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IN THE INDUSTRIAL COURT, MAHARASHTRA, NAGPUR BENCH,
NAGPUR.

BIR APPEAL No.8/2013

- 1] Sudhakar S/o Gulabrao Deshbhratar
Aged about 40 years, Occ: Service,
R/o Chudamanji Meshram, Post Chankapur
Shantinagar, Ward No.1, Khaparkheda,
Tah. Saoner, Dist. Nagpur.
- 2] Ramlal S/o Sukhao Bambure
Employees Representative Under
BIR Act, Spentex Industries Ltd.,
Buttibori, Nagpur.

----- **APPELLANTS**

----- **Versus** -----

- 1] Spentex Industries Ltd.
Through its General Manager
(P & A). M.I.D.C., Buttibori, Nagpur.
- 2] Additional Commissioner of Labour,
Bhonsla Chamber, Civil Lines, Nagpur

----- **RESPONDENTS**

CORAM :- **Sharadkumar S. Patil, Member.**

APPEARANCES:- Shri D. C. R. Mishra Advocate for Appellants.
Shri A. V. Desai Advocate for Respondents.

JUDGMENT

(Delivered on this 22nd day of October, 2013)

This appeal is directed against the order passed below Exh.U-2 in BIR Application no.46/2013 by Second Labour Court, Nagpur, who, by his order dated 3.7.2013 rejected the application.

2] The facts giving rise to the present appeal can be stated thus:-

The appellants have preferred BIR Appeal no.46/2013 by invoking the provisions of Section 78 read Section 79 of BIR Act before the Labour Court wherein an application for grant of interim relief under Section 119-D of the said Act was filed. It is the case of the appellants that they have specifically made out the case for deciding the dispute regarding misuse of power and authority available to the respondent no.1 under Model Standing Orders applicable to the Industrial Establishment. Appellant no.2 being an employees representatives submitted a notice of change under Section 42 (4) read with Rule 52 of BIR Act. The appellants have raised the legality and propriety of the order passed by the Disciplinary Authority exercised under Model Standing Orders in the case of :

- a) passing suspension order pending enquiry vide letter dated 31.12.2012;
- b) issuance of charge-sheet and appointment of enquiry officer and intimation of enquiry proceedings vide letter dated 31.1.2013 by invoking clauses 24 (k), (l) and (a) of the Model

Standing Orders;

- c) refusal to provide copy of Model Standing Orders vide letter dated 19.2.2013;
- d) refusal to provide copy of rule under which Shri H. C. Astankar is appointed as an enquiry officer;
- e) the decision/order to appoint Shri R. S. Ambalkar, the Deputy Manager(Personal) as Management Representative;
- f) refusal to grant permission for appointing Advocate Shri Madane as a defence representative vide letter dated 4.4.2013 and;
- g) the decision/order in respect of refusal to change the enquiry officer and Management Representative vide letter dated 19.4.2013.

3] Respondent no.1 is governed by the Model Standing Orders applicable to Cotton Textiles Industries, notified by the State of Maharashtra in the year 1981. The appellants raised basic questions in respect of interpretation of the provisions of the Standing Orders relating to the exercise of powers under the Model Standing Orders by the Disciplinary Authority before the Labour Court.

4] The Labour Court after considering entire record of the proceeding and upon hearing both the sides held that the appellants have not made out prima facie case to grant the relief and rejected the application Exh.U-2 vide order dated 3.7.2013 which has given rise to the present appeal.

5] I have heard Advocate Shri D. C. R. Mishra for the appellants and Advocate Shri A. V. Desai for the respondents.

6] The following points arise for my determination and my reasons for findings thereon are recorded serially:

POINTS

FINDINGS

- | | |
|--|---------------------------|
| 1] Have the appellants made out prima facie case? | : No. |
| 2] Have the appellants established balance of convenience in their favour? | : No. |
| 3] To whom greater hardship would be caused? | : To the respondent no.1. |
| 4] What order? | : As per final order. |

REASONS FOR FINDINGS

Point nos.1 to 4 :

7] At the outset I would like to mention that the scope of the present appeal against an order of interim relief would be very limited and circumscribed. The Hon'ble Supreme Court in case of **U. P. Co-op. Federation Ltd. vs. Sunder Bros reported in AIR 1967 SC 249** has laid down the parameters of the exercise of the powers of judicial review, especially in case of discretionary orders, in the following words:

“-----In dealing with the matter before it at the appellate stage, the appellate Court would normally not be justified in interfering with the exercise of the discretion order under appeal solely on the ground that if it had considered the

matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercise by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify such interference. If it appears to the appellate Court that in exercising its discretion the trial Court has acted unreasonably or capriciously or has ignored relevant facts, then it would be open to the appellate Court to interfere with the trial Court's exercise of discretion.”

8] Having noticed the contours of the jurisdiction of this Court, I have to decide the fate of the present appeal.

9] In the case in hand, the trial of the application is pending on merits before the Labour Court. It would not, therefore, be proper on the part of this Court to express opinion one way or the other on the merits of the proceeding before the Labour Court.

10] On the basis of three well established principles for grant of interim relief indicated in case of **Mahindra and Mahindra Ltd. vs. Dwaraknath Babaji Dalvi reported in 2006 I CLR 902**, the Labour Court has decided interim relief application Exh.U-2.

11] I have carefully gone through the record and proceeding of the Labour Court. I gave anxious thought to the submissions advanced before me. I minutely went through the order passed below

Exh.U-2 by the Labour Court dated 3.7.2013.

12] Appellant no.1 is continuously working in Autoconer Department and is a member of the Employees Representative Union. Appellant no.2 Ramlal is an Employee Representative for respondent no.1 Industry by virtue of Section 28 of the BIR Act, who is also an employee of the said industry. Respondent no.1, a General Manger (P & A) is the Disciplinary Authority under Model Standing Orders applicable to the said industry. On going through the record it is revealed that respondent no.1 passed suspension order dated 31.12.2012 of appellant no.1 and the same was served upon him on 2.1.2013. Thereafter, appellant no.1 was served with charge-sheet dated 31.1.2013 by respondent no.1. Respondent no.1 appointed Advocate Shri Astankar as an enquiry officer and Shri R. S. Ambalkar, Deputy Manager (Personal) as Management Representative. All this was communicated to appellant no.1 by letter dated 31.1.2013. The charges levelled against appellant no.1 in charge-sheet are under Clauses 24-A, 24-L and 24-K of the Model Standing Orders. The Labour Court has elaborately mentioned the charges levelled against appellant no.1 in para 3 of the order.

13] Clause 24 (4) of the Model Standing Orders speaks about the mode and manner in which an enquiry is to be initiated against an employee against whom enquiry is to be held. It prescribes issuance of charge-sheet, calling explanation to the charge-sheet. An employee is also given an opportunity to answer the charge and is

also permitted to be defended by his Representative as prescribed under Section 30 of BIR Act.

14] I have already mentioned the grounds of challenge made by appellant no.1. The Labour Court has mentioned in detail in para 5 of the order. The learned Labour Court has elaborately considered the grounds raised by the appellants before it and given reasons as to why the submissions advanced on behalf of appellants cannot be considered. Learned Labour Court has also considered the rulings cited by both the parties and dealt in detail the submissions advanced before him. The findings given by the Labour Court are just and proper and in consonance with the legal provisions and law laid down by the Higher Courts. The Labour Court has decided interim relief application judiciously. It has exercised the discretion reasonably and in judicial manner. I totally concur with the findings and observations made by the Labour Court. I only like to add that the findings and the observations made by this Court as well as the Labour Court are prima facie findings and observations which shall have no bearing while deciding the fate of the main application.

15] It is found from the record that the present matter involves complicated question of law and facts and therefore, they can only be decided after holding an enquiry ground to the earth. In this scenario it cannot be said that the appellants have made out prima facie case to grant interim relief. Similarly, the balance of convenience does not lie in favour of the appellants. Appellant no.1 is

put under suspension and is receiving suspension allowance as per rule and the enquiry is required to be completed by the enquiry officer within stipulated period. Taken into consideration the said facts and circumstances appellant no.1 will not be put to any hardship on refusal to grant stay to the departmental enquiry. Hence, for the aforesaid reasons I hold that the appellants have failed to establish the points framed for determination in their favour. Consequently, Point nos.1 to 3 are answered in the negative. In the result, following order is passed.

ORDER

- 1] BIR Appeal No.8/2013 is dismissed.
- 2] No order as to costs.
- 3] Record and proceeding be sent back to the Labour Court.
- 4] The parties to appear before Labour Court on 12.11.2013.

(Sharadkumar S. Patil)
Member
Industrial Court, Nagpur.

Date:22.10.2013

GJM/-