IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI
BEFORE HON'BLE SHRI. R.N.AMBATKAR, MEMBER
COMPLAINT (ULP) NO. 123/2021
CNR NO. MHIC01-000306-2021

Maharashtra Rajya Rashtriya
Kamgar Sangh (INTUC) ...Complainant

Versus

M/s. G4 Security Solution (India)
&Anr. ...Respondents

CORAM:- SHRI. R.N.AMBATKAR, MEMBER.

Appearances:- 1) Adv. Shri. J.R. Pawar for the complainant.
2) Adv. Shri. Sunil Kharwal for the respondents.

ORDER BELOW EXH.U-2
(Declared on 25.06.2021)

1) The complainant union has filed present complaint in respect of 43 employees/security guards, whose names are mentioned in Annexure-A, under Item 9 of Schedule IV of the MRTU & PULP Act, 1971 (hereinafter referred to as the PULP Act). This separate application has been filed for grant of interim relief.

2) The facts in brief emerging from the complaint and present application may be summarised as follows.:-

A) According to the complainant union, the respondent no. 1 is a company engaged in the business of providing private security guards to various establishments. The respondent no. 2 is the director of the company having administrative control. The service conditions of the

concerned workmen are governed by the provisions of Model Standing Orders as well as provisions of Private Security Agencies (Regulation) Act, 2005.

B) The concerned workmen have regularly been paid their full wages and other allowances fixed by the respondent till September 2019. However, surprisingly the respondent started deducting an amount of Rs.3,000/- to Rs.3,500/- under the head of 'other deductions' from the wages of the workmen. The said deduction has been shown in the payment slip. The said deduction has been started by the respondents from the month of September 2019. The respondents continued illegal deduction despite the protest of the workmen. The respondents have not given any specific details in respect of said deductions.

C) As per the provisions of Payment of Wages Act, the employer has no right to deduct wages without any justified and proper reasons. The union and the workmen addressed protest letters to the respondents and accordingly requested to stop the illegal deductions from the wages. Till date the respondents have not stopped illegal deductions and this amounts to unfair labour practices. Ld. Advocate Shri. A.M. Koyande on behalf of complainant addressed notice on 23.01.2020 and accordingly the respondents were requested to restrain themselves from committing unfair labour practices such as illegal deduction from the wages of the workmen. The complainant union also addressed letter on 03.12.2020 requesting the complainant to stop the deductions but in vain.

D) That due to the illegal deductions from the wages of the concerned workmen, the concerned workmen have unnecessarily suffered monetary loss. It is necessary and in the interest of justice, equity and fairplay that pending hearing and final disposal of the main complaint, the respondents are required to be restrained by an injunction order from illegally deducting any amount from the wages of the concerned workmen who are rendering their duties as security guards.

E) Accordingly the complainant union has prayed to restrain the respondents by an injunction order from deducting any amount from the wages of the concerned workmen listed in Annexure-A under the head of "other deductions" and it has also prayed to direct the respondent to deposit in the court total amount illegally deducted from the wages of the concerned workmen from the month of September 2019 to April 2021.

3) The respondents have filed their reply at Exh.C-2. It is contended by the respondent that the complaint and application for interim relief are filed with malafide intention to harass the respondents. All the contentions of the complainant union are false and baseless. The complaint is not filed as per the Regulations 100 and 101 and other mandatory provisions of PULP Act, 1971. It is contended that no cause of action has occurred on 07.05.2021 or otherwise and hence the question of unfair labour practices on and from the said date does not arise at all. It is further contended that names given in Annexure-A to the complaint are working in managerial capacity and hence they do

not come within the definition of workman and they have no locus standi to file the present complaint. Accordingly the respondents have challenged jurisdiction of the court to entertain the complaint. It is further contended that the complaint is filed after eight months after the socalled cause of action and thus there is delay in filing complaint. No separate application for condonation of delay has been filed and the complaint deserves to be dismissed.

It is the contention of respondents that the persons at sr. no. 16, 22, 33 and 37 are absconding and they are not in the employment of the respondents and the complaint in respect of these employees cannot be entertained. It is further contended that the persons at sr. no. 10 and 20 are actually doing supervisory and managerial duties and the complaint in respect of these persons cannot be entertained.

It is contended by the respondents that complainant union has suppressed material facts and for this reason the complaint deserves to be dismissed. The issue regarding maintainability of the complaint, jurisdiction of the court are required to be tried as preliminary issues and till then the application for interim relief cannot be entertained. It is contended that the concerned guards working with the respondent no. 1 company were temporarily made to officiate and to act on the higher posts on the sites since the same was requirement of the concerned sites, though the said officiating or acting position was not at all promotion to the said post nor any kind of promotion letters have even been issued to them. Their deployment on officiating posts were wrongfully presumed by the concerned employees as their promotion. It was informed the concerned guards at that time that their

deployment on officiating posts on particular sites was not of permanent nature and they will be paid wages of the concerned officiating posts only till they will be on that post and the same shall be stopped as and when they will revert back to the original post of guards. It was also informed to them that if the said sites were terminated, the concerned employees will have to work as security guards and they will get wages of the security guards only and will not be entitled to the wages of the officiating posts of higher grades. Accordingly it is contended that the said deployment or posting of concerned employees was nothing but a site wise adjustment on a temporary basis and they were entitled to the wages and that site officiating post till they work on the said posts. Thereafter the concerned sites were closed and also in some cases there was termination of contracts with the owner/management of the sites and thereafter the employees were reverted back to their original posts of security guards and are entitled to the wages of security guards as they are exclusively performing the duties of the security guards only. Inadvertently the concerned employees were being paid the wages of officiating posts. It is further contended by the respondents that meantime the concerned employees were sent for interviews of the higher posts as per the availability of the said designated posts. It was observed that concerned employees intentionally get themselves rejected in the interviews as they were already getting the higher wages of the higher post though they were working on lower posts of security guards and thereby causing not only inconvenience to the respondent company also a huge financial loss. It is contended that the concerned

guards are not willing to perform duties on the designated posts despite they are given various opportunities to work on designated posts. The respondent company is ready and willing to deploy them at their designated posts and they should join and perform the duties and may earn wages accordingly. The action on the part of the concerned employers takes away the legal right of the eligible employees for promotions as these people neither join the designated posts nor worked on the same. However they are earning wages of the higher posts, resulting into the huge losses to the company. It is the contention of the respondent company that the concerned workmen who are working as security guards are entitled for the wages of the security guard. They cannot claim higher wages while working as security guards. It is contended that the respondent company is a service industry and the source of revenue is it's clients. Since the concerned employees are working on the post of guards and clients are paying wages applicable to the guards only, consequently the respondent company is not in a position to pay them wages of higher grades as desired by the concerned employees and the complainant union herein and if compelled to pay higher wages, the same will cause huge financial loss to the company. Thus it is apparently clear that the complaint is filed with malafide intention as well as ulterior motive to pressurise and harass the respondents and suit their own purpose. All other contentions of the complainant union have been denied by the respondents and it is contended that the application be rejected.

4) After going through the rival contentions and pleadings, following points arise for my determination. I have recorded my findings for the reasons given below.

	POINTS	**FINDINGS**
1)	Whether there exists prima facie case in favour of complainant union?	..In the affirmative.
2)	Whether balance of convenience lies in favour of complainant union?	..In the affirmative.
3)	Whether complainant union will suffer irreparable loss if the interim relief is not granted?	..In the affirmative.
4)	What order?	..As per final order.

REASONS

AS TO POINT NOS. 1 TO 3:-

5) Heard Ld. Advocate Shri. J.R. Pawar for the complainant union. Ld. Advocate submits that the aggrieved employees whose names are mentioned in Annexure-A of the complaint are rendering duties as security guards for respondent company. As per the service conditions, the employees were getting their salary/wages properly till September 2019. From September 2019 the respondent abruptly and unilaterally started deducting substantial amount from the wages of the employees under the head “other deductions.” The security guards immediately approached the respondent's management for clarification but in vain. The respondent management did not clarify their stand of deducting substantial amount from their wages. Ld. Advocate submits that payment of wages is important service condition and if the

employer wants to deduct any amount from the wages of the employees, he is required to issue notice under Section 9A of the Industrial Disputes Act. The deductions are permissible only under Section 7 of the Payment of Wages Act, 1936. The employer cannot deduct the wages without the consent and without following the proper procedure given under Payment of Wages Act. Substantial deduction from the wages of the security guards is an admitted fact and this has not been denied by the respondents. The defence of the respondents is not acceptable at all. The said deduction is causing irreparable monetary loss to the security guards and it obviously attract Item 9 of Schedule IV of the PULP Act. Ld. Advocate submits that the complainant union has prima facie proof to substantiate that the respondents are deducting wages abruptly and unilaterally as well as illegally. The union had addressed one notice through Advocate Shri. A.M. Koyande and explanation of the respondents is unacceptable. He submits that the balance of convenience is in favour of the complainant union and all the 43 employees/security guards are praying for justice as they are being suppressed by the respondents. He submits that the security guards would suffer irreparable loss if the present application is not allowed. Accordingly he prayed to allow the application and to grant the interim reliefs prayed in the application.

6) Ld. Advocate Shri. Sunil Kharwal has vehemently opposed the submission of Ld. Advocate for the complainant union. He submits that the concerned security guards were temporarily to officiate and to work on the higher posts of the sites of the clients as it was the

requirement of the clients/principal employers. Said officiating was a paper work and it was not promotion in actual sense. The complainant union and the security guards wrongly presumed that the employees deployed on the higher posts were given promotions. He submits that the principal employer to whom security guards were deployed and officiated on higher posts have terminated contracts with respondent company and in some cases the agreement with the principal employer has come to an end and in other cases, the sites of the principal employers came to be closed. Accordingly the concerned security guards have been reverted back to the original posts of security guards. Hence these security guards are not entitled to wages of the security guards as they are exclusively performing duties of the security guards only. He further submits that meanwhile the security guards were sent for interviews to be taken by principal employers and those security guards got themselves disqualified with malafide intentions. They were not willing to work on higher posts as they were getting salaries automatically of the higher posts. It is apparently clear that the security guards wanted to render duties as security guards and at the same time they wanted to claim wages of higher posts. This approach of the security guards has caused monetary loss to the respondent company and to avoid further losses the company has no other option but to pay wages as per the posts on which the security guards were working. Thus Ld. Advocate submits that actually there is no deduction from the wages of the security guards. It is merely an adjustment which is absolutely illegal. He submits that the complaint is false and baseless and there is no prima facie case in favour of the complainant union.

7) Ld. Advocate at the end of his submission submits that if the court comes to the conclusion that deduction from the wages of the security guards was improper, the court may direct the respondents to deposit the amount being deducted under the head "other deductions" in the court and entitlement of the concerned security guards to receive the amount may be decided at the final stage on the basis of evidence from both the sides.

8) Ld. Advocate Shri. Kharwal further submits that the complaint is barred by limitation and that names given in the list Annexure-A to the present complaint are working in managerial capacity. Hence they do not come within the definition of workman under Section 2(s) of the Industrial Disputes Act and hence they have no locus standi to file the present complaint and accordingly the court has no jurisdiction to entertain the same.

9) The complainant union has approached this court with a grievance that the respondents are deducting substantial amount from the wages of the security guards under the head "other deductions." According to complainant union, the respondent is abruptly and unilaterally deducting the amount from the wages under the head "other deductions" from September 2019 and before starting the deductions the respondents have not issued notice under Section 9A of the Industrial Disputes Act. Substantial deductions from the wages of the security guards amounts to change in service conditions for which a notice under Section 9A of the Industrial Disputes Act was essential. It

is a grievance of the complainant union that the respondents have not followed the principles of natural justice. It is the contention of the complainant union that the respondents have committed unfair labour practices under Item 9 of Schedule IV of the PULP Act. Item 9 speaks that it is unfair labour practice on the part of the employer if he fails to implement an award, settlement or agreement. When the security guards came to be employed by respondents, an agreement comes into existence between them and respondent company. The service conditions of the employees are settled. The salary structure of each security guard is fixed and if the employer wants to make any change in the salary structure of the individual employee or if the employer wants to deduct any amount from the wages of the individual employee, notice under Section 9A of the Industrial Disputes Act is required to be issued in order to facilitate individual employee to submit his contention. In my opinion it appears that the grievance of the complainant union falls under Item 9 of Schedule IV of the PULP Act and the grievance is maintainable.

10) The complainant union has filed salary slips of the security guards and on perusal of these salary slips, it is apparently clear that from September 2019 the respondents are deducting substantial amount in between Rs.3,000/- to Rs.3,500/- from the salaries of the concerned security guards. It appears that the security guards had approached the respondent and opposed deduction from their wages. One of the letters of the security guards dated 30.01.2021 is available for perusal and it appears that security guard Anant Nare had requested

the respondent company to stop the deduction from the wages. It further appears that on 23.01.2020 Advocate Shri. A.M. Koyande for the complainant union had addressed one notice to the respondents regarding illegal deduction under the head of “other deduction” from the wages of 21 security guards. It further appears that the complainant union on 03.12.2020 had also addressed one letter to the director of respondent company and brought the issue of unfair labour practices and illegal deduction from the wages of the employees to the notice of the respondent company. The legal notice sent by Advocate Shri. A.M. Koyande was replied by Ld. Advocate Shri. Kharwal for respondents on dated 29.01.2020. The allegations made in the notice of Advocate Shri. A.M. Koyande were denied and it was clarified saying that the employees concerned are performing their duties of security guards and accordingly they are being paid wages as being received from the clients companies and no deductions whatsoever as alleged are being made. It was further clarified that in fact socalled deduction reflecting in the salary slips are not at all deductions but the difference of wages which were being paid when they were some time officiating on the higher grades and since the concerned security guards are deployed and are actually working as security guards.

11) On perusal of the proof salary slips in respect of the concerned security guards, it appears that the respondents started to deduct an amount from their wages from September 2019. It is an admitted fact that the respondent company had not issued notice before starting deduction from the wages of the security guards. Whenever the

employer is willing to change the service conditions of the employees, a notice under Section 9A is required to be given and it appears that the respondent company has not followed the provisions of Section 9A of the Industrial Disputes Act. In my opinion the respondents have committed illegality while abruptly and unilaterally deducting substantial amount from the wages of the security guards concerned with the present complaint.

12) It is the contention of the respondents that the security guards whose names are mentioned in Annexure-A were working with the respondent company made to officiate and to act on the higher posts at different sites as per requirement of the concerned sites and concerned principal employers. Accordingly the security guards were deployed at different sites on higher posts but in actual sense it was not their promotion. It was merely a paper arrangement. It is contended that deployment on officiating post was wrongly presumed by the security guards as their promotions. Thus it goes to show that the concerned security guards are actually security guards but as per the requirement of the clients of the respondent company were temporarily made to officiate and to act on higher posts. On perusal of the payslips of these security guards concerned with the present complaint, it appears that these security guards were having designations as head guard, supervisor, VIG officer etc. In my opinion, if it was the paper arrangement of the respondent company, then it was required to be informed to the concerned security guards in writing mentioning therein that the concerned employees are temporarily made to officiate

and to act on higher posts and that this arrangement is temporary and is being done on demand of the clients/principal employers. The respondents have not produced any letter of their clients/principal employers that there was such demand for posting the employees having higher designation. Therefore the defence taken by the respondent company cannot be said to be acceptable.

13) It is the contention of the respondents that meanwhile concerned employees/security guards were sent for interviews to be appointed on higher posts and that the clients/principal employers were required to conduct interviews for the deployment at their sites. It is alleged by the respondents that the security guards intentionally got themselves disqualified in the interviews as they were already getting higher wages of the higher posts though they were working on the posts of security guards. It appears to me that in support of this contention, the respondents are not having any reliable proof. The question arise when the security guards are the employees of the respondent company, why they were allowing their clients/principal employers to conduct interviews of the security guards for the deployment on higher posts. As security guards are the employees of the respondent company, it is for the management of the company to conduct the interviews and to deploy the employees having required designation. Conducting interviews of the security guards by the principal employer amounts to interference in the administration of the respondent company and the said company should not have allowed to happen this. If this has happened, it may cause inconvenience to the respondent

company for which the company itself is responsible. It is the contention of respondent company that security guards are being paid wages of their grades and the word “other deduction” is inadvertently mentioned in their salary slips and it is not at all deduction as alleged by the complainant. This contention of the respondent company is not acceptable at all. The salary slips of the security guards from the month September 2019 onwards specifically speak that substantial amount has been deducted from the wages of the employees.

14) In my opinion, the respondent employer is not having unilateral right to change the salary structure of the employees without issuing any notice under Section 9A of the Industrial Disputes Act. If it is the contention of the respondent company that the said deduction is an internal arrangement, then respondent company must have prima facie proof to show that in actual sense this deduction was an internal arrangement and the company has not committed any sort of illegality. Section 7 of the Payment of Wages Act speaks about deductions which may be made from wages. Sub Section 1 of Section 7 speaks that the employer should pay wages without deduction of any kind except those authorised by or under this Act. Sub Section 2 of Section 7 speaks that deduction from wages of the employed person shall be made only in accordance with the provisions of this Act and further the said sub Section describes the categories under which the employer can deduct the wages. The deduction from the wages of an employee must be statutory deductions. Internal arrangement without the consent of the employee is not acceptable. In the present case it appears that the

respondent company has deducted substantial amount of wages ranging from Rs.3,000/- to Rs.3,500/- from September 2019 and this deduction is continued and hence it appears that the complainant union is having a strong prima facie case for 43 security guards. The balance of convenience lies in favour of the complainant union. If the substantial deduction from the wages of the security guards concerned with the complaint is not stopped by passing interim order, these security guards would certainly suffer irreparable loss.

15) It is the contention of the respondent that some of the employees such as employees at sr. no. 16, 22, 33, 37 narrated in Annexure-A of the complaint are absconding and they are not in employment at all. Under such situation the question of paying these employees their wages does not arise. But while doing this the respondent company must be confident that these employees are absconding.

16) It is the contention of the respondent company that socalled cause of action has taken place on and from 07.10.2019. However, the present complaint is filed on 04.06.2021 after about one year and eight months. There is delay in filing the complaint and for this reason the complaint is not maintainable. No doubt under Section 28(1) of the PULP Act, the alleged unfair labour practice is required to be filed within 90 days from the date of cause of action. In the present case the grievance of the complainant union is illegal deduction from the wages of the security guards concerned with the present complaint. It appears

that time to time the complainant union through its Advocate, the security guards and the union itself has approached the respondent company. It is also apparently clear that the respondent company is deducting the substantial amount from the wages of the security guards and this cause of action is recurring. At this stage I am of opinion that there is no delay in filing the complaint. If the cause of action is recurring, the complainant can file complaint under Section 28 of the PULP Act at any point of time.

17) Ld. Advocate for the respondent has relied on the observations of Hon'ble Bombay High Court in the case **Executive Engineer, Central Public Works Department, Aurangabad Vs. Raju Banduji Raut**, 2009 II CLR 187. The Hon'ble Bombay High Court Bench at Aurangabad in this judgment has observed that the relief which is in the nature of final relief cannot be granted at the interim stage. In this case the complainant was appointed as a clerk in the stores department of respondent. Said appointment was oral and was made in the month of January 1984. It was the contention of the complainant that he was in continuous service for more than 240 days till the date of his oral termination which came to be effected in the month of January 2007. It was alleged by the complainant that his termination was without following due procedure of law and that respondent is engaged in unfair labour practices. The Ld. Trial Court after hearing the parties on interim application observed that there was prima facie case in favour of the complainant and accordingly the Trial Court allowed the interim application and directed the respondent to

keep the complainant on work with wages. This order was challenged before the Hon'ble Bombay High Court and on this back ground facts, it was observed that the relief which is in the nature of final relief cannot be granted at interim stage. In the case in hand it is the contention of the complainant union that the respondents are deducting wages of the security guards whose names are mentioned in Annexure-A without issuing them any notice, without following due process of law and under the head of other deductions. After going through the reply of the respondents, it appears that they have no proper explanation for the said deductions. There is no straight jacket formula that relief cannot be granted while deciding interim relief application. Sometimes there are circumstances which prima facie show that the respondent has engaged in unfair labour practices. In such circumstances the relief is required to be granted. The facts in the case in hand and in the case before the Hon'ble Bombay High Court at Aurangabad are totally different and hence the observations are not applicable.

18) It is another contention of the respondents that names given in the list Annexure-A of the complaint and on whose behalf the present complaint is filed are working in managerial capacity and hence they do not come under the definition of workman under Section 2(s) of the Industrial Disputes Act and hence having no locus standi to file the present complaint. On this back ground I have carefully gone through the entire reply of the respondents. In the entire reply, the respondents have called the employees concerned with the present complaint as security guards. It has been mentioned by the respondents that the

employees were deployed and officiated on higher posts and after termination of contracts and closure of sites, these employees were reverted back to their original posts of security guards. If this is the contention of the respondent company, then obviously employees concerned with the present complaint falls within the ambit of Section 2(s) of the Industrial Disputes Act and the complaint is very well maintainable.

19) Ld. Advocate for the respondents has relied on the judgment of Hon'ble Karnataka High Court in **Management of Rangaswamy & Co. Vs. D.V. Jagadish**, 1990 II CLR 56. In this case the first respondent raised dispute about his removal from service. The appellant management disputed that first respondent is workman. The Hon'ble Karnataka High Court observed that the Labour Court ought to have decided the question whether first respondent is workman as preliminary issue. On the same point the Ld. Advocate for the respondent has cited another judgment of Hon'ble Bombay High Court Bench at Nagpur in **Asia Foundation and Construction Limited, Nagpur by its Manager & Anr. Vs. Engineering Kamgar Sanghatana, Nagpur & Anr**., 2016 II CLR 258. The Hon'ble Bombay High Court has further observed that the exercise of repudiation of the contract with one and establishment of a legal relationship with another (of master and servant) can be done only in a regular Industrial Court in Industrial Disputes Act and provisions of MRTU & PULP Act, 1971 can only be enforced by persons who admittedly are workman. In the present case in hand it is undisputed fact that 43 workmen who has approached this

court through the complainant union are the security guards and in the employment of the respondents. In the reply filed by the respondents it has been repeatedly stated that concerned employees are admittedly undisputedly working on the posts of security guards and performing duties of the security guards. On the back ground of this admission, there was no necessity to frame any preliminary issue to establish whether the concerned employees are workmen within the meaning of Section 2(s) of the Industrial Disputes Act. In para no. 12 of the reply it has been stated that "I say that the concerned guards who were and even are working with the respondent company as security guards were temporarily made to officiate and/or to act on the higher posts on the sites since the same was the requirement of the said sites, though the said officiating or acting position was not at all promotion to the said post, or any kind of promotion letters have ever been issued to them in this regard." From the repeated admissions of the respondents given in their reply, it is apparently clear that the concerned aggrieved employees are the workmen of the respondents and the court has jurisdiction to entertain the complaint and the present application.

Ld. Advocate has also relied on the observations of Hon'ble Bombay High Court in the judgment **Sarva Shramik Sangh Vs. Swan Mills Ltd**. & Ors., 1994 II CLR 205. On careful perusal of this judgment, I am of opinion that the observation are not applicable to the present set of facts.

20) In view of my above observation, I conclude with the findings that the complainant union is having strong prima facie case,

the balance of convenience lies in favour of the complainant union. If the interim relief is not granted in favour of 43 security guards concerned with the present complaint, they would suffer irreparable loss. Hence, I answer all the points in affirmative and I pass the following order.

<u>ORDER</u>

1) The interim relief application is allowed.

2) Pending hearing and final disposal of the main complaint, the respondents are hereby restrained from deducting any amount from the monthly salary/wages of the employees concerned with the present complaint and listed in Annexure-A under the head of "other deductions."

3) Pending hearing and final disposal of the main complaint, the respondents are hereby directed to deposit in the court the total amount deducted from the salary/wages of the concerned employees from the month of September 2019 to April 2021 within one month.

Sd/-
(R.N. Ambatkar)
Dated: 25.06.2021 Member
Industrial Court, Mumbai.