

BEFORE G. S. HANGE JUDGE, LABOUR COURT AT MAHAD,
DIST. – RAIGAD

COMPLAINT (ULP) NO. 05/2023
CNR.No. MHLC060000552023

Mr. Shailesh Tiwari

Age- 48 yrs,
Add. Flat No.111/7C,
Wimco Naka Ambernath(W)
Thane- 421 505.

Complainant...

V/s.

1. M/s Uttam Galva Steels Ltd.

(AM/NS Khopoli)
Add- Khopoli-Pen Road
Post-Donawat, Tal-Khalapur
Dist-Raigad, 410 202.

2. Mrs. Shweta Kochar

Ececutive Director and HR Head
(AM/NS Khopoli)
Add- Khopoli-Pen Road
Post-Donawat, Tal-Khalapur
Dist-Raigad, 410 202.

3. Mr. Mukund Jagirdar

HRD (AM/NS Khopoli)
Add- Khopoli-Pen Road
Post-Donawat, Tal-Khalapur
Dist-Raigad, 410 202.

Respondents....

Order below Exh. U-2
(Passed on 02/08/2025)

The complainant presented this application for obtaining interim relief against the respondents by restraining them from

terminating his services and to not take any action against him till disposal of the complaint and directing them to accept his withdrawal application for resignation.

02. Complainants case in brief

2.1 The respondent No. 1 is in the business of steel. Respondent No. 2 is its executive director and HR head of company. Respondent No. 3 is its HRD. The complainant is in employment of respondent No. 1 as a steno secretary (Marketing) vide appointment letter dt. 16/01/2013. He was confirmed after the probation vide a letter dt. 16/01/2012. Since 2023 he has been working at the Khopoli premises of the company in the capacity of a workman. His work was to satisfaction of respondents as he was not issued any memo, warning etc. during his tenure of service. His nature of duties included making GCEO'S correspondence, dictation, tying, managing GCEO diary, maintaining time keeping and petty cash as per instructions from superiors, ordering stationary and office equipment etc.

2.2. On 09/03/2023 respondent Nos. 2 and 3 called complainant at the chamber of respondent No. 2 at 3:30 pm and asked him to tender his resignation. They threatened him that if he does not resign he would be terminated with adverse remarks and negative experience certificate. They forcibly obtained his signature on the already typed resignation letter. He signed upon the letter out

of pressure, harassment and coercion. He informed them that he is a certified disabled person with 47% Psoriasis Arthritis and if removed he would not get another job elsewhere. But the respondents by showing little disregard to his request asked him to sign the letter. This act of respondents is nothing but victimization with intention to discharge or dismiss the complainant without any reason and in utter disregard of principles of natural justice.

2.3 On 07/4/2023 the complainant sent an email to the management of the company and informed them that he was withdrawing resignation forcefully taken from him on 09/03/2023. On 10/04/2023 he went to attend his duties but was not allowed and stopped at the gate by the Security on the directions of the respondents. He states that his resignation is withdrawn before respondent's acceptance and issuing of relieve letter therefore he is entitled to join the services and respondents are bound to allow him to work.

2.4 On 20/04/2023 the complainant received email from respondents stating that they have not accepted his withdrawal of resignation letter. He was sincerely discharging his duties towards the company from the date of appointment. His work was upto the satisfaction of the company. However the respondents did not allow him to resume his duties. He is a workman as required under Section 2(s) of the Industrial Dispute Act and an employee within the

meaning of Section 3(5) of MRTU and PULP Act, 1971. He states that his forceful resignation and deemed termination of service is illegal, improper and is an unfair labour practice. The act of respondents to terminate him is against section 74 of Persons With Disabilities Act, 1955.

2.5 The complainant states that he is 48 Years old and is having two school going children. At this age he is illegally terminated by the respondents without following principles of natural justice. He is entitled to protection under Section 47 of Persons With Disabilities Act. The acts of respondents is bad in law. Therefore, considering these facts he has sought interim protection till the disposal of complaint.

03. Respondent's say

Respondent's filed their say at Exh. C-2 and contested the application. They raised following contentions-

3.1 That the complaint is not tenable in law and deserves to be rejected as the complainant by the very nature of duties is not a workman under section 2(s) of the Industrial Dispute Act and not an employee within the meaning under the MRTU and PULP Act.

3.2 That the complainant has resigned from the services of the respondents vide letter dt. 09/03/2023 and the said resignation has been accepted by respondent company. On 10/03/2023 The

company has informed him that he would be relieved from services on 08/05/2023. therefore, he has ceased to be in employment of respondents company on 08/05/2023.

3.3 That the complainant has stopped reporting for duty on and from the date of resignation.

3.4 That the complainant informed company that on account of personal reasons he is not able to continue in the service of the company and by the resignation letter he requested company to accept his resignation and relieve him from services. On 10/03/2023 the company informed him that his resignation is accepted and he would be relieved as per terms and conditions mentioned in the letter.

3.5 That on 18/04/2023 the complainant made a request to respondent company for experience certificate and he was informed by email dt. 20/04/2023 that his relieve letter would be provided him on his last date of notice period ie 08/05/2023

3.6 That the complainant sent a letter of resignation on 09/03/2023 and it is for the first time on 06/04/2023 that he alleged that his resignation was obtained forcefully. He ought to have raised the contention with senior management immediately after 09/03/2023 and would not have waited so long till 06/04/2023.

3.7 That the complainant in subsequent communication nowhere mentioned about withdrawal of resignation or that he was forced to resign. He has been relieved from services on 08/05/2023 and has ceased to be in employment with respondents.

3.8 That the complainant after tendering his resignation on 09/03/2023 has stopped reporting for work abruptly from 10/03/2023 and has failed to serve his notice period.

3.9 That the reliance placed upon section 47 of the Disability Act is misplaced and not applicable to the present facts of the case as the complainant voluntarily resigned from service and respondents accepted his resignation. He has ceased to be in employment of company from 08/05/2023. The respondent company has not terminated services of the complainant as falsely alleged.

3.10 That the complainant at the first place does not come under the meaning of workman. Therefore, that issue need to be decided as a preliminary issue as it goes to the root of the case. In view of the above objections the respondents prayed for rejection of the application.

04. Considering rival pleadings of both the parties following points arose for my consideration. I have recorded my findings

thereon for the reasons recorded hereunder.

<u>ISSUES</u>	<u>FINDINGS</u>
1. Whether the complainant proves that there is a <i>prima facie</i> case in his favor ?	“No”
2. Whether the complainant proves that the balance of convenience lies in his favor ?	“No”
3. Whether the complainant proves that he will suffer irreparable loss if the application is rejected ?	"No"
4. What Order ?	As per final order

05. Learned advocates of both the sides advanced their arguments. They have also filed the written notes of argument at Exh. U-28 and C-5 respectively. Both the parties relied upon the documents regarding the correspondence between each other and other documents which will be referred at the proper stage during the discussion.

ISUUE NOS. 1 TO 3 (Collectively)

06. All these issues are related to each other, therefore, for the sake of brevity and convenience they are discussed together. It is a case of the complainant that on 09/03/2023 the respondent nos. 2 and 3 obtained his resignation forcefully by threatening and harassing him. He did not want to resign from the service but the respondents

forcefully obtained his signatures on the already typed resignation letter. He states that on 07/04/2023 he sent an email to respondents and informed them about withdrawing his resignation letter and thereafter, on 10/04/2023 he went to report on duty but he was prohibited from entering the company. On 20/04/2023 the respondents sent an email to the complainant informing that his resignation withdrawal letter was not accepted.

07. On the other hand the respondents contend that the complainant voluntarily resigned from the service by tendering his resignation on 09/03/2023 and it was accepted and communicated to him on 10/03/2023. Therefore, the complainant can not raise an objection that he was compelled to resign from the service. They contend that the complainant has also sought the experience certificate from the company. He did not raise his grievance for a month since his resignation. If it was obtained forcefully he would have raised objection to the superior authority. It shows the present complaint is filed afterthought. They contended that the complainant is not a workman at the first place as the nature of his work was supervisory and administrative and for that reason also the interim relief can not be granted to him. They also contend that the final relief of reinstatement can not be granted at the interim stage and on this ground also the application is not maintainable.

08. I have carefully gone through the documents filed on

record by both the parties. It is not in dispute that the complainant was in service with the respondents and he tendered his resignation on 09/03/2023 and on 10/03/2023 the respondents accepted his resignation and intimated him about its acceptance. The complainant raised contention here that he withdrew his resignation before the acceptance and the issuance of relieve letter to him by the company. Therefore, he could definitely withdraw his resignation till the relieve period was over. Further, it appears that on 06/04/2023 the complainant sent a letter to the respondents intimating that he was withdrawing his resignation. On 20/04/2023 the company replied him that his resignation withdrawal letter has not been accepted. On the same day the complainant has sought the experience letter from the company. If this time line is watched carefully it becomes clear that the complainant has admitted the fact of his resignation. It also appears that since resignation till 06/04/2023 there was no action taken by the complainant against his alleged forceful resignation. It also appears that he himself has sought the experience certificate from the respondents. All these facts succinctly exhibit that the complainant after tendering his resignation started alleging, after around one month, that his resignation was obtained forcefully and under the pressure which raises a doubt about his bona fides.

09. On perusal of the pleadings of the complaint it reveals that the complainant has disputed the manner and circumstances in which his resignation was obtained. According to him it was

forcefully obtained by respondents. On the other hand the respondents contend that it was voluntary resignation. In my opinion the burden indisputably lies upon the complainant to prove that the resignation tendered by him was under the pressure and was without free consent. In my opinion this issue of voluntariness can be decided only after the proper evidence to that effect is adduced on record. At this stage the documents on record show that the complainant tendered his resignation and the respondents accepted the same on the next day. Further, it is pertinent to mention here that the complainant since the date of tendering his resignation on 09/03/2023 did not remain present on duty till 10/04/2023. This fact also raises a doubt that if the resignation was forceful then the complainant would have done something immediately by approaching the Labour authorities or the police. But it appears that he remained calm for around a month and did not raise any voice against the resignation which shows his acquiescence. Importantly, the issue of forceful resignation can not be determined at this stage in absence of proper evidence on record to that effect. If he is allowed to resume duties then it would be like granting a final relief to him which is not permissible while deciding the interim application.

10. In order to support his claim the complainant relied upon following judgments

1. M/s Gowalior Investment Co. Pvt. Ltd. Vs K. M. Desai, Member Industrial Court and Another cited in 1992(65) FLR 489

2. **Arkai Govind Raj Rao Vs Ciba Geigy of India Limited Bombay cited in 1985 (3) SCC 371**
3. **Tata Steel Limited Vs Prabodh Kumar Sahani, Jharkhand High Court decided on 5/2/2016**
4. **Gopichand Pillai Vs Thermax Limited and Ors, Bombay High Court decided on 2/9/2004**
5. **Kasturilal Sagar Vs D.A.V. College of Education, Hoshirapur and Others, Punjab High Court decided on 12/02/1998**
6. **Sudha Nagraj K Vs Chief Manager, Andhra Bank, Andhra Pradesh High Court decided on 23/11/1995**
7. **Management of Messrs. Kushalnagar Works Vs P. Nagaraju, Karnataka High Court decided on 01/12/1988**

11. I have carefully gone through the authorities cited above. Citation nos. 1 to 4 mentioned above are on the point of workman and retrenchment of the workman and have discussed therein the circumstances and facts of each case on the issue of a workman and laid down the parameters before considering the employee as a workman and also laid down the procedure of retrenchment. However, with due respect to the authorities cited the facts of the present case are squarely different and the present application is about granting interim relief to the complainant and is not on the point of workman. Therefore, those can not be made applicable in given set of facts and circumstances.

12. Similarly, citation nos. 5 to 7 mentioned above have apparently dealt with the issue of resignation and acceptance. In *Kasturilal Sagar* cited above the authorities had not accepted the resignation of the appellant and before accepting it the appellant withdrew it. In the present case the facts are totally different. Here the respondents have accepted the resignation of the complainant before he withdrew the same and the resignation was also communicated to him. Therefore, the said authority would not be applicable in the given set of facts of the present case. Then in *Sudha Nagaraj* cited above the resignation of the petitioner was never accepted and the fact of acceptance was also not communicated to her. In the present case the fact of acceptance of resignation had been communicated to the complainant on the next day of resignation itself. Therefore, the cited authority can not be applied in the present set of circumstances. In *P. Nagaraju* cited above it is observed by the court that the acceptance of resignation can be effective only on the expiry of the date mentioned in the letter of resignation on which date it has to take effect. In the present case the resignation letter did not mention any final date of acceptance and it was accepted immediately on the next date. Therefore, the observations of the said ruling would not be applicable in the present set of facts of the case.

13. Further, in order to substantiate their contentions the respondents placed their reliance on following authorities

1. Narsinha Anant Joshi Vs Century Shipping and Ors cited in 1994 I

CLR 717

2. Municipal Corporation of City Of Amravati Vs Ashok Ramkrishna Kambale cited in 1994 II CLR 180

3. Laftans India Pvt Ltd Vs Pancham Singh Rawat cited in 2003 LLR Pg 447 (Bombay HC)

4. Delta Engineering Company Pvt Lt Meetut Vs Industrial Tribunal cited in 1998 LLR Pg 622

5. Employers in Management, Kusunda Area of M/S BCCL Vs Presiding Officer Central Government, Jharkhand High Court decided on 20/12/2002

6. Hemant Govind Vaidya Vs Vasantdada Institute cited in 2000 I LLN 937

7. M.S.R.T.C. Vs C. R. Shingote cited in 2001 LLR Pg 341

8. Chand Mahal Chayal Vs State of Rajasthan cited in 2006 III CLR 674

9. V. K. Engineering Pvt Ltd V. B. Gunjotikar cited in 1997 I CLR 1144

10. Icchalkaranji Municipal Corporation Vs Raju Bandu Taral cited in 1991 I CLR 1257

14. In *Narsinha Joshi* cited supra and in *Municipal Corporation of City of Amravati* cited supra the question for determination was whether the employee can be called as a workman. With due respect to the ratio laid down in both the cited cases I find those not relevant at this stage as the issue under this application is about extending the interim protection to the

complainant and the issue of determination of status of the complainant is not under consideration here. In *Laftans India Pvt. Ltd* cited supra the resignation of the employee was accepted and was informed to him on 22/12/1993 and he did not raise any protest till 01/04/1994 when he demanded his reinstatement. The Honble Bombay High Court held that the resignation can not be alleged to be obtained forcefully. In the present case also the communication of resignation to the complainant was made on 10/03/2023 and till 06/04/2023 the complainant did not raise any voice against the said alleged forceful resignation. Therefore, in light of the observations of the Honble High Court the said resignation can not be termed forceful.

15. In *Delta Engineering* cited supra the Honble Allahabad High Court held that the primary burden to prove the fact that the thumb impressions/signatures of the employees were obtained by the petitioner on blank papers and such papers were later used as resignation letters always remains upon the employee at whose instance the reference was made. It is only after such evidence is adduced the petitioner is called upon to prove that the employees had voluntarily resigned. In *Employers in Management, Kusunda Area of M/S BCCL* cited supra the Honble Jharkhand High Court held that the burden of proof lies upon the employees and not the employer when they allege that their resignations were not voluntarily but obtained under coercion and duress. In light of these ratios laid down

as far as present case is concerned the burden is upon the complainant to prove that the respondents forcefully obtained his resignation. At this stage of interim relief the question of leading evidence on that point does not arise.

16. In *Hemant Govind Vaidya* cited supra the Honble Bombay High Court states that the premature acceptance of the resignation might be illegal but it would not amount to an unfair labour practice. If any act or decision of the employer does not amount to an unfair labour practice in that case no complaint of unfair labour practice would lie. In *Chand Mal Chayal* cited above the Honble Supreme Court states that the incumbent is entitled to withdraw his resignation before the acceptance. Once his resignation is accepted, there is no jural relationship between the employee and the employer and the employee can not claim the withdrawal of the resignation nor reinstatement in the post. In the present case the resignation of the complainant was accepted immediately on the next day of the resignation. Therefore, when the respondents accepted the resignation of the complainant the jural relation between them came to an end and thereafter the complainant can not seek the withdrawal and reinstatement as laid down in above coted authority. In *V.K. Engineering* cited above the Honble Bombay High Court said that it is principle of law that the interim relief can not be the whole of the relief which party would be entitled to in case he succeeds in the case. Similarly, in *Ichalkaranji Municipal Council* cited supra the

Honble Bombay High Court held that the interim relief should not be in the form of granting final relief.

17. In the present case also the complainant has prayed through this application to direct the respondents to not terminate him and accept his resignation withdrawal letter. In my opinion these prayers made in the present application are in the nature of final reliefs. Once the respondents are directed to reinstate the complainant in the service by accepting his resignation withdrawal letter then it would amount to granting of final relief. Therefore, it would be against the principles of law to ask the respondents to accept his resignation withdrawal letter and reinstate him to the earlier post.

18. Considering above facts and circumstances I of the opinion that the complainant has failed to show prima facie case in his favor as he has failed to show that there is a triable issue in the matter. If the application is allowed it would cause irreparable loss to the respondents as they will suffer more hardship than the complainant. The balance of convenience lies also in favor of the respondents. Therefore, the issue of forceful resignation raised by the complainant would be properly decided after the evidence to that effect is adduced on record. The record shows that the complainant tendered resignation and the respondents accepted it immediately. Therefore, as per the ratio laid down in above cited authorities the

interim protection can not be given to the complainant. In background of this situation I answer point nos. 1 to 3 in the negative and pass the following order.

ORDER

1. Application is rejected.
2. No Costs.

Mahad.
Date. 02/08/2025

(G. S. Hange)
Judge
Labour Court, Mahad