

BEFORE SHRI C. S. DATIR, INDUSTRIAL TRIBUNAL AT SATARA

Reference (IT) No.04 of 2016
CNR No.1MHIC 110001262016

Godrej & Boyce Manufacturing
Co. Ltd.,
Interio Division, Gat No.1267,
Shirwal, Tal. Khandala,
Tal. Khandala, Dist. Satara.

.. First Party

Vs.

Shivkranti Kamgar Sanghatana
101 Walwan, Lonawala,
Tal. Lonawala, Dist. Pune.

.. Second Party

ADVOCATES : Shri V. R. Joshi, Advocate for First Party.

Shri D. P. Todkar, Advocate for Second Party.

ORDER BELOW EXH.U-56
(Delivered on 19.11.2021)

1) This is an application on behalf of second party for interim relief on the following grounds.

Second party's case in nut-shell is as under.

2) The second party has submitted his demands on 06-02-2016 to the first party, however, management did not consider. Therefore, second party has approached to the Conciliation Officer to intervene the issue. The Conciliation Officer had called the parties but

the first party remained absent. Therefore, the Conciliation Officer forwarded failure report on 18-08-2016 to its superior officer. The appropriate authority referred the dispute to the court for adjudication.

3) He has further contended that, the first party has given wage rise of Rs.4,000/- (approximately) to the other employees except the present applicants in the year 2016 to 2019. The said wage rise is not granted to the present applicants. They have acted as a vengeance against the applicants. They have shown unjustified and arbitrary discrimination amongst employees. The first party should have granted wage rise to the present applicants as of right. The present applicants are performing their work with full efficiency. The first party management is a profit making company and competent to satisfy their demands as per demand letter dt.06-02-2016.

4) He has lastly prayed that, considering the circumstances, the first party be directed to pay the wage rise at least Rs.10,000/- per month in the basic wages and Rs.10,000/- per month in the House Rent Allowances during pendency of this reference.

(a) He has also prayed that, first party may be directed to

deposit a lump-sum amount of Rs.70 lakh in the Court.

(b) He has further prayed, to direct the first party to pay lump-sum amount of Rs. 2 lakh each to Madhukar Bane and Suraj Shinde respectively and Rs.4 lakh each to Khurshid Fakir and Dattaraj Kamble.

5) First party has filed say and resisted an application in toto. According to him, the present application is non-est, bad in law and malafide. The present application is nothing but an act of extortion on behalf of the second party. The Tribunal cannot go beyond the scope of the reference. This court has no jurisdiction to grant any relief apart from what has been stated in the reference. There is no justification for granting wage rise of Rs.10,000/- p.m. in basic wages and in the House Rent Allowance. This is an act of mischief. There is also no justification to a figure of Rs.70 lakh. The employees Mr. Madhukar Bane, Suraj Shinde, Khurshid Fakir and Dattaraj Kamble have been terminated legally, therefore, they are not entitled interim relief as sought. They have challenged their termination and their claim is subjudice before the Labour Court. Under these circumstances, their claim would not be tenable at interim stage.

6) He has further contended that, the second party has consciously suppressed the material fact from the court. The management has given salary rise between 2016 to 2021 in accordance with the remuneration policy. The second party did not wish to avail the same. The salary rise was not given to the applicants, since they wish to negotiate separate service condition. There are several factors while giving salary-rise as per the management remuneration package.

Considering the circumstances, the second party has absolutely no prima facie case. No balance of convenience tilts in his favour. The issue raised by him would not be tenable at interim stage. Hence, there is no question of irreparable loss. He lastly prayed, application may be rejected.

7) Heard arguments of both side at length. Perused record.

8) In the light of the rival pleadings, I frame following points and record its reason as follows.

POINTS

FINDINGS

1)	Does second party prove prima facie case ?	In the negative
2)	Does balance of convenience tilts in his favour ?	In the negative
3)	Does he entitle the relief sought for ?	In the negative
4)	What order ?	As per final order.

: REASONS :**As to Point No.1 to 3 :**

9) Learned Advocate of second party has vehemently argued that, the present applicants are the permanent workers of the first party company. The second party had given demand notice to the first party, stating that, they are entitled wage rise like other employees. As first party did not take cognizance, the second party union approached to the Conciliation Officer i.e. Assistant Commissioner of Labour.

10) He has further argued that, the Assistant Commissioner of Labour called the parties but the first party remained absent deliberately, therefore, no negotiations took place. Even the first party has dismissed two workers. The first party has not given wage rise to the applicants since last four years, because, they have joined Shivkranti Kamgar Union. The workers, who are not members of the second party union had been given wage rise of Rs.4000/-. The present applicants and other workers who were given wage rise are belonging to the same band ("K" Band). Even witness of the first party has admitted in cross-examination that, other members have been given wage rise. The learned Advocate alleged that, this is a discrimination and thereby, they engaged in unfair labour practice.

11) He has further argued that, this court has right to grant interim wage rise pending disposal of the main reference. Even court has right to grant interim relief to the terminated workers. Court should construe a reference not to technical or in pedantic manner but fairly and reasonably. In appropriate cases, court has ample jurisdiction to pass an interim orders. To support his contention, he placed following citations.

1) *The Management of Hotel Imperial Vs. Hotel Workers' Union, 1959 AIR 1342 (S.C).*

2) *The Management of Express Newspapers Ltd. Vs. Workers & Staff Employed under it, 1963 AIR 569 (S.C.).*

3) *M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, 1999 II CLR 433 (S.C.).*

4) *Voltas Ltd. Vs. State of Maharashtra & Ors., 2013 (139) FLR 130 (Bom.H.C. D.B.).*

5) *Board of Trustees of Jawaharlal Nehru Port Trust Vs. Navha Sheva Port and General Workers Union, 2007 II CLR 303 (Bom.H.C.).*

6) *Oil and Natural Gas Corporation Ltd., Vs. Transport & Dock Workers Union & Ors., 2007 I CLR 897 (Bom. H.C.).*

12) Learned Advocate of first party has argued that, the contents of reference (Exh.O-1) and statement of claim are totally different. Rather, second party has sought contradictory reliefs. The second party union has filed first interim application vide Exh.U-3 on 13-04-2017,

claiming interim rise of Rs.3,500/-, which subsequently Not pressed. It is a second interim application (Exh.U-56), claiming interim rise of Rs.10,000/-. It means, the second party is not firmed, how much wage rise is required exactly.

He has further argued that, this court has no jurisdiction to pass interim wage rise without ascertaining competency of each worker and the norms set out by the management. Court cannot consider interim wage rise, because, it directly relates the issue of financial burden on the employer. Without ascertaining its financial position, it would not be appropriate to grant interim wage rise. The capacity of the industry to pay the wage rise is one of the essential ingredients to be taken into consideration. The second party has claimed certain reliefs by way of interim application, which are not set out in the reference (Exh.O-1). This is a contradictory reliefs, not tenable. Court cannot go beyond the reference. On this ground also, the interim application is not tenable. While fixing wage structure, some principle factors needs to be considered and It cannot be considered at the interim stage. In short, Court cannot travel beyond the terms of reference and hence, interim application requires to be dismissed. To support his contention,he placed reliance on the following citations.

1) *Walchandnagar Industries Ltd. Vs. Construction Employees' Union and anr., 2004 (4) L.L.N. 443 (Bom.H.C.).*

2) *Novex Dry Cleaners, New Delhi Vs. Workmen of Novex Dry Cleaners, (1962) 1 LLJ 271 SC.*

3) *Oshir Prasad and others Vs. Employees in relation to management of Sudamdih Coal Washery of M/s Bharat Coking Coal Ltd., (2015) 4 SCC 71.*

4) *Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. And anr., (1979) 3 SCC 762.*

5) *Delhi Cloth and General Mills Co. Ltd. Vs. Workmen & Ors., (1967) 1 SCR 882 (S.C.).*

6) *Firestone Tyre and Rubber Company of India Vs. Firestone Tyre Employees Union, (1981) 3 SCC 451.*

7) *Mukund Ltd. Vs. Mukund Staff & Officers Association, (2004) 10 SCC 460.*

8) *Sindhu Resettlement Corporation Ltd. Vs. Industrial Tribunal of Gujarat and others, (1968) 1 LLJ 834.*

9) *M/s Unichem Laboratories Ltd. Vs. The Workmen, (1972) 3 SCC 552.*

10) *General Manager Vs. Tej Singh & anr., (2020) 4 LLJ 475 (Himachal Pradesh H.C.).*

13) It appears that, the present applicants are the permanent workers of the first party company. Even they are working with them since long. The second party had given demand notice to the management but no fruitful talks came out, therefore, the reference has been forwarded as per the request of the Assistant Commissioner of Labour.

14) Salary slips are filed on record vide list Exh. Exh.U-59. Their salary of the year 2017 and 2021 are same. It means, no wage rise has been granted to the applicants since 2017. No doubt, the witness of the first party has admitted in the cross-examination that, other workers have been given wage rise and not to the applicants. But one thing cannot be ignored that, while considering the issue of interim wage rise, certain factors needs to be considered i.e. designation of the workman, nature of the duty, their service record etc. These points cannot be considered at interim stage, because, it requires full-fledged evidence by the respective parties.

Needless to say that, the wage rise of the applicants has not been given like other workers. But to decide the wage rise, certain factors needs to be considered and for that, the evidence of the respective parties is much necessary. The applicant may be entitled wages as per the management norms at the time of final hearing but not at the interim stage.

15) Moreover, the present applicants had given interim application Exh.U-3, claiming interim wage rise of Rs.3,500/- and in the present application of Rs.10,000/-. It means, the applicants are not sure

whether they are entitled Rs.3,500/- or Rs.10,000/- Again, I would like to repeat that, it requires full-fledged evidence by the respective parties to adjudicate the issue in question in proper perspective.

No prima facie case is made out. No balance of convenience tilts in his favour at this juncture. No irreparable loss would be caused, because, if at all, they succeed at the time of final hearing, would get monetary benefits at that time. In the circumstances, the citations filed by the second party would not helpful at this juncture. Hence, I answer Point No.1 to 3 in the negative and proceed to pass following order.

ORDER

Application stands rejected.

Sd/-

Date : 19/11/2021

(C.S.Datir)

SATARA.

Industrial Tribunal, Satara