



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

Complaint (ULP)No.29/2024
CNR No. MHLCO90003002024

Shri. Kiran Madhukar Salokhe
R/o. Girgaon, Tal. Karveer,
Dist. Kolhapur.

... Complainant

V/s.

Tessitura Monti India Pvt.Ltd.
Gat No. 147, Kolhapur Hupari Road,
Tamgaon, Tal.-Karveer,
Dist- Kolhapur.
Through its Managing Director.

... Respondent

APPEARANCES :-

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

: ORDER BELOW EXH. U-2 :

(Delivered on this 15th day of October, 2024)

1. Present application is filed for interim relief under Section 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"*) Respondent be restrained from dismissing the Complainant.

Facts of the case in brief are as follows :-

2. According to Complainant, he is employee of Respondent and doing different works in the establishment.

Complainant worked 240 days in each calendar year. The past service record of the Complainant is clear and unblemished. Respondent having different departments. Respondent doing business of textile, manufacturing of textile products from the raw cotton. It is registered under the Maharashtra Industrial Relation Act. Respondent having near about 730 workers on different posts. Respondent running its company in three shifts. It have huge work and orders from the outsiders of their products. The Industrial Disputes Act, M.R.T.U. & P.U.L.P Act, M.I.R Act and its provisions are applicable to the Respondent being an industry.

3. Shahu Soot Kapad Kamgar Sangh is recognized union working in the establishment of the Respondent. Said union having more than 700 members. The subscriptions of members are being regularly deducted from the salary. From some years, the general secretary of union Mr. Vijaykumar Vishwasrao Kokate is not doing and performing the function of union regularly. There are several complaints against the recognized union before different authorities. However, general secretary Mr. Vijaykumar Kokate managing and getting success against the complaints filed by the members. There is a dispute between the union and the employees. It is alleged that since 2019 Respondent not increased salary and provided facilities. Therefore, Complainant along with other employees, by legal means demanding to fulfill their demand of enhancement of salary and providing facilities. However, management of the Respondent avoided to fulfill the demands. Even Complainant approached to recognized union about his and other workers general demands. However, due to irregular working of general secretary, their demands were not fulfilled by the recognized union or Respondent. Lastly, in the month of May 2024 Complainant personally asked to

increase his salary. At that time Mr. Sagar Patil was present and employing other workers through contractors to run the factory. Therefore, the Complainant having an apprehension of losing his employment. Mr. Sagar Patil on 31/07/2024 forcefully driven out all the workers from the premises and threatened dire consequences of their demand. Complainant having also apprehension that Respondent may proceed to adopt lockout without any reason. It is also alleged that Mr. Sagar Patil and Hemant Kulkarni giving life threats to the Complainant and family members. Against the life threats, Complainant filed criminal case against the Sagar Patil and Hemant Kulkarni.

4. Complainant along with other employees due to apprehension filed Complaint (ULP) No.27/2024. This Court issued notice to the Respondent. Meanwhile, Respondent on 20/08/2024 complaint and other five employees terminated from the service. The reason assigned in the termination order itself is illegal. No show-cause-notice is issued, no enquiry is conducted. Respondent not followed principles of natural justice. Lastly it is submitted that Complainant be reinstated pending the complaint.

5. In response to notice, written statement submitted by Respondent is at Exh.C-4. It is objection and defence of the Respondent that complaint and interim application is false, vexatious and deserves to be dismissed. Complainant is not entitled to any kind of relief and general demands from the Respondent. The dispute between the members and the trade union is internal and Respondent has no concerned with it. Reference (IC) No. 09/2021 is pending before the Hon'ble Industrial Court. Complainant and other employees have raised the same issue before this Court. Shahu Soot Kapad Kamgar Sangh is the representative and approved union

functioning in the Respondent establishment. The said union is sole collective bargaining agent of the general demands of the employees. Already, reference is pending for general demands before the Industrial Court. Therefore, present application is not maintainable. Complainant himself absent from duties and agitating against the general demands. On 31/07/2024 Complainant with other employees gathered at workplace and suddenly stopped working. Respondent are ready to accord Complainant. Respondent never driven away its workers. They are ready to give work and accommodate employees. From 03/08/2024 employees did not come for work and started strike against the management. Complainant commenced strike from 31/07/2024 and continued till today. Respondent has requested and made appeal to the employees on social media on 03/08/2024, 10/08/2024 and 12/08/2024 but employees failed to join the duty.

6. Due to such situation, Respondent filed application MIR No. 01/2024 against the striking employees. The Labour Court has granted interim relief on 17/08/2024, directing employees to stop strike and join the work forthwith. However, inspite of that directions Complainant did not join their duties and continued in a strike. Due to misconducts committed by the Complainant, his service was terminated by order dated 20/08/2024. It is mentioned in the termination order due to tense in the premises, Respondent unable to conduct enquiry against Complainant. By reserving rights, Respondent terminated service of the Complainant. Lastly it is submitted that application is not maintainable as there is no unfair labour practices on the part of Respondent.

7. In view of rival pleadings, following points arise for determination, to which findings are recorded alongwith reasons

given below :-

<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether Complainant have made out prima facie case in their favour ?	“No”
2)	Whether Complainant prove that balance of convenience lies in their favour ?	“No”
3)	Whether Complainant prove that they will suffer irreparable loss, if interim is refused ?	“No”
4)	What order?	As per final order

:- REASONS :-

AS TO POINT NOs. 1 TO 3 :-

8. 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 his 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. Complainant has to prove that action taken by the Respondent is prima-facie unfair labour practice, using colourable exercise of powers.

9. Apart from the above general principles, in a labour jurisprudence same principles are applicable and shall be considered by the Court. Section 30(2) of the M.R.T.U. & P.U.L.P. Act also lays down same principles while granting and considering the interim application. Discretion is left with the Court as it deems just and

proper. In present case Complainant has to prove prima-facie unfair labour practices alleged to be indulged and indulging by the Respondent. After perusal of complaint and written statement one thing is more clear that since 31/07/2024 there is a tense between the management and workers on the point of increasing their salaries and providing facilities. Complainant as well as Respondent pleaded that since 31/07/2024, work has been stopped by the Complainant. Complainant in present case come with a specific allegation of illegal termination without following due procedure of law. There is no notice, notice pay and enquiry held against him. On the contrary management Respondent pleaded in written statement that due to incidence and circumstances enumerated in notice dated 20/08/2024 as well as written statement enquiry was dispensed with.

10. The core question before this Court is about the dispensing of enquiry before termination. The notice dated 20/08/2024 issued to Complainant reveals that since 01/07/2020 to 30/06/2023 for that period there was demand of increasing salaries. For that purpose Reference (IC) No. 09/2021 is pending before the Hon'ble Industrial Court. In next para it is intimated that due to difference of opinion between members and union, the said Reference (IC) has been filed. This being the history before the termination of the Complainant. Again in the said notice there are several misconducts mentioned by the Respondent management. I would like to refer those misconducts because there is a claim of dispensing of enquiry against the Complainant. The first misconduct is about the beating of Prakash Shivaji Kapase by the Complainant on 06/07/2024. The said misconduct alleged to be happened in the premises of the Respondent. For that purpose Respondent issued

show-cause-notice on 16/07/2024. The next incident alleged to be happened that Complainant again given a threat to one of the workman Mr. Satish Balwant Karande on 06/07/2024. For that incident Respondent issued show-cause-notice to the Complainant informing that due to such threatening the working environment of the Respondent become spoil. The third incident dated 31/07/2024 alleged to be happened in the first shift. It is alleged that Complainant suddenly and by illegal means stopped working himself and instigated other workers working in the company. For that incident detail notice has been issued to the Complainant. Further in the said notice conversation between the workers on the social media also been narrated para wise. After perusal of that social media conversation it reveals some threatening and instigation words by the group admin. It is alleged that Complainant being the admin of the said group. There is no evidence in the present matter showing that Complainant is not admin of that group. Only evasive denial has been on the part of the Complainant about the forming of group in a social media.

11. The fifth misconduct alleged to be happened on 31/05/2024 itself. It is alleged that Complainant on a social media instigated other workers not to join the work. Sixth incident alleged to be happened on 17/08/2024. Due to such kind of intense in a industry, Respondent filed an application under Maharashtra Industrial Relations Act bearing MIR Application No. 01/2024. In that application this Court itself passed directive orders against the Complainant and other workers who alleged to be joined in the group. And the last incidence alleged to be happened on 19/08/2024 on the same social media group. It is alleged that Complainant has given serious and bold instigation to the workers. It

is also alleged that due to bold statements and instigation on social media other workers did not join the work. All these incidence nothing but serious in nature. Let us see the reason of dispensing enquiry against the Complainant.

12. It is legal position that employer who terminated the services of the workman without holding any enquiry, having opportunity to justify its action either before the appropriate Authority, Tribunal or Court. At the same time it is also settled that employer who dispensed with enquiry shall have to plead such reason of dispensing enquiry. In present case while issuing termination order dated 20/08/2024 in last para Respondent assigned reason for not holding enquiry against the Complainant. It is mentioned that due to extreme tense in the premises, Respondent is unable to conduct or hold any kind of enquiry. At the same time Respondent reserves its right to justify the action before the Court. This is pleading on the part of Respondent to justify its action before the Court. Therefore, at this juncture it cannot be said that Respondent by issuing termination order dated 20/08/2024 indulged and indulging in unfair labour practice. Prima-facie Respondent considering the circumstances, issued termination order reserving its rights to justify in the Court of law.

13. Complainant relied on the judgment of Hon'ble Bombay High Court in the case of *Dombivli Nagari Sahakar Bank Ltd. & Ors. V/s. Lahu Keshav Rewale, reported at 2014 II CLR 583*, in which it is held that if the Industrial Court finds that there is a strong prima-facie case regarding unfair labour practice, it has power to issue interim relief to withdraw said unfair labour practices. In present case Complainant failed to prove strong prima-facie unfair labour practices against the Respondent.

14. On the contrary, Respondent cited following judgments.
1. *United Ink & Varnish Co. Pvt. Ltd. V/s. Chandrashekhar Kurve and Ors., reported in 2007 I CLR 503;*
 2. *Workmen of Motipur Sugar Factory Pvt. Ltd. V/s. Motipur Sugar Factory, 1965 AIR 1803;*
 3. *Mumbai Cricket Association V/s. Pramod G. Shinde reported at 2011 I CLR 745;*
 4. *Damodar Valley Corporation V/s. Haripada Das, reported at FLR 1979 (39) 180;*
 5. *R. K. Gautam V/s. Union of India & Anr., reported at 1998 II CLR 682.*
 6. *Zilla Parishad, Jalgaon, Through its CEO V/s. Maya Tukaram Sonawane, reported at 2016 II CLR 580.*

In the above judgments there is ratio of Hon'ble Supreme Court and High Courts that the legal position is no more res-intgra that where an order of dismissal of an employee on the ground of misconduct is passed without holding domestic enquiry, it is open to the employer to prove misconduct in a Court and that being the position, there was no justification to pay wages or deposit wages in a court by way of interim relief and the said order is set aside. As in a foregoing para it is discussed that employer may prove misconduct or justify its action in a Court. The said right and opportunity is available with the employer. However, the said right and opportunity only can be availed in case of if it is pleaded at relevant stage.

15. Respondent in termination notice dated 20/08/2024, after mentioning several misconducts in last para pleaded about the dispensing domestic enquiry and opportunity of justification before the Court. Therefore, it cannot be said that Respondent has indulged

and indulging into unfair labour practices.

16. It is also settled legal position that Court cannot grant final relief at the interim stage. Complainant seeking final relief of reinstatement with all benefits. Therefore, considering the legal position at interim stage, final relief cannot be extended in favour of Complainant. Complainant has failed to prove prima-facie that Respondent indulged and indulging into unfair labour practices. Prima-facie Complainant is not entitled to seek any kind of relief against Respondent. Complainant has failed to prove three legal principles. Balance of convenience doesn't lies in favour of Complainant. Therefore, balance of convenience lies in favour of Respondent and not in favour of Complainant. If relief is granted, Respondent will suffer irreparable loss than the Complainant. Hence, Point Nos. 1 to 3 are answered in "Negative" and in answer to Point No. 4 following order is passed :

: ORDER :

1. Application Exh. U-2 stands rejected.
2. No order as to costs.

Kolhapur
Date :- 15/10/2024

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

Argued on :- 11/10/2024
Judgment Dictated on :- 15/10/2024
Judgment transcribed on :- 15/10/2024
Judgment checked & signed on :- 16/10/2024