

Exh.O-4

THE INDUSTRIAL COURT ( MAHARASHTRA)  
(BHANDARA BENCH), BHANDARA.

Complaint (ULP) No.18 of 2022  
(CNR NO.MHIC36-000040-2022)

Hindustan Composites Employees Union  
Through its Chief Advisor

..... versus .....

Hindustan Composites Ltd.

ORDER BELOW EXH.U-2  
(Passed on 30<sup>th</sup> July, 2022)

The complainant Hindustan Composite Employees Union through its Chief Advisor has filed this complaint under Section 28 read with Item 5, and 9 of Schedule IV of the Maharashtra Act No.1 , 1972 (hereinafter referred to as “Act”), claiming permanency in service of the employees whose names, date of appointments and designation has been given in the list Annexure-A, in which taken out this application for directing the respondent to make salary to its employees as per the provisions of the Minimum Wages Act, 1948 and they shall not be removed

from service without following due process of law till the decision of complaint.

2] Facts giving rise to file this application, in short, are as under:

The complainant Union is espousing the legitimate claims of the employees of respondent. The respondent has engaged its employees in the capacity of operator and mechanic on various dates as given in Annexure-A. Their appointments are from 03.08.2014 to 01.05.2020. According to complainant, the work which the employees are discharging is that of perennial in nature. Since, their appointment, they are continuously serving with respondent and uninterruptedly discharging their duties for more than 240 days every year. Therefore, by virtue of Clause 4-C of the Model Standing Orders their services shall be required to be made permanent by the respondent, but despite of repeated request respondent failed to do so. Not only that, the respondent is not paying salary and wages to the employees as per the Minimum Wages Act, 1948.

3] According to the complainant, in view of filing of this complaint, the respondent may take coercive step and remove said employees from service. The complainant thus, have a prima facie case and balance of convenience tilt in their favour.

If injunction is not granted the complainant will suffer with irreparable loss which cannot be compensated in terms of money. Thus, the complainant claimed interim injunction for directing respondent to make their salary as per the provisions of the Minimum Wages Act, 1948 and respondent shall not remove them from service without following due process of law pending this complaint for decision.

4] In response to the notice of this application, respondent appeared and filed its reply at Exh.C-6. The respondent has opposed all the adverse allegations in the complaint, so also, in the application and submitted that, the respondent Management is having various contractors such as M/s. Disha Manpower and Security Management Services and M/s. Aniket Services. Said agencies have providing contract workers to the respondent. The names of employees given in Annexure-A are the employees of Contractor and not of the respondent. Even, the Contractor is depositing their provident fund as well as ESIC with respective authorities and paying salary to them. Thus, according to the respondent, the employees whose names are given in Annexure-A are either the employees of M/s. Disha Manpower and Security Management Services or M/s Aniket Services. They have no nexus with the employees. Hence, there is no relationship of employer and employee between the respondent and complainant.

5] It is further contention of the respondent that, instant complaint is filed through Chief Advisor of Hindustan Composites Employees Union namely Shri S. N. Wadhai. Said S. N. Wadhai is neither an employee of the respondent nor the elected representative of the complainant Union. He is a outsider. He has no locus standi to file present complaint. It is submitted that, as per provisions of Section 28 of the Maharashtra Industrial Relations Act, 1946 election of workers to elect representative of employees was held and in pursuance to that seven elected representatives are representing the employees working with respondent Management and as such Shri S. N. Wadhai who has filed this complaint has no right. There is no resolution of the complainant Union to demonstrate that said S. N. Wadhai is authorised to file this complaint. So, on this ground also, complaint is not maintainable. With this, it is contention of the respondent that, the complainant has no prima facie case, no balance of convenience tilt in its favour. Therefore, no injunction should be granted.

6] In view of rival contention of the parties, following points have arisen for the determination. I have recorded findings against each points for the reasons discussed thereunder:-

**POINTS**

**FINDINGS**

- |  |                       |
|--|-----------------------|
| 1] Whether complainant proves that it has prima facie case in its favour?                              | : Partly yes.         |
| 2] Whether complainant prove that balance of convenience tilt in its favour?                           | : Partly yes.         |
| 3] Whether Complainant further prove that it would suffer irreparable loss, if injunction is refused ? | : Partly yes.         |
| 4] What order?   | : As per final order. |

**REASONS**

7] **As to Point no.1 to 4** :- Heard both the learned Advocates at length. The learned Advocate appearing for the complainant vehemently urged that, names of employees given in Annexure- A are appointed by respondent. Since their appointment, they are continuously working with respondent. Each of the employees had worked for more than 240 days in a preceding year, therefore, by virtue of Clause 4-C of the Model

Standing Orders their services are required to be made permanent by respondent. Number of times agitation and representations were made to the respondent, but invain. Therefore, complainants are constrained to file instant complaint and due to filing of this complaint there is apprehension in the mind of employees that respondent may illegally terminate them from service. He further submits that, the respondent is not paying wages to the employees as per the Minimum Wages Act, 1948.

8] During arguments, the learned Advocate for the complainant took me through Annexure -A. On perusal of the same, it seems that, employees are appointed from 2014 to 2020. The further document is the certificate of registration of Union Hindustan Composites Employees Union, Rajegaon, M.I.D.C., Bhandara. He pointed out Government Notification ated 30.03.2014 to demonstrate the rates of Minimum Wages of the employees discharging technical work. The representation made by employees to the General Secretary of the Union regarding their grievances. Further documents placed on record are the medial check-up reports of the employees, their shift duty list etc. According to learned Advocate, nothing is mentioned on medical check-up report that employees whose names are given in Annexure -A are the employees of Contractor as alleged by respondent. He submits the shift list was prepared and arranged

by Manager (Maintenance) appointed by respondent. It bears his signature. Thus, according to learned Advocate, the documents placed on record prima facie demonstrates that members of Union are employees of respondent.

9] He submits that, said S. N. Wadhai has given authority by Union to file this complaint. He pointed out the constitution and rules of complainant Union most prominently Clause 4 which speaks -

" मानसेवी सदस्यांना प्रवेश :- ज्या व्यक्ती संघाचे सामान्य सदस्य होण्यास पात्र नसतील त्यांना व्यवस्थापन समितीवर निवडून देता यावे किंवा स्वीकृत करून घेता यावे याकरिता संघाचे मानसेवी सदस्य म्हणून दाखल करून घेता येईल."

According to learned Advocate, the wordings of very Clause 4 of Constitution of the Union show about induction of their person as member on honorary basis. He further pointed out the authority granted by Union to said S. N. Wadhai. On perusal of this authority letter, it is mentioned that,

" कंपनीत दिवसेन दिवस अस्थायी कामगारांची संख्या वाढत आहे. मात्र कामगारांना किमान वेतन व अन्य सेवासुविधा मिळत नसल्यामुळे संघटनेच्या निदर्शनास आलेले आहे. करिता त्या अस्थायी कामगारांना त्यांचे हक्क व न्या मिळवून देण्यासाठी संघटनेचे ज्येष्ठ कामगार नेते श्री. संपतराव नानुजी वाढई यांची संघटनेच्या प्रमुख सल्लागार पदी नियुक्ती केली आहे."

Though, this may be the authority, but it nowhere speaks that said S. N. Wadhai has given authority by the Union to file this complaint. Said authority at the most reflects that, he has been appointed as Chief Advisor to look into the grievances of temporary employees regarding their wages, leave etc.

10] The learned Advocate for the complainant in support of his argument placed reliance on the case of **Smt. Sharda Rangnath Khedkar vs. State of Maharashtra through Principal Secretary and others 2022 (1) Bom. LC 100 (Bom).**

In this case, it is held by Hon'ble Bombay High Court,

*"If at all issue in regard to how petitioner was employed and/or anything to do with nature of respondent's appointment, there are issue which are pending adjudication in complaint itself and could not be weighed for purpose of refusing interim relief and more particularly, when petitioner was in service of respondent Nos.2 Corporation, for continuous period since July 2016."*

I have gone through the case relied upon by the complainant. In this case, petitioner has approached to Industrial court with a claim that she is in employment of respondent on "daily wages" since 2016 and that she has been

continuously paid wages in such employment. She contended that, she worked continuously for more than 240 days in a year therefore, she ought to have been granted permanency. She apprehended her termination. Thus, she claimed injunction. However, Industrial Court has refused it observing that her appointment can be considered to be a back-door appointment. It is held said issue itself was involved in the complaint, therefore, the Industrial court ought to have think from complainant's point of view.

11] The learned Advocate for the respondent submits why none of the members of Union came forward to file this complaint. Said S. N. Wadhai is neither the employee of respondent nor member of the Union. The representation dated 01.05.2022 of the employees placed on record by complainant is in the name of said S. N. Wadhai. It has been given by Shri S. N. Wadhai himself and not to the respondent. Therefore, it has no value in the eyes of law. He has no authority to file this complaint. The authority letter placed on record is also silent about giving of absolute power to the complainant to file this complaint. The learned Advocate for the respondent, drew attention of the Court to the provisions of Section 28 of the Maharashtra Industrial Relations Act, 1946.

12] He further extended his argument and submits that the names of employees given in list Annexure -A are the employees of Contractor i.e. M/s. Disha Manpower and Security Management Services and M/s. Aniket Services. For this purpose, he pointed out the documents placed alongwith list at Exh.C-7 i.e. work order issued in the name of M/s. Disha Manpower and Security Management Services and M/s. Aniket Services dated 01.04.2021 and 31.12.2021. Further, the ledger of respondent company demonstrating the huge payment has been made by respondent to M/s. Disha Manpower and Security Management Services and M/s. Aniket Services for their services provided to respondent. In the list of employees, the employees at serial no.1 to 19 are working with M/s. Disha Manpower and Security Management Services and other set of employees from serial no. 1 to 8 are working with M/s. Aniket Services. The document no.7 is Form "L". Said Form "L" demonstrate maximum number of contract labour employed with Contractor M/s Aniket is about 30 and with Disha Manpower and Security Management Services is about 20.

13] Upon hearing learned Advocates of both the sides and going through the documents on record that, according to the respondent, that instant complaint is filed by Union through its Chief Advisor S. N. Wadhai who is neither employee nor member of the Union. In this regard, I have perused the authority

granted by Union to said S. N. Wadhai. It is in respect of his appointment as a Advisor on honorary basis and not as a member of Union. Clause 4 of the Constitution of Union no doubt depicting for induction of honorary member, but from the authority it seems that, said S. N. Wadhai is not inducted as a honorary member of the Union, but appointed as Advisor.

14] Upon hearing learned Advocates of both the sides, at the outset, it would be advantageous to mention here that, though the Constitution of complainant Union is speaking about appointment of honorary member, but the authority of S. N. Wadhai placed on record reflects that he has been honorary appointed as a Chief Advisor. There is no resolution of the Union giving powers to S. N. Wadhai for filing of this complaint. Similarly, further documents placed on record by the respondent i.e. ledger of respondent Company and work orders given in the name of M/s. Disha Manpower and Security Management Services and M/s. Aniket Services Form "L" and payment made towards both the agencies are diluting the case of complainant in respect of their claim that they are the direct employees of the respondent.

15] Though, this may be the situation on record, however, while deciding the application for interim relief this Court restrain itself to speak in detail regarding the authority of

complainant to file this complaint or the employees whose names are given in Annexure -A are direct employees of the respondent or all the contractors. These are the main issues involved in the complaint. However, the documents placed on record by the respondent repelled the case of complainant.

16] However, it is an admitted position on record that employees whose names are given in Annexure -A are working in the factory of respondent. Hence, the respondent is under obligation to see whether there is exploitation of the employees at the hands of labour contractors or otherwise whether they have been given wages in accordance with the provisions of law. So, to this extent I find complainant has a prima facie case and balance of convenience tilt in their favour. They would suffer irreparable loss if injunction is refused. Here, it is necessary to mention that some of the documents placed on record demonstrating that the workers are the direct employees of respondent and some of the documents reflecting that they are working as contract labour and employees of M/s. Disha Manpower and Security Management Services and M/s. Aniket Services. So, it would not be just and proper at this stage to speak anything on that issue because they are the main issues involved in the complaint. Same is the case with locus standing of complainant. In view of that, I record findings against point no.1 to 3 in partly affirmative and in answer to point no.4,

I proceed to pass following order.

**ORDER**

- i] Application is partly allowed as under:  
Respondent to see that employees whose names are given in list Annexure -A shall not be removed from service without following due process of law.
- ii] Hearing of the complaint is hereby expedited.
- iii] Accordingly, application stands disposed of.
- iv] No order as to costs.

Bhandara.

Dated: 30.07.2022

( Atul K. Shah )

Member

Industrial Court, Bhandara.