

SCC No.119/2021

State of Mah. Vs. Chairman, JIU.

CNR No.MHJN090003212021

ORDER BELOW EXH.4

1. This is an application filed by All Noor Hospital and Medical college (JIU and IIMSI) employees union through its president Salim Kasam Pathan and prayed for disposal of the present complaint.

2. The applicant contended that the members of the union have filed application before Authority of under Minimum Wages Act against the present accused and he was original opponent of the said proceeding. Applicant further contended that application no.3/2018 was originally filed by Aurangabad Zilla Aarogya Karmachari Sangthana (CITU), now, the aggrieved workers are the member of applicant's union therefore, this application is filed by applicant's union for aggrieved members. The applicant further contended that the authority was directed to the accused to pay the differential amount and compensation amount to the aggrieved workmen. Accordingly, the original complainant has filed present complaint before this Court. However, summons was issued to the accused but, yet same was not received to him. During pendency of the proceeding, applicant and accused entered into memorandum of understanding dated 21.06.2022 and resolved the issue arising out of the order dated 03.03.2020. In terms of the memorandum of understanding, applicants are agreed to withdraw pending cases filed by the applicant against accused including of the present proceeding. The applicant has made necessary

representation before the original complainant regarding the same. Applicant is representing to the aggrieved workmen seeking permission for independent prosecution is not pressed. Therefore, the complaint is now infructuous and accordingly accused must be discharged as the alleged offence is compoundable in nature and prayed for direction to the prosecution to take appropriate steps for disposal of the present complaint.

3. Complainant/Assistant Commissioner of Labour, Aurangabad and Jalna Yuvraj Padiyal has filed his say below Exh.7 and contended that he has filed the present complaint in pursuance of order passed in application no.3/2018 filed under Minimum Wages Act. In the present proceeding order has been passed under Minimum Wages Act, 1948 and thereby benefit have been given to 162 aggrieved workmen. The authority/complainant further directed to pay differential amount of minimum wages to 162 aggrieved workmen including fine penalty and on minimum wages. The accused has failed to comply the order therefore, he has filed the present proceeding before this Court u/s 20 of Minimum Wages Act for recovery of the said amount. The complainant further denied the averment of the application and the fact about compromise between the parties. According to the complainant, there is no any kind of settlement took place between the aggrieved workmen and original union and the accused. The present complainant has not given any consent to the said memorandum of understanding. Union could not make compromise u/s 23 of

the Indian Contract Act, 1872. Without considering the consent of the beneficiary who are aggrieved workmen I cannot dispose off the present complaint. Applicant is not party to the present proceeding or in original proceeding, therefore, applicant has no right to file present application regarding disposal of the complaint. The application filed by the applicant is not tenable and therefore prayed for rejection of the same.

4. Heard ld. Advocate of the applicant and complainant. Perused the record before me.

5. After perusal of record it appears that Aurangabad Zilla Aarogya Karmachari Sanghtana (CITU) has filed the proceeding bearing no.3/2018 against the JIIU, (accused) u/s 20(2)(3) of Minimum Wages Act, 1948. In pursuance of the order passed in the present complaint this proceeding has been filed by the Assistant Commission of Labour, Aurangabad and Jalna for execution of the order passed by the authority in application no.3/2018. It appears that the original proceeding bearing 3/2018 was filed by Aurangabad Zilla Aarogya Karmachari Sanghtana (CITU) against the accused before the said authority. As per averment of the complaint, the accused failed to comply the direction given by the authority and thereby he committed offence, hence present complaint has been filed u/s 20(5) of Minimum Wages Act. All aggrieved workmen are originally the beneficiaries of the said order, they have filed complaint through original union CITU. Now, the present applicant contended that 162 aggrieved workmen are member

of their union and they have right to file present application in view of the terms and conditions settled in memorandum of union hence, the present complaint is infructuous. However, it appears that the present applicant is not aggrieved union in the original complaint. The complainant raised the question regarding tenability of the application on the ground of locus standi of the applicant to file the present application on behalf of aggrieved workmen. I have gone through the record and award it appears that the aggrieved workmen has filed complaint through CITU before the complainant's authority. However, the present application contending that the aggrieved workmen are members of their union. But, the complainant has denied the said fact and raised the objection on the ground of status of the applicant.

6. Obviously, complainant is competent authority to comply the order in question and in absence of complainant consent it is not desirable to arise on conclusion that the dispute between original union, 162 aggrieved workmen and accused was settled. Furthermore, when the complainant himself raised the question regarding locus standi and status of applicant in such circumstances applicant ought to have adopt proper recourses to establish their status for representing the aggrieved workmen. In absence of the consent of the complainant the present case against accused cannot be disposed off and it is not judicious to discharge the accused as prayed by the applicant. Applicant has not established their status and valid representation on behalf of the aggrieved workmen. In such

circumstances and considering the document and record the present applicant has no locus standi to file the present application. The question raised by the complainant regarding status and valid representation of the applicant is proper. Before, disposing off the complaint it is necessary to see the consent of the 162 aggrieved workmen to dispose off the same without verifying the same and without consent of the complainant. The matter cannot be disposed off. Hence, I proceed to pass following order:-

ORDER

The application is rejected.

Date : 20.03.2023.

(Smt.P.V.Raut),
Judicial Magistrate F.C.,
Badnapur.