

IN THE INDUSTRIAL COURT, MAHARASHTRA,
BENCH AT : JALNA.

(PRESIDED OVER BY Dr. F. M. Khwaja, MEMBER)

Complaint (ULP) No.71/2021.
(CNR No. :- MHIC21000099-2021)

Virbhadra Madhavrao Vasmate
Age:31 yrs., Occ: Service/Labour,
R/o: “Padmashri”, Ramanagar,
Plot No.7(B), Behind Gokul Nagri,
Old Jalna, Tq. & Dist. Jalna.

Complainant

Versus

NRB Bearings Limited
Address : Plot No.C-6,
MIDC Additional Industrial Area,
Jalna – 431 213

Respondent

ORDER BELOW EXH.U-2
(Delivered on 04.03.2022)

1) The present Complaint is filed under Section 28 read with Item-9 of Schedule-IV of the Maharashtra Recognition of

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Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short MRTU & PULP Act, 1971), along with the present interim relief application Exh.U-2, therein seeking interim relief not to terminate/discharge/dismiss the complainant, during the pendency of the Complaint and further to restrain the respondent from deducting any amount from his wages/allowances payable to him.

The facts in short, relevant to decide the application are as under :-

2) The complainant is a workman in the factory run by the respondent, he is working since 2011 as a Trainee and on completion of probation period of one year in 2014 and since 2015 he is continued as a permanent employee. He is an active member of the New Panther Kamgar Sena (NPKS), he is signatory of the declaration as per the award dated 3-8-2019 and his services are governed by the said settlement. The NPKS raised an industrial dispute for increase in wages by terminating earlier settlement/award. The demand was not settled before the Conciliation Officer, therefore, the Appropriate Government has referred the said dispute for adjudication before the Industrial Tribunal in Reference (IT) No.1/2021.

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3) It is alleged that the respondent has engaged in unfair labour practices under Item No.9 of Schedule-IV of the MRTU & PULP Act, 1971 by imposing a deduction without notice to the complainant and without securing his consent illegally from February 2021 and October 2021 his reduction of wages from the respective months which is arbitrary, illegal and in violation of section 9-A of the Industrial Dispute Act, 1947 and Payment of Wages Act, 1936, so also violative of Section 33(1) of the Industrial Disputes Act as the demand for wage rise is pending adjudication. It was incumbent upon the respondent to pay full wages to the complainant after deducting Provident Fund, Professional Tax, ESI and Society contribution. No other deduction, on any count whatsoever, is permissible. The payment so deducted amounts to forcible recovery being against his will, wish and desire. The respondent is likely to continue to deduct such an amount unauthorizely henceforth in breach of settlement and it would cause irreparable loss, manifest inconvenience and irreversible hard to the complainant.

4) It is thus, prayed that by declaring that the respondent has engaged in unfair labour practices falling under Item No.9 of Schedule-IV of the MRTU & PULP Act, 1971 they be directed to desist from indulging in such unfair labour practices during the pendency of Complaint. Further they be directed not to

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terminate/discharge/dismiss the complainant during the pendency of the Complaint and further to restrain them from deducting any amount from the wages and allowances payable to the complainant except the statutory deductions namely Provident Fund, Professional Tax, ESI and Canteen recovery, pending hearing and final disposal of this Complaint.

5) The respondent appeared and filed its say cum written statement at (Exh.C-4). At the outset the respondent has assailed the maintainability of complaint for want of jurisdiction under section 28 r/w Item No.9 of Schedule-IV of the MRTU & PULP Act, 1971. It is contended that, the respondent previously deducted and recovered the excess amount paid of other allowance of Rs.11,692/- in the month of February 2020 and now started to recover the remaining amount towards the excess payments made to the complainant w.e.f. October 2021 with his oral consent therefore, the complaint is barred by limitation.

6) In Writ Petition No.8583/2019 on 17-7-2019 the Hon'ble High Court has given liberty to the union members to sign the newly drafted declaration and as per directions of the Hon'ble High Court the Reference bearing No.1/2018 is disposed of by this Court by its award dated 3-8-2019 and the

complainant has signed the said declaration in view of the order passed by the Hon'ble High Court and agreed to all the terms and conditions mentioned in settlement dated 13-12-2017. The complainant is admittedly confirmed in the service of the respondent after 1-7-2010 i.e. in the year 2014 therefore, he was/is entitled to the other allowance @ Rs.803/- to 1546/- per month however, inadvertently after acceptance of settlement as per the order of Hon'ble High Court, the complainant was wrongly paid other allowances @ Rs.3190/- to 3933/- per month, instead of @ Rs.803/- to 1646/- and therefore, on realization first deduction was made in the month of February 2020 by deducting Rs.11,692/- from the wages payable to the complainant that too with the consent of the complainant.

7) From August 2019 till September 2021 in all total recoverable amount is Rs.55,938/-, from which in the month of February 2020 an amount of Rs.11,692/- is recovered from the wages of complainant and Rs.15,000/- is recovered from the wages of complainant from October 2021, November 2021 and December 2021 @ Rs.5,000/- per month. Yet an amount of Rs. 29,246/- is recoverable from the complainant. The complainant has suppressed these material facts and pleaded contrary to the declaration signed by him. It is thus, prayed that the application seeking interim relief being devoid of substance be

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dismissed/rejected. Moreover, the complainant has failed to make out a prima facie case of unfair labour practice therefore, no relief by way of interim relief needs to be granted and accordingly it is prayed that the interim application be rejected.

8) Heard the learned Advocates for both the parties. Both have reiterated the contentions of the complaint in their respective oral submissions. I have gone through the same and perused the whole record.

9) Upon rival submissions and by going through the record, the points which arise for my determination with findings and reasons thereon are as under :-

Sr.No.	POINTS	FINDINGS
1)	Whether complainant-employee has made out a prima-facie case?	No
2)	Whether balance of convenience tilts in favour of complainant-employee?	No
3)	Whether the complainant-employee will suffer irreparable loss, if interim relief stands refused?	No

4)	What order?	Interim Application Exh.U-2 is rejected per final order.
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REASONS

As to Point Nos. 1 to 4 :-

10) At the outset, the admitted and undisputed facts and circumstances of the case are necessary to be quoted. Those are as under :-

That, the complainant is confirmed in the service of respondent after 1-7-2014 i.e. in the year 2014 on being appointed as a Trainee in the year 2011 on completion of probationary period and since 2015 he is a permanent employee and as such 'workman' as defined under section 3(5) of the MRTU & PULP Act, 1971 r/w Section 2(s) of the Industrial Disputes Act and that he is an active member of initially All Marathwada Kamgar Union, then Panther Power Kamgar Sanghatana and the New Panther Kamgar Sanghatana.

11) On 15-2-2021 the NPKS raised an industrial dispute for wage rise by terminating earlier settlement/award. The demand was not settled before the Conciliation Officer and

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therefore, the Appropriate Government has referred the industrial dispute for adjudication before Industrial Tribunal in Reference (IT) No.1/2021.

12) The deduction of Rs.11,692/- was made in February 2020 from the wages payable to the complainant towards the excess payments made to him on realization of mistake by the respondent. A total amount of Rs.55,938/- from August 2019 till September 2021 is to be recovered towards such excess payments made and now after deductions an amount of Rs.29,246/- is yet recoverable from the complainant.

13) It is canvassed with all vehemence by the learned Advocate for the complainant that the complainant has challenged the illegal deduction, recovery by the respondent which as per the own admission of the respondent in Para No.15 of their say and written statement is without issuing any notice. The defense of the respondent is that inadvertently the complainant was wrongly paid the excess amount. Such a defense is not permissible, putting economic sanction on the workman is to be deprecated.

14) In support of his submissions the learned Advocate for the complainant has placed his reliance on the observations made by Hon'ble Supreme Court in the case of **State of Punjab**

and ors. Vs. Rafiq Masih 2014(12) CPSC 37, wherein the Hon'ble Supreme Court observed that it is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference summarize the following few situations, wherein recoveries by the employers, would be impermissible in law i.e. the recovery from the employee belonging to Class-III and Class-IV, retired employees, when the excess payment has been made for a period in excess for five years and when it is harsh or arbitrary iniquitous and when an employee has wrongfully been required to discharge duties of higher post, and has been paid accordingly.

15) It is significant to note that it is the observations made by the Hon'ble Apex Court in the Appeal preferred by the State of Punjab, wherein the issue fall within the above categories and in respect of the employees of the State Government, the orders passed by Hon'ble High Court of Punjab and Haryana, quashing the order of recovery, have been upheld for the above said reasons.

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16) Herein the case in hand, it is not a matter of State employees or pertaining to the categories given above, the learned Advocate for the respondent has taken me through the order passed by Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No.8583/2019 dated 17-7-2019 referred above, then the memorandum of settlement entered into in between respondent M/S NRB Bearing Ltd. And All Marathwada Kamgar Union dated 13-12-2017 pursuant to the directions given by the Hon'ble High Court in the Writ Petition No.8583/2019 on 17-7-2019 then the declaration signed by the complainant and lastly the recovery made. The act of the respondent is pursuant to a settlement of which the complainant himself is a signatory and party to it alongwith majority of workmen.

17) As a matter of fact as per the understanding an amount of Rs.11,692/- towards the recovery of total amount of Rs.55,938/- paid by way of excess payment is made long back in the month of February 2020 and Rs.15000/- further recovered from his wages from October 2021, November 2021 and December 2021 @ Rs.5000/- per month as per oral consent and the complaint in question is filed on 14-12-2021 i.e. after near about two years after the first deduction towards the recovery in February 2020.

18) From the facts and submissions as well as the record produced by the respondent i.e. the attested copy of statement of other allowances actually paid and recoverable from the complainant it clearly appears that the recovery towards the excess payments made is considering the request of the complainant of the less amount i.e. Rs.5,000/- per month instead of Rs.10,000/- to 11,000/- per month further as per the oral consent and understanding. Now, it does lay in the mouth of the complainant to allege that such recovery by way of deduction from monthly wages is arbitrary, illegal and contrary to the provisions of the Payment of Wages Act or alike Labour Laws and that it amounts to an unfair labour practice being in breach of the settlement and thus attracted Item-9 of Schedule-IV of the MRTU & PULP Act, 1971. On the other hand, the recovery in easy installments of Rs.5,000/- per month is well justified and can't be said to be an arbitrary unilateral act of the respondent to be termed as an unfair labour practice least under Item No.9 of Schedule-IV of the MRTU & PULP Act.

19) Thus considering the peculiarity of the facts and submissions it can safely be concluded that, the complainant has failed to make out a prima facie case coupled with balance of convenience in his favour. Furthermore, he is not likely to suffer any hardship or irreparable loss. On the other hand, the

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respondent would be prevented from recovering the excess amount paid to the complainant 'due to inadvertence'. Hence, the complainant is not entitled to the reliefs claimed through this interim application and accordingly, I answered point Nos.1 to 3 in the negative and proceed to pass following order :-

Order

The application Exh. U-2 is hereby rejected.

Place :- Jalna.

Dated : 04/03/2022.

**(Dr. F. M. Khwaja)
Member,
Industrial Court, Jalna.**