reinstate the petitioners along with full back wages. Respondent-establishment filed revision before the Industrial Court which were remanded back on two grounds; firstly, for deciding applicability of Section 101 of the Act in case of the petitioners and secondly, on the ground of deciding the issue of back wages in wake of letter issued by the management of respondent-

establishment to resume the duties. Feeling aggrieved by the impugned orders passed by Industrial Court, the petitioners filed the present petitions.

6. Ms. Asawari Kale, learned counsel appearing for the petitioner in both the petitions submitted that the petitioners are elected representatives of the workers of respondent-establishment. Accordingly, learned Labour Commissioner has issued certificate and communication is also addressed to respondent-establishment, therefore, they are protected employee under Section 101 of the Act, hence, remanding the matter on the same count could not be justifiable, therefore, she submitted that the order of the Industrial Tribunal is not correct one.

7. Per contra, learned counsel for respondent-establishment submitted that, respondent-establishment has recognized till the date of intimating the petitioners that they are protected employee and the remand is made on the ground of determining the back wages. Undisputedly, the petitioners are amongst the five elected representatives of the workers of respondent-establishment. Accordingly, intimation was given by the Labour Commissioner to respondent-establishment. Needless to mention Rule 71-A(2) of the

I.R. Rules provides that if there is no trade union, then the management of respondent-establishment shall recognize the five elected representatives of the employee. Thus, as soon as, the intimation was received by the management that the petitioners are from amongst five elected members of the employees of respondent-establishment, no further recognition from respondent-establishment. Respondent-establishment is bound to treat them as protected employees. Therefore, there is no further need for any determination in this regard. This aspect has not been considered by the learned Industrial Court and erroneously directed to decide this issue afresh. Therefore, the said finding is required to be set aside.

8. However, it seems that the Industrial Court has discussed about the letter of respondent-establishment calling the petitioners in each petition for resuming their services, therefore, the Industrial Court was right in directing the Labour Court to decide the point of back wages in light of the said letter of respondent-establishment.

9. Thus, both petitions are partly allowed.

10. The order dated 20.10.2023, passed by the Industrial Court, Nagpur in Case bearing Revision (ULP) Nos. 127/2022 and

126/2022 remanding the matter back to the Labour court is maintained. However, the Labour Court, Nagpur shall decide the issue of only back wages afresh and not the question of protected employee.

11. The order of the Industrial Court is hereby modified to that effect.

12. The petitions are partly allowed in the aforestated terms.

(M.W. CHANDWANI, J.)

Belkhede PS