

IN THE INDUSTRIAL COURT AT AURANGABAD
(Presided over by S. S. MAUDEKAR, Member)

COMPLAINT (ULP) NO.22 OF 2021
[CNR NO.MHIC20-000-043-2021]

Shri. Shivaji Umaji Kharat.
Age: 70 yrs Occ:nil,
R.o- Chhatrapati Nagar, Ranjangaon,
(Shenpunji), Tq- Gangapur,
Dist: Aurangabad.

... **COMPLAINANT**

Versus

1. The Managing Director,
Chandra Polyplast Pvt. Ltd.,
K-222, M.I.D.C. Waluj,
Aurangabad
2. The Manager (H.R.)
K-222, M.I.D.C. Waluj,
Aurangabad

..RESPONDENTS

[In the matter of Application for interim relief
Section 30 (2) of the Maharashtra Recognition of
Trade Unions and Prevention of Unfair Labour
Practices Act, 1971]

Appearance:

1. Shri. A. M. Taksal ,the learned Advocate for the complainant.
2. Shri. B.S. Landge- Patil, the learned Advocate for the respondents.

ORDER BELOW EXH.U-2

[Passed on 25th day of September, 2023]

This is an application filed by the complainant under Section 30 (2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (In short the Act) whereby the complainant has prayed to direct the respondents not to transfer, alienate or shift the properties of the respondents till the disposal of the complaint.

2] The facts in brief are as under ;

According to the complainant, the respondents appointed him in the year 1999 as a Supervisor on initial payment of Rs.40/- per day. Subsequently, his payment was increased up to Rs.520/-per day till the date of oral termination dated 28-07-2020. As per confirmation letter dated 08-09-2004, the respondents had intimated the complainant that he would get Rs.20,000/- per month for the work allotted to him , but at no point of time such payment was made. Though the complainant has worked for the respondents for 12 hours for the whole year, no over time allowance was paid to him. There are 40 workers in the respondent – company which is engaged in manufacturing of polypropylene mats. No arrears of wage, gratuity, provident fund, leave salary , were paid to the complainant. So, the complainant has claimed that it is entitled to get arrears of wages and over all dues worth Rs.38,13,076/-. There is recurring cause of action also.

3] It is claimed that though the complainant has meritorious case there is possibility that the respondents may sell the machinery or immovable property or they may run away from their liability. Therefore, interim order is required for restraining them from selling, transferring alienating, mortgaging or creating any third party interest over the movable or immovable properties. If interim relief is not granted, irreparable loss and manifest inconvenience will be caused to the complainant. But no such prejudice would be caused to the respondents if application is allowed. It is supported by affidavit of the complainant Exh.U-3.

4] The respondents have filed say and written statement at Exh. C-5. It is signed by its Director Gopal Khatri. The respondents have denied the averments made in the complaint and application. It is claimed that the complainant has suppressed and hidden material facts and there is no cause of action. Moreover, the complaint is barred by limitation. Imaginary allegations have been made by the complainant and documents have been fabricated by him including letter of appointment, wage sheet, attendance sheet, and Identity Card. There is no letter of appointment as the complainant was never an employee of the respondents. It is claimed that the complainant was doing work of gardening, maintenance and house-keeping on contract basis. There was no fixed time. So there was no relationship as employer-employee with him.

5] It is denied that respondents had agreed to pay Rs.20,000/- per month towards salary. Allegations about

long working hours and non-payment of wages and claim for arrears of wages and other dues are denied. As there is no prima facie case , question of restraining the respondents from selling or alienating any part of machinery ,does not arise and it is submitted that there is no such intention of the respondents also. It is claimed that the complainant is trying to extract money by illegal way and no unfair labour practice is committed by the respondents. Hence, it is prayed to dismiss the complaint with compensatory costs of Rs.5000/- .

6] The points for determination alongwith my findings thereon are as under :

Sr. No.	POINTS	FINDINGS
1	Whether prima facie case is made out in favour of the Complainant ?	No.
2.	Whether the balance of convenience lies in favour of the Complainant ?	No.
3.	Whether the Complainant will suffer irreparable loss or injury if the interim relief is refused ?	No.
4.	What order ?	Application is rejected.

REASONS

7] The complainant has filed some documents vide Exh.U-4, but no documents have been filed by the respondents. Heard the learned counsel Shri. Taksal for the complainant and the learned counsel for the respondent Shri.Landge Patil . The respondents have also filed written notes of argument at Exh. C-6. According to the learned counsel for the complainant, when the claim of the complainant is regarding monetary benefits and the documents show that the respondents had engaged the complainant for several years, if interim relief as sought by the complainant is not granted ,it is possible that the respondents may dispose of the machinery and movable and immovable property to defeat the claim of the complainant. Hence, interim relief may be granted. On the other hand, the learned counsel for the respondents has submitted that, when the relationship between the parties itself is in dispute, no interim relief can be granted in favour of the complainant, especially when the claim is quite belated. It is also submitted that the documents filed by the complainant are all false and fabricated. So unless the said averments are established , it cannot be said that he is entitled to get any reliefs, especially when he has not established any prima facie case. Hence, it is prayed to reject the application.

As to Point Nos. 1 to 3 :

8] All the points are inter-connected, hence they are clubbed together. Admittedly, the burden lies on the complainant to show that the respondents have engaged in unfair labour practices and at least a prima facie case will have

to be established by him to show that the respondents have deprived him of his legal dues. So, prima facie material will have to be considered for arriving at the conclusion that the complainant has succeeded in that attempt. It is found that on 08-09-2004 , respondent No.1 had allotted work to the complainant on contract basis for doing various services. The said document was disputed by the respondents. There is another document like Identity Card and E-pass issued by Government of Maharashtra on 04-07-2020. Some other documents including Handwritten Note and monthly Muster /Rolls for the period March-2019 to September – 2019 and even from the period August-2001 to March-2001 are placed on record.

9] Even in the said Muster Roll for the year 2001, gross wages of the complainant were mentioned as Rs.1800/-. The designation of the complainant is mentioned as Supervisor. Admittedly, there is no appointment letter and it is the case of the complainant that the respondents had orally terminated his services on 28-07-2020 without paying legal dues or other benefits . He has been shown as aged about 70 years. In notice dt.02-09-2020, the complainant had claimed the said monetary benefits and it is mentioned that cause of action arose on 28-07-2020.

10] At this juncture, it cannot be said that the said documents are fabricated or manipulated by the complainant but at the same time ,it is also found that since July – 2020 as per the case of the complainant himself , he is out of

employment and his age is mentioned as 70 years. Even in the main complaint, he has sought the reliefs in the form of declaration of unfair labour practices and for payment of Rs.38,13,076/-. So, the main contention of the complainant is about monetary gains. Therefore, unless and until it is found that the respondents are transferring or alienating or shifting the machinery, movable or immovable property, the said relief cannot be granted. Even the respondents have claimed that they have no intention to take any such action.

11] When the claim of the complainant himself is not entirely established even from the documents on record and there is some delay in seeking the monetary benefits when the alleged cause of action arose in the year 2020 itself, when the respondents started paying complainant less wages than agreed amount and even nature of the work of the complainant as an employee of the respondents or an independent contractor is doubtful, directing the respondents to not shift or transfer the machines will certainly cause serious prejudice to the respondents. On the other hand, if the complainant is able to establish his case on merit, he will get the consequential monetary benefits. So there will not be any undue hardship or irreparable loss to the complainant that cannot be compensated in terms of money. Hence. I am of the opinion that, the complainant is not entitled to get discretionary reliefs under Section 30(2) of the Act and no affirmative action is required to be taken against the respondents as sought by the complainant. Therefore, Point Nos.1 to 3 are answered in the negative.

As to Point No.4:-

12] In view of my findings on Point Nos. 1 to 3, the application will have to be rejected. Hence, I pass the following order:

ORDER

1.	The application Exh.U-2 is rejected.
2.	Costs in cause.

Place:-Aurangabad.

Date - 25-09-2023

**(S.S. Maudekar)
Member,
Industrial Court, Aurangabad**

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