

**IN THE INDUSTRIAL COURT, MAHARASHTRA
AT : AURANGABAD**

Complaint (ULP) No.20 of 2017

Mr.Suraj s/o Apparao Joshi

Complainant

Versus

M/s D.B.Corp.
Dainik Bhaskar Group & ors.

Respondents

ORDER BELOW EXH.U-2
(Dtd. 02nd February, 2018)

- 1) This complaint is filed under Items-3,6 & 9 of Schedule-IV of the M.R.T.U. & P.U.L.P. Act, 1971 requesting to give direction to the respondent to make complainant permanent on the post of Management Associate and give permanency benefits. By filing U-2 application the complainant has requested that respondent be directed not to take forcible resignation of his post of Management Associate and be restrained from terminating and transferring his services.
- 2) In short the contents in the application are that, respondent No.1 has started newspaper business of Daily Divya Marathi at Aurangabad w.e.f. 31-5-2011. Complainant was appointed as Telephone Operator in Administration department at Aurangabad. Thereafter he is time to time promoted. Since April 2016 he is working as Management Associate in Brand Marketing Department at Aurangabad. Further, his work as Management Associate is

appreciated by the respondents. His service record is clean and unblemished. Further, till today the respondent has not issued permanency order to him. Also the respondent has not given benefits of Award of Majithia Wage Board dated 11-11-2011. Hence, the complainant was insisting to pay salary to the post of Management Associate as per Wage Board and also to make him permanent in service. His request is not considered. Further, on 6-1-2017 respondent No.1 through respondents No.2 & 3 started pressurizing the complainant to give resignation of his post on or before 31-1-2017, otherwise his service would be terminated w.e.f. 1-2-2017. As per his contention the respondent has not issued prior notice or not paid retrenchment compensation. Therefore, the respondents have committed unfair labour practices. Further, the complainant has made out prima facie case. Balance of convenience is in his favour and requested to grant interim relief.

3) The respondents have filed Say and Written Statement at Exh.C-6. They have admitted relationship with complainant. Further, they have denied all allegations in respect of unfair labour practices. They have also denied that, the respondents No.2 and 3 had threatened the complainant to give resignation. As per their contention the complainant is designated as Management Associate. Therefore, he is not 'workman' as per provisions of M.R.T.U. & P.U.L.P.Act and Industrial Disputes Act. His nature of duty is to supervise and control over the other employees of the respondent. Hence, the present complaint is not maintainable. Further, the present complaint is filed on imaginary ground. The present

complaint is filed under Item-6 of Sch-IV of the MRTU & PULP Act for getting permanency. Further, complainant is already confirmed employee of the respondents. Hence, Item-6 is not maintainable. The respondents had neither pressurized the complainant to give resignation nor intended to transfer. Therefore, there is no termination and hence, complaint as well as interim relief application are not maintainable. Further, the complainant is not entitled to get benefits of Award of Majithia Wage Board as he is getting more favourable service conditions and pay scale. Further, as per appointment order his service is transferable at any place where the offices of the respondents are situated. Complainant has not made out prima facie case. Balance of convenience is not in his favour and requested to reject the application.

4) From the pleadings of the parties, following Points arose for my consideration and I have recorded findings with reasons thereon as under :-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the complainant has made out a prima- facie case ?	No
2)	Whether the balance of convenience lies in favour of complainant ?	No
3)	What Order ?	As per final Order.

REASONS

5) As to Point Nos.1 & 2 :-

In support of contention both the counsels have argued before me. From the submission and documents it appears that, the complainant is appointed as Telephone Operator w.e.f. 10-6-2011. Further, during tenure he is promoted as a Executive and at present he is working as Management Associate. Only material point is whether the complainant is pressurized or the respondent is intending to transfer. Further, it is the contention of the complainant that, the respondents are threatening and pressurizing complainant to give resignation. He is orally communicated by respondents No.2 & 3 about threat of respondent No.1. There is no written communication between the parties. It is pertinent to note that, generally in any industry there should be no oral communication or no management person is directly or indirectly threatening to their employee for giving resignation. Therefore, contention of complainant about oral threat is not possible. Further, alongwith List Exh.U-4 the complainant has produced his appointment letter and salary slips. The last salary slip is for the month of December 2016. The designation mentioned in the salary slip is Management Associate. Further, it appears that, complainant is having control over junior employees. Further respondent has raised dispute that, he is not 'workman' as per Section 2(s) of the Industrial Disputes Act and Section 3(5) of the M.R.T.U. & P.U.L.P. Act. Being working in management cadre, it is necessary to decide the issue of 'employer'

and 'employee' and maintainability of the complaint. Prima facie it appears that, there is no possibility of giving oral threat to the complainant. Further there is no written transfer order. Hence in my view on imaginary ground this complaint and interim relief application is filed. Therefore, the complainant has failed to prove prima facie case. Balance of convenience is not in his favour. Hence, I record negative findings to the points under consideration and proceed to pass following order :-

Order

Application Exh.U-2 is rejected.

Date : 02-02-2018

Sd/-
(R.S. Ghatpande)
Member,
Industrial Court, Aurangabad.