

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

COMPLAINT (ULP) No.44/2023

MHIC-2000118-2023

Siemens Workers' Union
04, Yash Ashoka CHS, Sudarshan Colony,
Kopri, Thane (East) – 400603
Through : Its General Secretary

.....Complainant.

Vs.

[1] M/s. Siemens Ltd.
Plot no.E-76
MIDC Waluj, Aurangabad
[2] Shri. Ashish Gaikwad
Works Manager,
M/s. Siemens Ltd.
SE GT PR MMF AIS Division,
E-76, MIDC, Waluj, Aurangabad
[3] Shri. Praveen Deshmukh,
Vice President-HR,
Siemens Ltd.
Kalwa Works
Thane Belapur Road,
Airoli Node, New Mumbai

...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 :

Mr. G.S. Telangre, the Ld. Advocate for the complainant
Mr. Y.R. Marlapalle, the Ld. Advocate for the respondents.

ORDER BELOW EXH.U-2

[Passed on this 7th day of October, 2024]

This is an application filed under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (In short the Act) for grant of interim relief.

2] The facts in brief are as under :-

According to the complainant, it is a Union registered under the Trade Unions Act and the respondent is a company . Respondent Nos. 2 and 3 are its Works Manager and Vice President respectively. It is claimed that respondent No. 1 has registered Head Office at Mumbai. The complainant claims to be a recognized union at Kalwa, Nashik and Goa factories of respondent No. 1. Earlier, the complainant had 117 members. respondent No. 1 deals in manufacturing of electrical products. It is claimed that the members of the complainant whose names as well as details of employment are mentioned in Annexure-A are workmen as defined in Section 2(s) of the Industrial Disputes Act, 1947 and employees under Section 3(5) of the Act. They are permanent workmen . So also, it is claimed that Chapter – VB of the Industrial Disputes Act is applicable to respondent No. 1 as it is an industrial establishment and

industry. The said workmen became members of the Union on 29-05-2023.

3] It is further claimed that the workmen were given different designations like Junior Executives and Engineers to deprive them of benefits of various labour legislations though they do various types of works of assembly in work shop of raw material and they work under supervisors. The details and particulars of work in each assembly is mentioned in Annexure -B. It is also claimed that glorified designations were given to the workmen so that they cannot form or join any Union. Such matters were earlier resolved through settlement in Court in Thane and they were designated as workmen. There was similar settlement in the year 2021 in Goa Unit. However, the workmen in the unit of the respondents at Waluj MIDC after realizing situation and treatment given to them by the management decided to form union for getting fair treatment through collective bargaining. It is submitted that the workmen are not paid over time wages. Supervisors threatened them to cancel leave. The complainant Union has signed several settlements with the respondents at Kalwa, Nashik and Aurangabad Units. The workmen have been given identity cards but they are intentionally kept in office grade to deprive them of the benefits of various labour laws.

4] It is reiterated that no subordinate or assistant work under the workmen and they do not possess any administrative powers. Supervisors threatened them to

dismiss from service and to depute them at new work station. Names of some officials of respondent No. 1 are mentioned in para 3.5 who are allegedly discriminating workmen for wage increments and consequences are mentioned as discharge or dismissal for non-completion of targets. It is further claimed that since the date of joining of the employees, there was no transfer at any other place. But it is claimed that to break the complainant Union or discourage the employees, the respondents may issue orders with mala fide intention under guise of management policy. So also, there is constant threat of disciplinary action owing to formation of new Union or joining of Union as members. Hence, it is claimed that the respondents have engaged prima facie in unfair labour practice under Item 1(a)(b), 4(a) and 5 of Schedule II and Item 3,5,9 and 10 of Schedule IV of the Act and various prayers are made in clause (b)(c)(d) and (e) like directing the respondents not to entice the workmen with glorified and false designations with a view to breaking the Union, to not discharge or dismiss or transfer them for not accepting glorified designations and to direct the respondents to maintain status-quo about service conditions and lastly to direct them to bargain collectively in good faith with the complainant.

5] The application is supported by affidavit of one Shri. Girish Ashtekar, General Secretary of the complainant Union at Exh.U-3. Several workmen / employees have also sworn affidavits in support of the application at Exh.U-4 to U-21.

6] The respondents have filed preliminary objections, written statement and say to the interim application at Exh.C-9. They have claimed that the alleged members of the complainant enlisted in Annexure-A are not workmen or employees, considering their nature of duties. So, the complaint itself is not maintainable. Further, the complainant is said to be unconnected with the establishment of the respondents and legally incompetent to represent its employees. According to the respondents, respondent No. 1 has various factories, establishments in India and there are at least 3 distinct and separately registered factories in the industrial establishment in the premises of respondent No. 1 namely; Switchgear (SGR) Unit-1, Air Insulated Switchgear (AIS) and Bushing Instrument Transformers and Coll (BIC) Unit-2 and Gas Insulated Switchgear Unit (GIS) Unit -3. It is submitted that the present complaint deals with AIS Factory of Unit -2.

7] The respondents have submitted that respondent No. 1 is an industry, industrial establishment and a factory. The service conditions of the employees including alleged members of the complainant are governed by appointment / confirmation orders. So, M.S.Os. or C.S.Os. are not applicable to them. It is claimed that out of 205 employees engaged by respondent No. 1, 86 are junior executives , six are Trainee Officers and rest of the employees are officers. The alleged members of the complainant are said to be Junior Executives and they are not workmen, but only workers under the Factories Act. They also possess educational and technical

qualifications and they have undergone recruitment process. Nature of their duties have been mentioned in para Nos. (9) (10)(11) and (12). It is claimed that they take critical decisions.

8] The respondents have denied that they have pressurized or threatened the said employees due to joining of Union. It is claimed that due to negligent acts, superior officers have right to take appropriate actions. It is also claimed that in absence of status of workmen, members of the complainant cannot join any Trade Union and the complaint is said to be based on surmises and assumptions. The commission of unfair labour practices is denied. It is claimed that the complaint is liable to be dismissed and without adjudicating the issue of maintainability of the complaint, the Court cannot travel beyond its jurisdiction, otherwise it will cause great hardship and prejudice to the respondents. Hence, it is prayed to dismiss the complaint.

9] 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 ?	Yes.
2.	Whether the balance of convenience lies in favour of the Complainant ?	Yes.
3.	Whether irreparable loss or hardship will cause to the	Yes.

	Complainant if the interim relief is refused ?	
4.	What order ?	Application is partly allowed.

REASONS

10] As per the record, after appearance of the respondents , order was passed on 08-06-2023 and the respondents were directed to not change service conditions of employees who are mentioned in Annexure -A till filing of the reply. The said order was continued from time to time. It is also gathered that in the mean time, some of the members of the complainant Union sought permission to delete their names from the complaint. The complainant took strong objection ,however, as per orders passed on Exh. U-30, 33, 36, 39, 42, 45,48,51,54,55 and 60, those applications were allowed and names of the said employees were deleted. Some amendment was also made by the complainant vide order below Exh.U-28 and it filed amended Annexure -A. Another application was also filed at Exh.U-67 for modification of order below Exh.U-2. But it was rejected and it was directed that the said order dt.08-06-2023 would continue till further order below Exh.U-2 after hearing the parties.

11] Heard the learned counsel for the complainant Shri. Telangre and the learned counsel for the respondents Shri. Marlapalle. According to the learned

counsel for the complainant, even from averments made in the complaint and written statement it can be gathered that the nature of the work done by the members of the complainant Union / employees is of skilled or technical nature. So, prima facie they cannot be excluded from the definition of workman and employee. Therefore, merely because they were designated as Junior Executives or Engineers, it will not make any difference. It is also pointed out that during pendency of the complaint, some interim wage rise was given to such employees who were enlisted in Annexure-A but only after they had left the complainant union. The benefit of interim wage rise or increments was given only to break the Union and demoralize the remaining members / employees too, so that they may be compelled to relinquish the membership.

12] It is submitted that all the grounds raised by the respondents can be decided after recording evidence and in remaining factories/ units of respondent No. 1, such employees were given various benefits and their service conditions were better than that of the members of the complainant Union. Therefore, it is prayed to grant the reliefs and to protect the members of the complainant and also to direct the respondents to give wage rise as compared to the other employees of respondent No. 1 Unit. The following authorities are referred by the complainant, viz. :

[i] Ghanshyam Jamnomal Shewakramani v. Lachmandas Tulsiram Naya (HUF) [2010 (1) Bom. C. R. 812],

- [ii] **Nashik Workers Union v. M/s Trimbak Rubber Industries Ltd. [2002 (92) F.L.R. 789],**
- [iii] **M/s Trambak Rubber Industries v. Nashik Workers Union [Appeal (Civil) No.8489 of 2001 decided on 16-07-2003],**
- [iv] **Inter Globe Air Transport v. Mrs. Leela Deshpande [1994 (2) BOM. C.R. 596],**
- [v] **Guest Keen Williams Ltd. v. Assistant Labour Commissioner [(1994) III L.L.J. 37 CAL],**
- [vi] **Oil and Natural Gas Corporation Ltd. v. Transport and Dock Workers Union [2007 LAB. I.C.1547],**
- [vii] **Reliance Energy Limited v. Rashtrawadi Kamgar Sangh [(2008) 11 BOM C K 0006],**
- [viii] **The Associated Cement Companies Ltd. v. Their Workmen [AIR 1960 SC 777],**
- [ix] **S.G. Chemical and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Limited [1986 SCC (2) 624],**
- [x] **Judgment delivered by Industrial Court Aurangabad in Revision (ULP) No. 25 of 2019 dated 18-03-2019,**
- [xi] **Food Corporation of India Workers' vs. Food Corporation of India [AIR 1990 SC 2178],**
- [xii] **Hindustan Lever Ltd. v. B.N. Dongre [AIR 1995 SC 817],**
- [xiii] **Hindustan Lever Mazdoor Sabha v. Hindustan Lever Limited and Ors. [1990 (1) Bom. C.R. 359], and**
- [xiv] **Kamani Metals & Alloys Ltd. v. Their Workmen [1967 AIR 1175].**

13] The learned counsel for the respondents has however pointed out that the complaint itself is not maintainable as the complainant Union has prima facie not established that its members after allegedly joining it were either workmen or employees and unless and until their status is decided first , no relief including interim relief can be granted to them. So also, their status is to be decided in connected reference. It is pointed out that till this date, the alleged members had not taken any steps to join any Union and they were not disputing their designation. But only to claim interim wage rise, as compared to other employees who were not doing similar nature of duties, they are claiming to be workmen or employees without any substance. Hence, in absence of any locus standi to the complainant Union to accept the employees as its members and until the tenability of the complaint itself is decided, the Court cannot grant any relief to them.

14] It is further submitted that whatever wage rise was given to the other employees , it was only after considering other factors and not their non-affiliation to any Union. It is thereafter contended that the complainant is not a recognized Union in respondent No. 1 and it cannot take benefits of settlements that had taken place in other Units and establishments, as they were based on different considerations and there is no similarity in situation of the complainant and its alleged members. So, in absence of prima facie proof of unfair labour practice or any right to get the reliefs, it is prayed to

reject the application along with complaint. The following authorities are referred , viz. :

[i] Ramesh Chandra Sankla and Ors. v. Vikram Cement and Ors. [(2008) 14 Supreme Court Cases 58],

[ii] Management of the Express Newspaper (P) Ltd. Madras V. Workers and Ors. [(1962) 2 LLJ 227],

[iii] Rangaswamy and Company v. D.V. Jagadish [2990 II L.L.N.745],

[iv] Executive Engineer , Central Public Works Department Aurangabad v. Raju Banduji Raut [2009 (6) Mh. L.J.],

[v] H. S. Rawat v. Voltas Ltd.[2005(1) L.L.N.500],

[vi] Pauni Shikshan Sanstha Pauni v. Sunil Rajaram Uparikar [2001 (2) L.L.N. 936],

[vii] Municipal Corporation of City of Amravati v. Ashok Ramkrishna Kamble [1994 – II L.L.N. 394],

[viii] Standard Chartered Bank v. Vandana Joshi [2010 (2) Mh. L. J.22],

[ix] Sonapat Co-operative Sugar Mills Ltd. v. Ajit Singh [(2005) 3 SCC 232], and

[x] Bharati Airtel Limited v. A.S. Raghavendra [(2024) 6 SCC 418].

As to point nos. 1 to 3:-

15] To avoid repetition of discussion , it is better to decide all the points together. Initial burden is on the complainant Union to show that it has strong prima facie case to get equitable and discretionary reliefs. Before that it will have to be prima facie shown that the respondents have engaged in unfair labour practices enumerated under the Item 1(a)(b), 4(a) and 5 of Schedule II and Item 3,5,9 and 10 of Schedule IV of the Act. Briefly, those Items are attracted when the employer interferes with or restrains or coerces employees in exercise of their right to organize , form, join or assist the Trade Union for the purpose of collective bargaining namely threatening employee with discharge or dismissal , threatening a lock out or closure, granting wage increase to employees at crucial period of bargaining with a view to undermine the efforts of the Union, to encourage or discourage membership in any Union by discriminating against any employee like discharging or punishing the employee for urging other employees to join or organize a Union or to refuse to bargain collectively with the recognized Union. Other unfair labour practices under Items under schedule IV deal with transferring employees mala fide from one place to another under the guise of following management policy to show favouritism or partiality to one set of workers, regardless of merits, failure to implement award, settlement or agreement and indulging in act of force or violence.

16] Obviously proof of all those acts of unfair labour practice can be established by the complainant and the respondents would be at liberty to disprove the stand of the complainant or to make any other appropriate defence as per the written statement during the course of trial . But for deciding prima facie case, the material on record will have to be gone into and at the same time, preliminary objections can be considered to some extent to scrutinize whether without deciding the same or trying them as preliminary issues, some relief in the form of protection can be granted to the members of the complainant Union. There is no doubt that members of the complainant Union as described in Annexure-A have been working with respondent No. 1 in concerned Division. They are said to be working as long as since 2007 and some since 2021 also. Some of the members / employees have left the complainant Union during pendency of the complaint and some have newly joined.

17] The respondents have claimed that the status of the members of the complainant is yet to be decided and they are challenging their designations without denying benefits which were granted to them in that capacity by the respondents earlier. It has also claimed that the complainant is unconnected Union. In this regard, if averments made in the complaint at paras 2.1 to 2.5 are perused, the nature of duties of workmen / employees mentioned in Annexure-A are given. Different assemblies are also mentioned in which the said employees work . It is claimed that the workmen who are styled

as Junior Executives/ Engineers, operate manually and fix assemblies by using different types of raw material. Some record is manually entered in information system. Supervisors monitor the work performed by the operators.

18] The respondents in their written statement have not submitted their explanation, comments or reply to paras 2.1 to 2.5. On the other hand, they have come with a case that various duties are performed by the workmen in Assembly Department and Testing Department and those duties are mentioned in paras (9) to (12). It seems that the said work is of higher skill and sensitive nature and various activities are required to be performed by the workmen to ensure highest level of quality and safety. Some qualifications are laid down by the respondents for eligibility to get employment. The parties have filed several documents and photographs also in connected Reference (IT) No. 5/2024 and in present case also some documents are filed by the complainant at list Exh.U-22.

19] Even if the description of the duties and nature of the work performed by the members as mentioned by the respondents in their written statement is taken to be true reflection , prima facie, it is difficult to say that the said work and duties performed by the workmen including the members of the complainant Union would exclude them from the definition of workman under Section 2(s) of the I. D. Act. Otherwise also, the said aspect can be considered by giving opportunity to the parties to establish their respective stands during the course of trial.

20] As per the list Exh.U-22, it reveals that the complainant Union was registered in the year 1971 in Mumbai and its address was changed. It received recognition certificate on 02-04-2008 as per order passed by the learned Member, Industrial Court in Application (MRTU) No. 3/2006. The learned counsel for the respondents have claimed that recognition has not been granted for specific Unit namely AIS and BIC Factories i.e. Unit-2. However, the learned counsel for the complainant has pointed out that address of respondent No. 1 and the address shown in the recognition certificate is one and the same. Even, it is not disputed that all 3 units function in the same premises or piece of plot. So, it is claimed that the complainant Union can certainly represent the employees / workmen working in three Units. At this juncture, only prima facie view is to be taken and contention of the learned counsel for the complainant appears to be more acceptable, as there is no bifurcation of various Units in recognition certificate also and it has not been shown that the Units started after year 2008.

21] The complainant has also filed subscription receipts for the month of May and June-2023. There is no doubt that respondent No. 1 has several other Units in Maharashtra as well as in other States of India. The copies of settlements filed on record by the complainant at various Units at Kalwa, Nashik, Aurangabad, Goa, show that some benefits were extended to the employees who were represented by the complainant Union. So, competency, authority or locus standi of the complainant Union to work in the Industrial

Establishment , factories, units of respondent No.1 , cannot be disputed or denied and there is no doubt that being a registered Union and having claimed for recognition also, it can represent members as enlisted in Annexure-A.

22] Some documents are filed at Sr. No.4, Page No.13 to 223 which have not been disputed by the respondents also about letters of appointment of the members, letters of confirmation , identity cards, pass books etc. Some of them were styled as Trained Diploma Engineer. After completion of training period, they were made permanent or confirmed in service. Various terms and conditions were laid down in said letters, orders, especially about working hours. Even termination of employees without notice was contemplated. In pay-slips of said employees, other details like date of joining, seniority, various identification numbers, P.F. numbers, employee code etc. are given and various benefits are also mentioned in such documents. The members were required to work in shifts also if necessary and various grades were assigned to them. The respondents have reserved the right to alter or amend service conditions. They were required to participate actively in various initiatives, trainings and development programmes.

23] As observed earlier, both the parties have given details of nature of duties and work performed by them and there is no doubt that even on perusal of those documents also, the stand of the respondents cannot be prima facie accepted that members of the complainant Union do not

fall within the definition of workman under Section 2(s) of the I.D.Act or that the complainant Union has no locus-standi to represent them or to negotiate on their behalf with the respondents.

24] The record also shows that some of the members of the complainant Union had left the membership and it is alleged by the complainant that those were extended benefits of wage increase in order to pressurize the complainant and other members to stop all such union activities. The complainant has also filed salary slips of all such employees and such documents are also not disputed by the respondents, but it is their stand that those employees were granted such increase as per applicable norms or on appraisal of their performance. However, no such details have been furnished by the respondents, but that aspect is not directly involved in the present dispute as another connected matter bearing Reference (IT) No. 5/2024 is pending. So, it is not necessary to discuss much in detail at this stage.

25] Prima facie, it is seen that the respondents are not approving the activities of the complainant and they are not ready to permit it to represent the workmen / employees who are said to be its members. In such circumstances, when prima facie it has been shown by the complainant that it is having recognition and it has also represented various employees of the principal company in other Units , it would not be proper to restrain it from representing the members in order to negotiate with the respondents for

getting better conditions of service. Therefore, the complaint appears to be very much maintainable at this stage and the approach of the respondents cannot be approved when there is nothing to deprive the members to approach the Trade Union for raising their grievances.

26] In this regard, the authorities cited by the respondents can be considered . In the case of **Ramesh Chandra Sankla** (supra), the Hon'ble High Court observed that question as to maintainability or jurisdictional facts can be decided if need be as preliminary issues, prior to determination on merit. There is no doubt that preliminary objection as to jurisdiction of the Court or Tribunal needs to be decided first as preliminary issue, but that does not mean that even mixed questions of facts and law like status of members of the complainant Union as workmen are also to be decided first before deciding application under Section 30(2) of the Act. There was reference of Order XIV Rules 1 and 2 of the Civil Procedure Code, so that issue can certainly be framed. It was observed that issue whether VRS was accepted by the workmen by free consent was held to be decided in the light of evidence before the Labour Court . However, the workman claimed to be employees of the company as they had not received all the benefits to which they were entitled under the Scheme. So, the said authority does not prohibit the Tribunal or Court from deciding the application for interim relief and it seems that the Labour Court was directed to decide the matters on fulfillment

of conditions by the said employees such as depositing of the amount.

27] In the case of **Management of the Express Newspaper (P) Ltd.** (supra), it was held that the Industrial Tribunal can examine as preliminary issue, the question whether the dispute referred to it is industrial dispute or not. As observed earlier, the complaint appears to be maintainable and status of the complainant Union can be decided by giving opportunity to the parties to lead evidence and here only prima facie indication is sufficient.

28] In the case of **Rangaswamy and Company** (supra), the case of the Management was that the employee was not a workman and reference was not maintainable. It seems that the second party had challenged his removal from service and had sought reinstatement. In the reference, he had sought interim relief and the learned Labour Court had granted interim relief of Rs.1200/- p.m. without deciding objection of the company that the second party was not a workman. In para (13), it was specifically clarified by the Hon'ble Supreme Court that it all depends upon facts and circumstances of each case as to whether issue touching the jurisdiction of the Labour Court or Industrial Tribunal should be tried as a Preliminary Issue and Judgment in the case of D.P. Maheshwari was referred.

29] In the present matter, admittedly the members of the complainant Union are in the employment of the respondents and their status can be adjudicated during the

course of trial. So, it cannot be said that no interim relief can be granted unless their status is established. Even in that matter, Hon'ble Supreme Court had directed employer to pay Rs.900/- by way of interim relief till preliminary issue was decided. So, if in future such issue is framed and decided in favour of the respondents, certain modifications can also be made in the order itself.

30] In the case of **Raju Banduji Raut** (supra), it was held that before examining and deciding the application for interim relief, the Court should be satisfied that the complaint is maintainable . It was alleged by the respondent that there was no relationship between it and the complainant and application Exh.U-2 was allowed directing the respondent to reinstate the complainant with wages. On consideration of various settled legal principles, it was held by the Hon'ble High Court that the issue of jurisdiction was involved and even relief granted was of final nature at interim stage. Hence, the said order was set aside and the matter was left to be decided on the issue of maintainability of the complaint. Here, the facts show that there is no issue of want of relationship between the respondents and members of the complainant-Union. Hence, prima facie the complaint cannot be said to be barred and other issues can be decided on merit.

31] In the case of **H. S. Rawat** (supra), it was held that the Labour Court was right in framing Preliminary issues whether the petitioner was workman in a proceeding under Section 33(C)(2) of the I.D. Act. There was no issue

about deciding application for interim relief and to grant interim relief before trying the preliminary issue and it was found that the management was not at fault for delay, so preliminary issue as to maintainability was directed to be decided first. Here also, if required while framing issues, such an issue may be tried as a preliminary issue.

32] In the case of **Pauni Shikshan Sanstha Pauni** (supra), it was held that before allowing amendment in the complaint, the Tribunal ought to have decided preliminary objection raised by the respondent – petitioner. It was a case where the issue was whether Industrial Tribunal or College Tribunal had jurisdiction. Even issue of industry was raised. So, those were certainly triable as preliminary issues.

33] In the case of **Ashok Ramkrishna Kamble** (supra), it was held that an objection as to jurisdiction can be raised at any level and if the Court has no jurisdiction, such an objection should be decided first. So, the matter came to be remanded including decision on application for interim relief. It was held that for getting relief, the complainants have to establish that they are employees under Section 3(5) of the Act. As discussed earlier, prima facie stand of the respondents appears to be not acceptable that interim relief should not be granted unless status of the members of the complainant Union is decided.

34] In the case of **Standard Chartered Bank** (supra), it was held that burden lies on the person who asserts status of workman under Section 2(s) of the I.D. Act to

establish with reference to the dominant nature of her/his duties that the work which is performed falls within the one of the stipulated categories in Section 2(s). Admittedly, such an issue is a mixed question of facts and law and the Court will certainly exercise the jurisdiction by considering it as preliminary issue at an appropriate stage. But prima facie nature of work performed by the members of the complainant Union appears to be of skilled, technical and operational categories. Even, it is not the stand of the respondents that they are doing any duties such as managerial, administrative or supervisory nature. Hence, the Court can certainly go into the aspects of entitlement of the members of the complainant to get interim relief.

35] In the case of **Ajit Singh** (supra), it was held that the teachers are not workmen under Section 2(s) of the I.D. Act and here also the learned counsel for the respondents had referred the definition under Section 2(s) of the I.D. Act and it was further observed by the Hon'ble Supreme Court that the conclusive evidence is required to determine the status of the employee and findings on jurisdictional issue must be given. There is no doubt that such an issue can be framed and adjudicated in due course. So the grievance of the respondents can be considered at that time.

36] In the case of **Bharati Airtel Limited** (supra), the factors for considering the status of workman under Section 2(s) of the I.D. Act were discussed by the Hon'ble Supreme Court and it was held that mere absence of powers to appoint, dismiss or hold enquiries against the other employees

cannot be sole gratuity to determine status of employee as workman. But in that case, it was found that the employee was discharging managerial duties and functions. So, the said observations were based on appreciation of factual position and the ratio will not be applicable in all matters without ascertaining the admitted position of facts. As observed, it is also not the stand that the members were doing some administrative, managerial or supervisory duties. On the other hand, the contentions of the complainant were not disputed by the respondents regarding nature of duties. So, in my opinion the authorities relied on by the respondents are not of much help to them.

37] So far as the authorities cited by the complainant are concerned, in the cases of **Ghanshyam Jamnomal Shewakramani** (supra) it was held that while deciding preliminary objection as to jurisdiction of the suit under Section 9(A) of the Code of Civil Procedure, the Court may grant such interim relief as it may consider necessary pending determination by it of the preliminary issue as to jurisdiction. Now, though the said provision has been amended/deleted, such preliminary objection can also be considered under Order XIV Rule -2 of the Civil Procedure Code. As observed, this Court has jurisdiction to entertain and decide the complaint including application for interim relief.

38] In the case of **Nashik Workers Union**(supra), issue before the Industrial Court was whether the complainants were Trainees and the Hon'ble High

Court held that findings of the Industrial Court were contrary to law. The Hon'ble Supreme Court upheld the order of the Hon'ble High Court and it was held that on facts, it was found that production activities were carried and so the management could not have summarily terminating the services of the employees dubbing them as Trainees. In this case, pleadings of the parties prima facie indicate that nature of the work of the members of the complainant Union can be included in the definition of workman.

39] In the case of **Inter Globe Air Transport**(supra), it was held that predominant and substantial nature of the duties are required to be considered while deciding the status of workman and not mere nomenclature and subsidiary part of the duties. Here also, merely by terming the members of the complainant as Junior Executive Engineers or Engineers will not make them non-employees as the respondents are not saying that they are excluded from the definition of workman by resorting to exceptional clauses.

40] In the case of **Guest Keen Williams Ltd.** (supra), it was held that employees designated as Junior Management Staff would get ousted from the definition of workman and it was held that even after agreement by some workmen about their designation, they cannot be treated as members of the Management Staff, if factually they are workmen considering their nature of duties and functions performed by them . It was further observed that such contract executed by the workmen cannot be acted upon as it is contrary

to the beneficial legislation i.e. the Industrial Disputes Act. As observed earlier, a person designated as a Junior Executive Engineer or Engineer may also fall within the definition of workman provided such employee performs duties as mentioned in Section 2(s) of the Industrial Disputes Act.

41] In the case of **Oil and Natural Gas Corporation Ltd.** (supra), the Hon'ble High Court upheld the order of the Industrial Tribunal granting interim relief as prima facie relationship of employer-employee was established and the Tribunal had power to decide the incidental issues necessary for adjudication of the dispute.

42] In the case of **Reliance Energy Limited** (supra) it was held that the order passed by the Labour Court and confirmed by the Industrial Court and the Hon'ble Single Judge of the Hon'ble High Court was proper as the employees were in the employment of the company for 25 years for house-keeping department though contractors had changed. So, service conditions of the said employees were unchanged. There is no doubt that when prima facie finding is given about existence of unfair labour practice, appropriate relief can always be granted by the Court. In the present case also, such relief can be extended to the complainant.

43] In the case of **Associated Cement Companies Ltd.** (supra), issue was about binding nature of Award under Section 18 of the I.D. Act. It was also observed that it is not necessary that a group of workmen acting collectively through their Union or otherwise should represent

the majority of the workmen bound by the Award. The present authority may be useful in the connected matter.

44] In the case of **S.G. Chemical and Dyes Trading Employees' Union** (supra) it was held that it is an implied condition of every agreement and settlement that the parties would act in conformation with the law and if services of a workman are terminated in violation of the provisions of the Industrial Disputes Act, reliefs can be granted. It seems that some settlement had taken place subsequently . Otherwise also, even if certain terms and conditions are laid down in appointment order or confirmation order , the employees cannot be debarred or prohibited from making grievance and dispute about such terms and conditions can be raised before the Tribunal. Here, it seems that the respondents are not ready to extend similar benefits like wage rise which have been extended to other employees, especially those who had resigned from the membership of the complainant Union and elements of breach of agreement could also be said to be in existence.

45] The complainant has also referred Judgment dt.18-03-2019 in Revision (ULP) No. 25/2019 wherein the learned Member, Industrial Court had upheld the order of the learned Labour Court that it would not be necessary to frame preliminary issue about the status of complainant No.1. Though it is not binding on this Court, it seems that several authorities were discussed by the learned Member and as observed earlier, present application can be decided without

waiting for decision on preliminary issue as may be framed subsequently.

46] In the case of **Food Corporation of India Workers'** (supra), the Hon'ble Supreme Court had granted parity in the scales of pay , allowances and terms and conditions of service for labour force of the Food Corporation of India. But the principle laid down therein for securing parity in wage, pay-scale, allowances of the employees working in similar situation , can be considered while deciding the connected reference on merit.

47] In the case of **Hindustan Lever Ltd.** (supra) the main issue was about ceiling fixed or D.A. where basic-wage exceeded Rs.500/- and both the management and workmen through Union had challenged certain findings of the Industrial Tribunal. The matter was remanded for re-determination of certain disputes. This case can be helpful while deciding the connected matter.

48] In the case of **Hindustan Lever Mazdoor Sabha** (supra), some interference was made by the Hon'ble High Court in the Award of the Tribunal regarding D.A. , House Rent Allowance and revision of pay-scale. The earlier observations will also apply in the present matter. In the case of **Kamani Metals & Alloys Ltd.**(supra) for revision of wages, dearness allowances. This Judgment can also be considered while deciding connected matter.

49] Here, wage rise or discrimination with the ex-members is not a direct issue. But main grievance of

the complainant seems to be that some members who were parties to the present complaint were granted wage rise after leaving the Union and deleting their names. However, those aspects were subsequently disclosed and as on the date of filing of the complaint and application, there was no such grievance by the complainant. Moreover, those members have been permitted to get their names deleted from Annexure-A and amendment has been made by the complainant accordingly. So also, subsequently some other members of the complainant also filed similar applications and orders are passed on those applications today itself. So, question of discrimination in wage rise and other relevant aspects can be considered in connected Reference.

50] Here, the issue is regarding grant of protection to the members of the complainant Union in their attempt to join the complainant and making grievance. So, prima facie ,it seems that the respondents are aggrieved with the activities of the complainant and its members after joining the Union who are employees of the respondents. So, possibility of taking any adverse action due to the said Union activities under the guise of following management policy etc. cannot be ruled out. When the status of the complainant and its members itself has been disputed, protection to the members during the pendency of the complaint can also be taken away by the respondents by resorting to various clauses in the appointment/confirmation letters.

51] So, prima facie there is some substance in the contention of the complainant that existence of unfair labour practices can be inferred at this juncture as laid down in the aforesaid items of Schedule II and IV of the Act and direction for taking affirmative can be given by the Court under Section 30(2) of the Act . Hence, this is a fit case where such discretion can be exercised in favour of the complainant and its members, especially to maintain status-quo and to allow the members to continue their activities without any hindrance or prohibition . Thus, strong prima facie case is established by the complainant. If no protection is afforded , high chances are there that the members will face harsh and serious consequences as there is reference of some dereliction in duties by the respondents against the members of the complainant in lowering down the production. However, no such prejudice , inconvenience or hardship will be caused by the respondents if interim relief to some extent is granted. Accordingly, relevant and essential conditions for grant of interim relief are in existence . Therefore, point Nos. 1 to 3 are answered in the affirmative.

As to Point No. 4:-

52] The complainant has also claimed in the instant application that the respondents be restrained from enticing the members i.e. employees with offer of glorified designations. Such a relief cannot be granted at this stage and it would be proper to grant certain reliefs and prayer clause (e) regarding direction to the respondents to bargain

collectively can be considered while deciding the connected reference. As such, the application will have to be partly allowed. In the result, I pass the following order –

ORDER

1.	The application is partly allowed.
2.	The respondents are directed not to discharge or dismiss the employees / workmen mentioned in Annexure – A and not to transfer them on account of their Union activities till the complaint is finally disposed of.
3.	The respondents shall maintain status-quo during the pendency of the complaint and they shall not change the service conditions affecting the workmen employees named in Annexure-A affecting adversely in any manner without following due process of law during the pendency of the complaint.
4.	Costs in cause.

Place: Aurangabad.

Date 07-10-2024

(S.S. Maudekar)

Member,

Industrial Court, Aurangabad

kad/-