



BEFORE JUDGE, SECOND LABOUR COURT, AT KOLHAPUR.
(Presided over by – K.B. Kamgauda)
(JO Code – MH-1894)

Complaint (ULP)No.19/2024
CNR No. MHLC090002152024

Shri. Shankar Mahadev Takmare

Age:- 57 Years, Occupation:- Service,
R/o. Babanagar, B-14 Uchgaon,
Taluka- Karveer, Dist. Kolhapur.

... **Complainant**

V/s.

Indo Count Industries Ltd.,
D-1, M.I.D.C. Gokul Shirgaon,
Tal. Karveer, Dist. Kolhapur.
Through its General Manager.

... **Respondent**

APPEARANCES :-

Adv. R. D. Patil, for Complainant.
Adv. D. S. Joshi, for Respondent.

: ORDER BELOW EXH. U-2 :
(Delivered on this 19th day of June, 2024)

1. Present application is filed for interim relief under Sec. 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (*For sake of brevity hereinafter referred to as "MRTU & PULP Act, 1971"*) to restrain Respondent from terminating service of Complainant till the decision of the main complaint. It is contention of the Complainant that he has filed Complaint u/s. 28 of the MRTU &

PULP Act, 1971 alleging unfair labour practices at the hands of Respondent.

Facts of the case in brief are as follows :-

2. It is a brief history that Complainant is working with Respondent since 01/01/1994 as a helper in a cotton industry. Complainant worked 240 days on each calendar year. He is a workman and Respondent is an industry. Respondent is abide and duly bound to follow the provisions of Maharashtra Industrial Relations Act, 1946 and provisions thereunder. The past history and service record of the Complainant is clean and unmarred. Along with Complainant other workers are now completing 58 years of age. Respondent compelling and forcefully obtaining signatures of the Complainant and other workers. It is alleged that Complainant was forced to resign his job at the age of 58 years which is premature. It is also alleged that Respondent forcefully compelling to resign and avail the all monetary benefits. Due to such activity of compelling premature retirement, Complainant will suffer irreparable loss. Therefore, it is prayed that Respondent be restrained from terminating the service of the Complainant prematurely.

3. In response to notice Respondent appeared and filed written statement at Exh.C-4. It is stated that application is not maintainable. Respondent denied the contents of complaint and interim application. It is the defence of the Respondent that it never indulged into unfair labour practices. The allegation of compelling and forcefully obtaining resignation are totally false. The costume and usage of the Respondent company is to

superannuate any employee at the age of 58 years and not 60 years. It is an admitted that Complainant being worker, Respondent is an industry, Complainant working since 01/01/1994. Only dispute and defence is raised that Respondent company since its inception superannuating employee or worker at the age of 58 years. Lastly it is submitted that application is liable to be rejected.

4. In view of rival pleadings, following points arise for determination, to which findings are recorded along with reasons given below :-

<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether Complainant has made out prima-facie case in his favour ?	Yes
2)	Whether Complainant proves that balance of convenience lies in his favour ?	Yes
3)	Whether Complainant proves that he will suffer irreparable loss, if interim relief refused ?	Yes
4)	What order?	As per final order

-: REASONS :-

AS TO POINT NOS. 1 TO 4 :-

5. To grant or refusal to grant interim relief is covered by three well established principles viz. 1) whether Complainant has made out prima facie case; 2) whether Complainant would suffer irreparable injury in the absence of interim relief; and 3) whether balance of convenience lies in her favour. The burden to prove

these three necessities lies on the person seeking interim relief. The court has to see whether the claim is bonafide and whether there is a fair and substantial question to be tried.

6. Respondent while arguing admitted certain facts as such, employer-employee relation, applicability of Maharashtra Industrial Relations Act, 1946, past service record of the Complainant. In view of the admitted facts it is not necessary to highlight and discuss the admitted facts. It is core question before this authority that whether Respondent having an authority to superannuate worker at the age of 58. admittedly, MIR Act is amenable to the Respondent. Section-35 of the MIR Act provides settlement of Standing Orders by Commissioner of Labour. Sub-section 1 provides procedure within 6 weeks from the date of application of this Act to an industry, every employer herein shall submit for approval to the Commissioner of Labour. Provided that where an undertaking in an industry is started after the application of this Act the draft Standing Orders shall be submitted within 6 months of the starting of the industry or undertaking. Sub-section 2 further provides procedure of enquiry and settling of the said Standing Orders. Sub-section 3 is the forwarding procedure of the Standing Orders so settled by the Registrar. Sub-section 4 provides operation of the Standing Orders from the date of their record in the register under Sub-section 3. Lastly, Sub-section 5 states until Standing Orders in respect of undertaking come into operation under the Sub-section of 4, Model Standing Orders, if any, notified in the official gazette of the industry shall apply to such undertaking.

7. The above provision under Section 35 of MIR Act provides procedure of settlement of Standing Orders. Admittedly, Respondent has not settled Standing Orders as per the Sub-section 1 to 4 of Section 35 of MIR Act. Then Sub-section 5 of the said Section come in to picture and apply to the Respondent mutandis mutadis. Respondent relied on the agreement dated 15/04/2006. After perusal of agreement dated 15/04/2006 it is nowhere shows that it is approved by the Commissioner of Labour u/s. 35 of the MIR Act. The agreement dated 15/04/2006 is between some of the workers and the Respondent. Moreover, it reveals that the said agreement was in force only till 31/12/2010. Thereafter the terms and conditions of the agreement comes to an end and inoperative. Therefore, the agreement dated 15/04/2006 cannot be considered as a certified Standing Orders. It is further argued that as per agreement dated 15/04/2006 the age of retirement was agreed as 58 years. However, as early said agreement dated 15/04/2006 not registered, certified or settled by the Commissioner of Labour.

8. As per Model Standing Orders applicable to the Respondent the age of retirement of worker is 60 years. Model Standing Orders as published in Government Gazette. It is numbered as GN,Lab & H No.22/48 dated 29/04/1950. The Model Standing Orders as published by the Government of Maharashtra in official Gazette reads as under;

9. Order 25 A the date of compulsory retirement of an operative shall be the date on which he attains the age of 60 years or such other age as may be agreed between the employer and the employee by any agreement, settlement or award which may

be binding on the employer and the employee under any law for the time being in force. Even for the sake of argument the last sentence of the order taken into consideration. Last sentence of the order provides that any agreement, settlement or award which may be binding. The agreement dated 15/04/2006 already ceased to an end on 31/12/2010. Therefore, the agreement cannot be termed as binding on the Complainant and Respondent. Now, finally it remains that in the absence of certified standing orders, the Model Standing Orders as published in official gazette shall apply to the Respondent. The Model Standing Orders provides the age of retirement as 60 years.

10. The apprehension in the mind of the Complainant is prima-facie probable. As it is admitted by the Respondent that it is their general practice, costume and usage to superannuate their workers at the age of 58 years. This apprehension supported by the affidavit of the colleague namely Satish Bapu Jadhav and Dattatray Vishwanath Raghu. Prima-facie the act on the part of the Respondent amounts to unfair labour practices. Compelling and forcefully obtaining resignation from the workers is nothing but victimization and amounts to unfair labour practices. In the absence of certified standing orders, Respondent shall follow the Model Standing Orders. Prima-facie it is necessary to protect Complainant being victimized at the hands of Respondent. Balance of convenience lies in favour of Complainant. If interim relief is refused, he will suffer irreparable loss and loss of service. On the contrary Respondent is at liberty to get work done by the Complainant and pay for it.

11. Complainant in present case prima-faciely succeeded in fulfillment of legal principles. Complainant succeeded in proving prima-facie that Respondent indulged in unfair labour practices. Complainant prima-facie proved three ingredients of interim application. Hence, Point Nos. 1 to 3 answered in “Affirmative” and in answer to Point No. 4 following order is passed.

: ORDER :

1. Application Exh. U-2 is allowed.
2. Respondent is hereby temporarily restrained from superannuating Complainant until he attains age of 60 years without following due process of law.
3. No order as to costs.

Kolhapur
Date :- 19/06/2024

(K. B. Kamgauda)
Judge,
Labour Court No. II, Kolhapur

Argued on :- 14/06/2024
Judgment Dictated on :- 19/06/2024
Judgment transcribed on :- 19/06/2024
Judgment checked & signed on :- 19/06/2024