Exh. - _____

BEFORE SHRI JEETENDRA L. GANDHI, MEMBER, INDUSTRIAL COURT, MUMBAI

COMPLAINT (ULP)No.64 of 2019.
(CNR No. MH1C01-000232-2019)

1. Mr. Dattaray Pandurang Jadhav,
   R.No.20,ATI,Rahul Nagar,
   Senapati Bapat Road,Chunabhatti,
   Mumbai-400 022.
2. Mr. Dilip Shankar Gaikwad,
   Talavali Gaon, D Wing,R.No.6,
   Post-Ghansoli,Thane.
3. Mr. Yashwant Kumar Yadav,
   Iqbal Chawl, Shiv Shakti Nagar,
   Saki Vihar Road, Powai,
   Mumbai-400 072. ...Complainants.

Versus

1. M/s. Prism Johnson Ltd.
2. Mr.Atul Desai, Director,
   M/s. Prism Johnson Ltd.
3. Mr. Shriran Sondu,
   General Manager,M/s. Prism Johnson Ltd.
4. Mr. Pankaj Shrivastava,
   H.R. Manager,M/s. Prism Johnson Ltd.

All at:-RMC (India) Division,
Windsor, 7th floor,Near Vidyanagari,
Kalina,Santacruz(East),
Mumbai-400 098. ...Respondents.

Coram:- Shri J. L. Gandhi, Member.

Appearances: Shri R.R. Yadav, Ld.Counsel
for the Complainants.

Shri P.N. Anaokar, Ld. Counsel
for the Respondents.

O R D E R (Below Exhibit U-2)
(01.08.2019)

01. In a Complaint under section 28(1) and 30(2) read with items 5,6, 9 and 10 of Sch.IV of the MRTU & PULP Act, 1971 (in short, "***the Act***"), the Complainants have preferred this Application for Interim Relief claiming various reliefs such as not to terminate the services, to depute Helper/Khalasi on the Transit Mixer Vehicle, issue attendance card, leave card, etc. and allied reliefs, to which the Respondents opposed.

02. The case of the Complainants is as under:-

The Complainant Nos.1 to 3 are in the employment of Respondent Company as Transit Mixer Driver. The entire service record of the Complainants are clean and unblemished inasmuch as they are diligent in duties and loyal to the Company. They were never subjected to any disciplinary action during the entire tenure of continuous service. They received the salary of Rs. 17,800/- per month. It is contended that the Respondent Company is engaged in the business of cement manufacturing and supplying/ trading/ selling the ready to use mixture cement. The Respondents

have 60 Transit Mixer Vehicles and they have engaged more than 150 employees in the Company.

03. The Complainants further state that the regular duties of the Complainants are driving the mixer truck of the company to deliver the mixture cement to the customers. Supply of mixture cement is the main business of the Respondent No.1 Company and the Complainants are doing the perennial regular work of the Company. It is alleged that in order to avoid the provisions of all labour laws, the Respondent Company sometimes used to get the signatures of the Complainants on agreement paper, stating therein that they are appointed for specific period. It is contended that even after the expiry of period of those so-called agreements, the Complainants used to work as usual without any break in service. It is claimed that the Complainants are employed as Drivers and they are not the contractors or entrepreneur, as shown by the Respondents in the alleged agreement. Even the Complainants are getting benefits of bonus under the Payment of Bonus Act. It is contended that the

Complainants are not getting other benefits provided under the Factories Act and other allied Act and even they are forced to do overtime work without any overtime wages. The salary paid to them is below the rate of minimum wages. The agreement was lastly extended till 31.10.2018 by the letter dated 01.04.2018. The Respondents used to take the signatures of the Complainants with a view to fool the ESI Authorities, P.F. Authorities and the Government Authorities. It is submitted that salary was transferred in the Bank Account by taking the signature on English typed papers and those papers were kept by the Respondents and contents were not explained to the Complainants. The Complainants asked Respondent No.4 as to why no benefit is given to them. On that, Respondent No.4 conveyed that they are not the workers, but they are partners of the Company. Complainants claimed that they are unable to understand how they are the partners when they are working as Drivers and driving the Transit Mixer of the Company to the customer's site. It is further contended

that the Respondents are not providing Helpers and Khalasis on Transit Mixer vehicle though it is mandatory as per the RTO Rules. Many-a-times penalty was imposed by the Traffic Officers and Complainants were forced to pay that penalty. It is submitted that some of the workers who were working as Driver on Transit Mixer were made permanent in 2012, but no permanency was granted to the Complainants. Hence, it amounts to unfair labour practice under item 5 of Sch.IV of the MRTU & PULP Act.

04. The Complainants came with further case that the action of the Respondents of taking signatures on so-called agreement is against the provisions of law and as no facility is provided, Respondents have also indulged in unfair labour practice under item 9 of Sch.IV of the Act. Even some other workmen in like capacity are paid more salary than the Complainants, which is again an unfair labour practice under item 5 of Sch.IV of the Act. Complainants requested on 07.03.2019 to the Respondent No.4 to provide all the benefits at par with the other employees working as

Drivers in the Respondent Company under the provisions of law. The Respondents got angry and they threatened the Complainants to terminate their services if they will put demands of benefit at par with other drivers and also threatened to discontinue them at any time. As such, the Complainants are under great threat of termination. Hence, they are constrained to file the Complaint and Application for Interim Relief.

05. The Respondents resisted the Application by filing their Reply-cum-Written Statement at Exhibit C-2. It is vehemently contended that the Respondents are not at all indulged in any type of unfair labour practice. It is further submitted that the Complainants are working as Entrepreneurs by way of independent contract and there are various contracts executed by the Complainants with the Respondents from time to time. It is further contended that after expiry of the contract on 31.10.2018, the Complainants have not signed the new agreement. Hence, they were directed to sign the contract. It is further submitted that Complainants are drawing more amount that the

wages paid to permanent drivers appointed by the Company. It is further submitted that the Complainants are not workmen, but they are the Entrepreneurs. Hence, the Complaint is not tenable. It is submitted that as and when work is available, it is alloted to the Complainants, but they were never permanent workmen of the Company nor they were taken on the muster-roll of the Company. It is submitted that service charges are paid to the Complainants on the basis of work performance and they get the work on the basis of contract only. Hence, the Complaint as well as the present Application is liable to be dismissed.

06. Besides raising the specific defence, the Respondents have denied each and every allegation made in the Complaint and submitted that the Complainants have filed false case as well as false Application and falsely alleged that they are doing perennial or regular work in the Respondent Company. It is further submitted that the Complainants are engaged by way of agreement and hence they are not

entitled for any relief except the bonus which the Respondents used to pay to the Complainants. As such, the Complaint does not disclose any unfair labour practice. Hence, it is further prayed that the Complaint as well as the Application is liable to be dismissed.

07. In view of the rival submissions of the parties, following points arise for my determination. I have recorded my findings thereon. The reasons are given below.

POINTS	**FINDINGS**
1) Whether the Complainants have made out prima-facie case of unfair labour practice?	In the negative.
2) Whether balance of convenience is in favour of the Complainants?	In the negative.
3) Whether the Complainants are entitled for relief sought?	In the negative.

R E A S O N S

As to Point Nos.1 to 3:-

08. Heard Ld. Counsel Shri R.R. Yadav for the Complainants and Ld. Counsel Shri P.N. Anaokar for the Respondents.

09. Ld. Counsel Shri R.R. Yadav relied on various

judgments of the higher Courts and submitted that there is documentary evidence to show that the Complainants were and are employed as Drivers on fixed salary. He submitted that the allegations in the Written Statement are sufficient to show that the Respondents are denying the employer-employee relationship and there is every possibility that they will terminate the services of the Complainants. He further submitted that the Respondents have not given any benefit under the various labour laws to the Complainants and they have not paid the salary from last 3 months, which itself shows that the Respondents are indulged in unfair labour practice. He submitted that in view of the documentary evidence, it is crystal clear that the Respondents have made permanent to some Transit Mixer Drivers and they are paying handsome salary to them, which amounts to favoritism, as defined under item 5 of Sch.IV of the Act. As such, the Application be allowed.

10. On the other hand, Ld. Counsel Shri Anaokar vehemently submitted that these 3 Complainants are

Entrepreneurs. Earlier some of the Drivers were made permanent by taking into consideration their performance. As these Complainants are not in the employment of the Respondent Company, there is no employer-employee relationship between the parties and no question of any unfair labour practice. He also relied on the provision of Section 59 of the Motor Vehicles Act and submitted that employing of driver is permissible as per the law. He also referred the judgment of the higher Courts in support of his case that Complainants are not entitled for the interim relief, as prayed and submitted that the Application is liable to be dismissed.

11. I have given thoughtful consideration to the submissions advanced by both the parties. Admittedly, the Complainants have also filed the Application at Exhibit U-11, claiming additional interim relief, stating that the Respondents have not paid the salary of March, April and May 2019.

12. On the other hand, Respondents claimed that the Complainants have not submitted the bills for the

relevant period and hence the amount was not paid for the said period. Later on Complainants have filed the bills stating that they have submitted the bills for March 2019 to May 2019 and accordingly payment was made. So, it prima facie shows that the Complainants used to submit the bills and accordingly the payment was made to them.

13. Complainants submitted and claimed that they are the employees of the Respondents. However, Complainants have not filed any document to show that they are in the employment of the Respondent Company. On the other hand, the very document filed by the Complainants themselves shows that there is agreement between the Complainants and the Respondents regarding Transit Mixer and as per the agreement, Complainants were plying Transit Mixers and they were submitting the bills and accordingly amount was paid to them. At the same time, there are documents to show that the Respondents used to issue appointment letter as it issued to one Mr. Surup Ekorge and Mr. Kanta Dadas wherein it is clearly shown that

they were appointed as Truck Mixer Driver from 01.06.2002 and their basic salary and terms of employment was also stated in the appointment letters. Not only that there are payment slips which shows that they were paid basic salary alongwith other benefits which include provident fund gratuity, LTA, Annual Bonus, HRA, Education Allowance and other facilities.

14. The issuance of appointment letters to some of the Truck Mixer Drivers and the pay-slip for October 2016, November 2018 issued to them show that the Respondent Company used to issue pay-slips to the drivers who are permanent, ine employment of respondents and doing the work of driving of Transit Mixers. The Complainants have not filed single document to show that there was any appointment letter or pay-slip in form of showing the details whereby they were given the other benefits. On the contrary, the detail bills filed by the parties on record show that the Complainants were employed by agreement on payment of fixed charges of Rs.10,200/-

and they were allowed some other benefits by which they are getting the amount to the tune of more than Rs.25,000/- per month.

15. So it prima facie appeared that there is no such employer-employee relationship between the Complainants and the Respondents. The question that whether such arrangement regarding appointment on the basis of agreement and paying the fixed charges alongwith other benefits will amount of agreement of service or contract of service, that has to be decided on the basis of evidence of the parties. But at this juncture, it prima facie shows that Complainants have failed to make out prima facie case to show that they are in permanent or temporary employment of the Respondent Company. As such, I find that the Complainants have failed to make out any prima facie case in their favour.

16. Ld. Counsel for the Complainants relied on the judgment in the case of ***Soft Beverages (P) Ltd. V/s. ESI Corporation, Madras- 2001 I LLJ 309 (Madras High Court***), wherein it is held that when

employer has direct control and supervision over the employees, they can be termed as employees, but it cannot be ignored that the said judgment was in respect of ESI Act, 1948, wherein Section 2(9) of the ESI Act is interpreted by the Hon'ble Madras High Court. Even otherwise also, the facts in the present case are quite different and the nature of work done by those casual workers and the present Complainants is also different. Hence, the ratio laid down is not squarely applicable in the present case.

17. Ld. Counsel Shri R.R. Yadav further relied on the judgment in the case of ***Shining Tailors v/s. Industrial Tribunal II, Uttar Pradesh, Lucknow (Allahabad HC)-1983 (0) AIJEL-SC 26335***, wherein tailors working on piece-rate basis in big tailoring establishment were held workmen of owner of establishment by further holding that every piece-rated workman was not an independent contractor. Even on factual aspects that these persons were working on piece-rate basis and the Complainants herein are working on the basis of agreement, the ratio is not

applicable.

18. Ld. Counsel Shri R.R. Yadav further relied on the judgment in the case of ***Fulchand Baburao Gedam v/s. Lokmat-2008 I LLJ 125(Bom.H.C.***) and contended that the Hon'ble Bombay High Court held that such workers are the workers of the establishment and there is employer-employee relationship between the parties. However, while going through the judgment, I do find that the facts of the case were quite different than the facts in the present case. Hence, the ratio is not applicable and not useful to the Complainants.

19. Ld. Counsel Shri R.R. Yadav further relied on the judgment in the case of ***Surat Jari Vepari Mandal v/s. State of Gujarat & Ors.-(1977) 18 GLR 831 (Guj. HC)***, wherein the workers doing the jari work were held as workmen and it is ruled that contract for service contemplate that workers are the employees of the employer. However, in the present case in hand, the present Complainants are the out-worker. The Hon'ble Gujarat Highj Court has ruled that out-worker is

not included in the definition of “worker” in Section 2(1) of the Factories Act. Even the nature of work carried out by these Akhadedars was quite different. Hence, the ratio laid down is not applicable to the present case in hand.

20. The Ld. Counsel Shri P.N. Anaokar for the Respondents has relied on the judgment in the case of ***Ghatge and Patil Concerns Employees Union v/s. Ghatge and Patil Transports Pvt. Ltd.-1968 AIR (SC) 503***, wherein the Hon'ble Apex Court upheld the letting out of the vehicle u/s. 59 of the Motor Vehicles Act. In the case of ***Godawari Marathwada Patbandhare Vikas Mahamandal v/s. Devidas-2010 (124) FLR 816 (Bom. H.C.***), it is ruled that when there was no appointment letter and appointment of Respondent was without any written letter, Respondent was not a regular employee.

21. Again in ***Gujarat Mazdoor Sabha v/s. Indian Oil Corporation Ltd. & Ors.-2005 III CLR 518 (Guj. H.C.***), it is ruled that when there is no such documentary evidence, the interim relief cannot be

granted. Again in the case of ***Bombay Hospital Trust & anr. V/s. Dr. Shailesh Hathi & anr.-2006 (110) FLR 4573 (Bom. H.C.***), it is ruled that in absence of appointment letter, it cannot be held that there is direct master-servant relationship and when the parties failed to establish direct master-servant relationship, they are not entitled for the relief.

22. In the case of ***Mahindra & Mahindra Ltd. V/s. General Employees' Union & Ors.-2006 III CLR 73 (Bom.H.C.***), question of canteen workers was there. However, the ratio is not applicable to the present facts in hand. In the case of ***I.D.B.I. Bank Ltd v/s. Bhartiya Kamgar Sena & 2 ors.-2018 III CLR 4(Bom.H.C.***), our Hon'ble High Court ruled that any judicial and quasi-judicial authority cannot pass such Order and grant relief to workers by way of Orders which are legal and valid Orders. In the present case in hand, the Complainants failed to prove prima facie case in their favour.

23. The Complainants have claimed many reliefs by way of interim application u/s. 30(2) of the Act. So

far as granting of relief as to appointment of cleaner or khalasi, issuance of identity card or grant of benefits are concerned, that cannot be granted at the interim stage as it will amount to granting of final relief at the interim stage. So far as termination of services is concerned, the Ld. Counsel for the Respondents has vehemently submitted that there is no intention of the Respondents to terminate the services of these drives and they are still working with the Respondent Company. Hence, the balance of convenience is also not in favour of the Complainants as there is no direct threat to their services. So far as irreparable loss is concerned, admittedly termination of services will amount to irreparable loss as non-payment of monetary benefits will lead to irreparable loss though it is settled law that if party is in a position to claim monetary compensation, it will not sustain irreparable loss, but in case of workers, termination of services will amount to irreparable loss. However, when there is a clear-cut submission by the Respondents that they are not going to terminate nor they have threatened to

terminate the services of the Complainants at any time, the mere apprehension without any substance cannot amount to irreparable loss. As such, I find that the Complainants failed to prove prima facie case, balance of convenience and irreparable loss, which is required to grant interim relief in their favour. As such, I answer Point Nos.1 to 3 in the ***Negative*** and proceed to pass the following Order:-

O R D E R

i) The Application stands rejected.

ii) In view of the specific submission that Respondents are not going to terminate the services and ready to pay the bills as soon as the Complainants submit the same, there is no requirement to grant any relief in favour of the Complainants.

Date:-01.08.2019.

(J. L. GANDHI)
Member,
Industrial Court, Mumbai

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