

Comp-ULP No.142/2023

BEFORE SHRI. K. K. KURANDALE, JUDGE
NINTH LABOUR COURT MUMBAI.

COMPLAINT (ULP) NO. 142 OF 2023
CNR NO. MHLCO 1002112-2023

Mr. Dilip Kantilal Trivedi

...Complainant.

V/s.

Sur Gems and Ors.

...Respondents

Appearances : Ld. Adv. A. G. Nagvekar for complainant.
: Ld. Adv. Sachin Pathak for Respondents.

ORDER BELOW EXH. U-2
(Passed on 05/05/2025)

1. Complaint is filed under section 28 read with Item No.1(a), (b), (d) and (f) of Schedule -IV of The Maharashtra Recognition of Trade Unions And Prevention of Unfair Labour Practices Act, 1971 (in short MRTU & PULP Act) for declaration and prevention of unfair labour practices with direction to reinstate the complainant to his original post.

2. This is an application for interim relief filed under section 30(2) of MRTU & PULP Act praying for reinstating complainant to his original post till disposal of complaint or directing respondents to pay monthly wages to complainant till disposal of complaint or directing respondents to pay leave wages to complainant during pendency of complaint.

FACTS OF COMPLAINANT'S CASE IN SHORT

3. According to complainant, respondent no.1 is company dealing in diamonds and respondent no.2 are the partners therein looking after day to day business of the company. Complainant is appointed as Accountant since 16.12.2022 and he is getting salary of Rs.40,000/- per month. Respondents have employed more than 50 workers/employees and hence model standing orders are applicable to them. Respondents are covered under the Bombay Shops And Establishment Act. According to complainant, respondents have started unfair labour practices since 29.09.2023. On that day respondents told complainant to resign from the said post as they wanted to employ new person in his place by paying him less salary. As the complainant refused to resign, respondents terminated his service on and from 29.09.2023 without following due process of law. Thereafter, complainant was not allowed to enter the premises though he was ready and willing to do his work. No compensation of whatsoever nature was paid to complainant at the time of termination and hence according to him his termination is illegal, improper and bad in law and hence he needs to be either reinstated to his original post or respondents may be directed to continue to pay him salary by way of interim relief.

FACTS OF RESPONDENTS' CASE IN SHORT

4. Janhavi Milind Sarang, on behalf of respondents has filed her affidavit in reply at Exh.C-4 in which respondents have denied

the allegations of unfair labour practices at their hands. According to respondents, complainant was appointed as Senior Accountant from January 2023 and not from 16.12.2022 and he has worked only for 08 months and 26 days. According to respondents, complainant was allotted a work of taking entries in accounting software and he was extremely reckless and negligent in doing his work. Complainant was taking incorrect entries due to which respondents were required to check those entries through another employee which was duplication of work. Respondents have referred two incorrect entries one pertaining to money received from DHFL Pramerical Long Term Equity Fund was booked in new ledger account which was already in existence and second entry was pertaining to taking new entry as to receiving money from Sundaram Large Cap Fund wherein already account in said name was exist. Apart from allegations of incorrect entries it is also stand of respondents that complainant was rude in behaviour and he misbehaves with seniors, forges documents by putting signature of respondent no.2. It is also contended that complainant has made false experience certificate but in absence of proof therein management has not filed police complaint. In view of aforesaid conduct of complainant he was terminated with effect from 26.09.2023.

5. Janhavi Milind Sarang on behalf of respondents has also filed additional affidavit in reply vide Exh.C-6 wherein it is contended that complainant was on leave for 04 days and when the said fact

was informed to him, he abused her in filthy language. Thus, according to respondents the allegations in complaint are vague and looking at the conduct of complainant he is not entitled for any interim relief.

POINTS FOR DETERMINATION

6. Perused record along with various documents filed on record by both the parties. Heard Mr. A. G. Nagwekar, learned advocate for Complainant and Mr. Sachin Pathak, learned advocate for respondents.

7. Considering the rival pleadings of both the parties following points arise for my determination to which I record my findings against each of them with the reasons stated below :

S.N	Points for Determination	Findings
1.	Whether complainant proves that he has strong prima facie case to grant interim relief in his favour?	In affirmative
2.	Whether balance of convenience lies in favour of complainant?	In affirmative
3.	Whether complainant will suffer an irreparable loss if interim relief is refused?	In affirmative
4.	What order?	Application is partly allowed.

ARGUMENT

8. Learned Advocate for complainant Mr. Nagvekar submitted that complainant was orally terminated without issuing any show cause notice which is gross violation of principle of natural justice and due process of law. He further submitted that allegations against complainant even if considered as true are not that much serious for which respondent can directly terminate the complainant. Respondent could have issued show cause notice to him or could have suspended or could have charge-sheeted him. No departmental inquiry was conducted against complainant and even no FIR is registered against complainant which shows that action of oral termination of complainant is malafide which amounts to unfair labour practices. He further submitted that there is strong prima facie case in favour of complainant and as the respondents admitted working of complainant with them balance of convenience also lies with complainant. Since termination, complainant has lost his job and not able to find job anywhere hence interim relief as prayed if not granted irreparable loss would cause to complainant. Hence, he prayed for granting interim relief as prayed. In support of his submission, he has also relied upon the judgment of Hon'ble Supreme Court in the case of *Hindustan Lever Ltd. v. Ashok Vishnu Kate*, 1995(6) SCC 326.

9. Learned advocate for respondents submitted that taking incorrect entries has caused great monetary loss to respondents.

Complainant is not only rude in his behaviour but also misbehaves with his seniors and has also forged the documents which amounts to serious misconduct hence respondents decided to terminate him. It is further submitted that complaint of theft, misuse of company letter head and forging signature of partners of M/s. Sur Gems is given to BKC Police Station, Thane. It is further submitted that final relief at the interim stage cannot be granted. Even in case of oral termination employer has right to lead evidence to prove charge of misconduct and hence without giving opportunity to lead evidence, complainant cannot be reinstated. Thus, according to him neither there is strong prima facie case, nor balance of convenience lies in favour of complainant nor any irreparable loss would cause to him if application is rejected. In support of his submission learned advocate for respondents has placed reliance upon following citations;

- i. **State of Uttar Pradesh v. Ram Sukhi Devi, 2005(9) SCC 733,**
- ii. **Executive Engineer, M.S.E.B. Morshi v. Industrial Court, Amravati, 2001(3) ALL MR 566,**
- iii. **Mr. Vajidali T. Kadri v. D.D. Shah, 2007(6) MhLJ 650.**
- iv. **United Ink & Varnish Co. Pvt. Ltd. v. Chandrashekhar Kuvre, 2007(1) CLR 503.**

REASONS

RELEVANT PROVISIONS UNDER MRTU & PULP ACT

10. Chapter VI of the Act relates to 'Unfair Labour Practices' from section 26 to 29 and Chapter VII of the Act relates to 'Powers Of

Courts' from section 30 to 37. Section 26 of the Act provides for what is mean by Unfair labour practices. Section 27 of the Act provides for Prohibition on engaging in unfair labour practices by employer, union and employees. Section 28 of the Act provides for procedure for dealing with complaints relating to unfair labour practices. Section 29 of the Act provides for Parties on whom order of Court shall be binding. Section 30 of the Act which is most important and relevant for the decision of the application provides for 'Powers of Industrial and Labour Courts'. For ready reference the relevant portion i.e. sub section (1) and (2) of section 30 is reproduced which runs as under;

Section 30. Powers of Industrial and Labour Courts.

(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practices, it may in its order -

(a) declare that an unfair labour practices has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

(b) direct all such persons to cease and desist from such unfair labour practices, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practices, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

(c) where a recognised union has engaged in or is engaging in, any unfair labour practices, direct that its recognition shall be cancelled or that all or any of its rights under sub-section (1) of section 20 or its right under section 23 shall be suspended.

(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision:

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

GRANTING INTERIM RELIEF IS DISCRETIONARY

11. Sub section (2) of Section 30 of the Act lays down the circumstances under which interim relief can be granted in a complaint of unfair labour practices. Unless the circumstances laid down in the aforesaid section exist, a Court has no jurisdiction to grant interim relief. Granting an order of interim relief under this section is purely discretion of the Court and law is well settled that this discretion vested in the Court, like any of the discretionary power can be exercised in accordance with the reason and on sound judicial principles. The settled principles of law governing exercise of the discretion conferred by this section are to the effect that a person

who seeks a interim relief must satisfy the Court as to the existence of the following conditions;

Firstly : that there is a strong prima facie case raised in the complaint which is required to be tried and that on the facts before the Court there is probability of the complainant being entitled to the relief asked for by him.

Secondly: that the Court's interference is necessary to protect the complainant from that species of injury which the Court calls irreparable, before, the legal right of the complainant can be established on trial, and

Thirdly : that the comparative mischief or inconvenience which is likely to occur by withholding the injunction or interim relief will be greater than that which is likely to arise from granting it.

12. In Indian Labour Law, particularly in cases seeking interim relief (like interim reinstatement, stay on transfer, or suspension etc.), courts rely on the aforesaid three fundamental equitable principles to decide whether such relief should be granted. These principles help Labour Courts or Industrial Tribunals to assess whether temporary intervention is justified before final adjudication.

AS TO POINT NO. 1:

APPRECIATION

13. Prima facie case means existence of circumstances justifying the trial on the questions of facts and law raised in the

litigation. It is also well settled that in order to make out a prima facie case, complainant is required to prima facie establish that in the event of non-interference by the court there will be irreparable injury and substantial loss would cause to him. Existence of prima facie case alone does not entitle the complainant to an order of temporary injunction or interim relief. Along with prima facie case, to grant relief of interim relief in favour of the complainant there must also exist balance of convenience in his favour and injury of irreparable loss to him.

14. It is admitted position that complainant was employee of respondent. Though the length of time is disputed by the respondents that is the point which can be decided after leading evidence by both the parties at trial. However, at this stage there is no dispute that complainant was working as Accountant with respondents and his last drawn salary was Rs.40,000/- per month. According to complainant, respondents are having more than 50 employees hence model standing order is applicable to them. However, according to respondents they are having only 17 employees hence model standing order is not applicable to them. Whether there is more than 50 employees or only 17 employees working with respondents is again part of trial which requires evidence. Even if it is presumed at this stage that there are less than 50 workers working with respondents that does not mean that employer can dismiss any

employee orally at any time. For terminating or dismissing any of its employee due process of law needs to be followed.

In ***Hindustan Lever Ltd. Vs. Ashok Vishnu Kate*** (supra) Hon'ble Supreme Court was pleased to observe as under;

“.....only when a very strong prima facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated”

In ***State of Uttar Pradesh v. Ram Sukhi Devi*** (supra) Hon'ble Supreme Court was pleased to held that final relief cannot be granted by way of interim order.

In ***Executive Engineer, M.S.E.B. Morshi v. Industrial Court, Amravati*** (supra) Hon'ble Bombay High Court was please to held that final relief at interim stage cannot be granted and reinstatement at the interim stage amount to granting final relief which employee may or may not get after due adjudication on merits.

In ***Mr. Vajidali T. Kadri v. D.D. Shah*** (supra) Hon'ble Bombay High Court was please to held that even in a case where no inquiry was held prior to dismissal of the employee, the employer's right to

justify the action by leading necessary evidence in support of such action for the first time before the Labour Court remains unaffected.

In ***United Ink & Varnish Co. Pvt. Ltd. v. Chandrashekhar Kuvre***, (supra) Hon'ble Bombay High Court was please to held as under;

"...The legal position is no more res integra that inter alia where an order of dismissal of an employee on the ground of misconduct is passed without holding the domestic enquiry, it is open to the employer to prove the misconduct in the court. That being the legal right available with the employer, we hardly find any justification in the order of the Industrial Court directing the employer to reinstate the complainant and pay him wages during the pendency of the complaint. That order, in our view, is not justified even in exercise of the power under section 30 (2) of the MRTU & PULP Act. The order passed by the Industrial Court, if allowed to stand, would occasion in failure of justice in as much as despite the right having been given in law to the employer to prove the misconduct in the court in a case where the order of dismissal was not preceded with by the domestic enquiry, such legal right would be seriously prejudiced. On the other hand, if ultimately, the employer fails to establish the misconduct and the complaint is allowed; the order of dismissal is set aside, obviously, an appropriate consequential order shall be passed by the court."

15. Apart from aforesaid judgments of the Hon'ble Supreme Court and Hon'ble High Court which are relied upon the learned

advocate for complainant and respondents as stated above, certain other judgments in which certain principles and guidelines have been laid down by the Hon'ble Supreme Court needs to be referred.

In ***Punjab National Bank Ltd. v. All India Punjab National Bank Employees' Federation and Anr., AIR 1960 Supreme Court 160***, Hon'ble Supreme Court observed as under:

"But it follows that if no enquiry has in fact been held by the employer, the issue about the merits of the impugned order of dismissal is at large before the tribunal and, on the evidence adduced before it, the tribunal has to decide for itself whether the misconduct alleged is proved, and if yes, what would be proper order to make."

In ***Delhi Cloth and General Mills Co. v. Ludh Budh Singh, AIR 1972 Supreme Court 1031***, Hon'ble Supreme Court has observed as under:

"if no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it."

In ***Firestone Tyre and Rubber Co. of India Pvt. Ltd. v. The Workmen Employed represented of Firestone Tyre Employees, AIR***

1981 SC 1626, Hon'ble Supreme Court held that it is settled law now that when no inquiry has been held or the inquiry held has not been proper, the Tribunal has jurisdiction to allow the management to lead evidence to justify the action taken.

In ***Kamal Kishore Lakshman v. The Management of Pan American World Airways Inc. and Ors. 1987 (1) LLJ SC 107***, Hon'ble Supreme Court has reaffirmed that the legal position firmly established is that if there has been no appropriate domestic enquiry or no enquiry at all before disciplinary action is taken it is open to the employer to ask for such opportunity in the course of adjudication before the Labour Court.

16. Having gone through the aforesaid judgments it is crystal clear that normally employer before terminating employee shall conduct inquiry into alleged misconduct. However, even if the employee is orally terminated without holding any inquiry still employer has right to lead evidence during trial to justify the oral termination of employee. Coming to the facts of the case admittedly complainant is orally terminated without holding any inquiry. There is nothing on record to show that respondents have issued any show cause notice to complainant as to his alleged misbehaviour. There is also nothing on record to show that respondents have issued any show cause notice to complainant in respect of his taking incorrect entries in account software. Though the respondents have filed a letter in the form of complaint on 28/09/2024 to the BKC Police

Station which was received by police station on 30.09.2024 there is nothing on record to show that Police have registered FIR against complainant. Thus, at this stage there is nothing on record to substantiate the contents or defence of respondents.

17. Perusal of record shows that on 09.10.2024 respondents have filed an application for producing complaint dated 28.09.2024 vide Exh.C-8. Complainant has filed reply on 31.01.2025 vide Exh.U-8 in which he has disclosed real cause of termination. According to him, after joining the job in December 2022, Mr Sudhir Mehta told him in January 2023 to do the work of accounting in his Restaurant namely 'Ayush Resort' situated at Panvel, District : Raigadh, on holidays i.e. on every Saturday and Sunday for which he told him to pay extra money. Accordingly, complainant worked for some time there but till August 2023 Mr.Sudhir Mehta did not pay him that extra amount for his extra work therefore he stopped going to resort from September 2023 and that is the cause for his termination from the job. Thus, considering aforesaid discussion, prima facie I hold that oral termination of complainant without following due process of law amounts to victimization, not in good faith but in colourable exercise of the employer's right and it is in utter disregard of the principle of natural justice, which amounts to unfair labour practice on the part of employer. Accordingly, I answer point no.1 in affirmative.

AS TO POINT NO. 2 TO 4

17. Next point is in whose favour balance of convenience tilts. This principle weighs the relative hardship to both parties if interim relief is either granted or denied. If the employee would suffer significantly more hardship without interim relief compared to the inconvenience to the employer if relief is granted, then the balance of convenience lies in favour of the employee. Since there is nothing on record at this stage to justify the oral termination of complainant balance of convenience tilts in favour of complainant. According to complainant since his termination, he is jobless and despite of searching job he could not get job anywhere. By oral termination, respondents have not only cause economic loss to complainant but has also snatched from him his mental peace because the jobless person continuously thinks about how to feed his family which compel him to become restless. The physical as well as economic condition of jobless person weakens day by day in continuous thinking of getting job and pressure of feeding the family.

16. Admittedly, final relief at the interim stage cannot be granted. Thus, reinstatement being final relief cannot be granted at interim stage. That does not mean that none of the interim relief which have been sought by the complainant cannot be granted at interim stage. Complainant has sought relief of deposit of his monthly wages/salary from the date of interim order. Though there is restriction on passing reinstatement at the interim stage there is no

restriction in passing other order which Court finds just and proper in situation of particular case and section 30(2) of MRTU & PULP Act definitely grants that much discretion to the Labour Court. As discussed above since the act of oral termination of complainant by respondents amounts to unfair labour practices some sort of relief needs to be granted in favour of complainant so as to sooth his economic, physical and mental wounds. Such relief needs to be granted because employer shall not think that they can dismiss or terminate any of its employee without issuing any notice or without assigning any reason. Thus, according to me directing respondents to deposit 50% of last drawn wages/salary of complainant in Court from the date of this order till disposal of case will meets the ends of justice. In view of aforesaid discussion though I find force in the submission of learned advocate for respondent that reinstatement at interim stage cannot be granted I do not find force in his submission that none of the relief can be granted to complainant as prayed. On the other hand, though I do not find force in the submission of learned advocate for complainant that by way of interim relief complainant needs to be reinstated, I find force in his submission to the extent of depositing 50% of last drawn salary. Accordingly, I answer point no.2 and 3 in affirmative and resultantly for point no.4, pass following order;

ORDER

- i. Application Exh. U-2 is partly allowed.

- ii. Respondents are directed to deposit **50% of the monthly salary** of the complainant, which amounts to **Rs. 20,000/- (Rupees Twenty Thousand only)**, before this Hon'ble Court **on or before the 7th day of each succeeding month**, starting from the month of May 2025, and to continue such deposits regularly **till the final disposal of the case.**

Dated : 05/05/2025

(Kailas K. Kurandale)
Judge
9th Labour Court, Mumbai.

SSA