

BEFORE THE JUDGE, LABOUR COURT-2 AT AURANGABAD

(Presided over by Shri. S. S. Sahasrabudhe)

Complaint (I.T.) No.04/2022
in Ref.IDA NO.12/2018

CNR NO.MHLC200001822022

01. Laxman Sheshrao Bahir,

Age : 33 years, Occ. Nil,

R/o.Shirapur (Dhumal), P.O. Rajuri (N),

Tal. Shirur(Ka), Dist.Beed.

02. Indus Mobile Tower Technical Karmachari

Sanghatana (Through its President),

K-75/6, N-9, Pawan Nagar Cidco, Aurangabad.

**..Applicants/
Complainants**

V/s.

1. M/s. Indus Towers Ltd.,

(Through it's Manager),

E-core, 210, IInd Floor, Marvel Edge,

Viman Nagar, Pune-411 014.

02. M/s. Teamlease Services Pvt.Ltd.,

(Through it's Manager),

509, Nucleus Mall, Chourch Road Camp,

Opp.Police Commissioner Office,

Pune 411 001.

... Respondents

Claim :- Application for interim relief in the matter of Complaint
U/s.33-A of the Industrial Disputes Act, 1947.

Appearance :

Shri. B. R. Kawre, Advocate for Complainants

Shri. Y.I. Thole, Advocate for respondent no.1.

Shri. Gadekar, Advocate for respondent no.2.

Order below Exh.U-2

(Passed on this 02nd August, 2023)

1. This is an application in the matter of Complaint U/s.33-A of the Industrial Disputes Act, 1947 against respondents for grant of interim relief. The applicants have prayed for

directions to the respondents to reinstate the complainant otherwise provide work and pay full wages from January, 2002 till final decision of the complaint. The case of applicants in short is as under :-

2. That the applicant is working since 2008 as a Technician with respondent no.1 but his services were not regularized. The name of applicant was enrolled on the roll of different name lending contractor. Therefore, he raised industrial dispute of regularization of services against respondents before this Court vide Ref.(IDA) No.12/2018. Applicants have submitted that, in the month of January, 2022 the respondent no.1 has introduced new Labour Contractor by terminating earlier Labour Contract unilaterally. The applicant and other employees were insisted to sign employment paper of newly appointed contractor. The complainant and other some of employees refused to sign such papers therefore, the respondent no.1 not allowed them to sign muster roll or not allowed to perform his regular work. The wages of complainant is unpaid since January, 2022. The complainant is an employee of respondent no.1 and worked for respondent no.1 from 2008 onwards as a Technician. Though the complainant is working for respondent no.1 on perennial work, his name was enrolled on the roll of different name lending contractor with intention to avoid permanency and regularization. The complainant and union raised industrial dispute of regularization against the respondents and is pending for adjudication. Services of complainant cannot be terminated or discontinued without following due procedure of section 33 of

IDA,1947. On 01.01.2022 the respondent no.1 instructed the complainant to sign the papers of newly appointed name lending contractor. As he refused to do so, respondent no.1 has orally terminated his services without following due procedure of law. The respondents have failed to comply provisions of section 33 of Industrial Disputes Act, or not obtained permission from the Labour Court before issuance of termination. The complainant and union have filed several representations but respondents failed to take proper steps of providing work or continuation in employment with unpaid wages. Therefore, the complainant has no alternative than to file present proceeding before this Court u/s.33A of the I.D.Act, 1947. The respondent has not issued written order of termination and refusing work on the reason of non signing paper with newly appointed contractor. The complainant has apprehension that the respondent may keep the complainant outside the employment by using such modus operandi. He services of complainant are already protected by virtue of industrial disputes, therefore the respondents have no right to terminate his services or refuse work/wages till pendency of industrial dispute. The complainant has good prima-facie case and there are every chances of the complainant to succeed in the matter. The balance of convenience lies in his favour. If the interim relief prayed for is not granted he will suffer irreparable manifesto and loss. Hence, he prayed that, pending hearing and final disposal of the complaint the respondents may be directed to reinstate the complainant otherwise provide work and pay full wages from January, 2022.

3. Respondent no.1 filed their say at Exh.C-4 and contended that, complaint is filed on 21.05.2022 and complainants alleged in the complaint that services of complainant no.1 came to be allegedly terminated w.e.f. 01.01.2022. Hence, there is delay of 4 months. Respondent no.1 submits that, the Provisions of Section 33A of the I.D.Act, 1947 speaks volume that a complaint shall only be maintainable where it exists employer-employee relationship. In the Written Statement filed by respondent no.1 in Ref.IDA No.12/2018 they have denied employer-employee relationship ever exists between the complainant no.1 and respondent no.1. The complainant no.1 was employee employed by the respondent no.2 and respondent no.2 used to pay the payment of wages to the complainant no.1. Hence, respondent no.1 submits that, under the Provisions of Section 33 A of the I.D.Act, 1947 the complaint is not maintainable against the respondent no.1 as there exist no employer-employee relationship. Respondent no.1 denied all other contentions and allegations made in the application and lastly prayed for dismissal of interim application as well as complaint.
4. It is submitted by respondent no.1 that the Ref.IDA No.12/2018 and instant complaint and the application for interim relief are having same subject matter i.e. of “change in service condition” and “whether there exist employer-employee relationship? The parties of Reference IDA No.12/2018 are also same. Therefore, in view of above, the present complaint and the application for interim relief filed therein by complainant is hit by principles of *res-judicata*. In view of judgment of Hon’ble Bombay

High Court delivered in IDBI Bank Ltd., Vs. Bharatiya Kamgar Sena reported in 2019 (160) FLR 519, no interim relief can be granted. Hence, prayed for dismissal of complaint as well as interim relief application as same is hit by principles of res-judicata.

5. Respondent no.2 filed their say at Exh.C-8 and contended that, respondent no.2 M/s.Teamlease Services Ltd., is a company engaged in the business of Human Resource Outsourcing and deploying the manpower on fixed term contract to their vendor. Respondent no.2 admitted the relationship of respondent no.2 with complainant and respondent no.1 was contractual and that too for a specific period subject to terms and conditions of the contract, wherein it was specifically expressed that the said relationship was contractual in nature for a certain specific period. Respondent no.2 further submitted that, after respondent no.1 has terminated his services of respondent no.2 vide it's letter dated 29.09.2017 from 30.09.2017, further improves/incident happened, mentioned in complaint are not concerned with it and not know to respondent no.2. The respondent no.2 is not in capacity to change any service condition in subject matter, hence could not be held responsible for the allegations. By denying all other averments made in the complaint against respondent no.2, they prayed for dismissal of application against them.
6. In view of rival contentions of the parties following points arises for my consideration, against which I have recorded my findings thereon as follows :-

	<u>Points</u>	<u>Findings</u>
1	Whether the complainant has made out a case for grant of interim relief ?	No
2	Whether the balance of convenience lies in favour of the complainant ?	No
3	Does complainant prove that, if interim relief is not granted he would suffer irreparable loss?	No
4	Whether complainant is entitled for interim relief as prayed for?	No
5	What order?	As per order

REASONS

AS TO POINTS NO.1 to 5 :-

7. Heard Ld.Counsel Shri. Kawre for complainant and Shri. Thole for respondent no.1 and Shri.Gadekar for respondent no.2.
8. The complainant is claiming that he is employee of respondent no.1. In spite of this fact, the respondent no.1 has enrolled his name on the roll of different lending contractors with intention to avoid permanency and regularization. The complainant and union has raised industrial dispute for regularization and same is pending for adjudication. So far as this contention of complainant in respect of pendency of lis is concerned, admittedly, the complainant has initiated proceeding for permanency through his union and same is pending before the Court. As per the complainant, during pendency of said proceeding i.e. Ref.IDA No.12/2018, the respondent no.1 is trying to change service conditions of complainant. He introduced new Labour Contractor from January, 2022 by terminating his earlier

contract. The complainant and other employees were insisted for signing employment papers of newly appointed contractor. As the complainant and other workmen have refused to do so, therefore, the complainant is not allowed to sign muster roll, so also to perform his regular work. Respondent no1 has not paid wages since 2022.

9. All these contentions raised by the complainant are denied by respondent no.1. The respondent no.1 has specifically submitted that, they have filed Written statement in Ref.IDA No.12/2018, wherein they have specifically denied employer-employee relationship. They further submitted that, the complainant has admitted that the respondent no.2 used to pay the payment of wages to the complainant, hence the present complaint is not maintainable in view of provisions of Section 33A of Industrial Disputes Act, 1947.

10. The complainant has filed this application as per section 33A of Industrial Disputes Act, 1947. Section reads as follows :-

Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.

a) in regard to any matter connected with dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings;

11. On perusal of above referred provision it is clear that, by the said provision restrictions are imposed on employer from changing the service conditions of his employee during pendency of the proceeding. It appears from the record that the present

complainant has produced documents with list Exh.U-4. At Sr.No.4 he has produced Written Statement of the respondent no.1 filed in Ref.IDA No.12/2018. On perusal of said written statement it appears that in the said written statement respondent no.1 has seriously raised dispute in respect of his relationship with the present complainant. Certainly the said issue is yet to be decided by the Court, in which Reference bearing no.12/2018 is pending for adjudication. Considering this fact, as there is dispute in respect of relationship interim relief as sought cannot be granted.

12. So far as the question of change in service conditions are concerned, at least prima-facie there is no material on record from which it can be gathered that the respondent has changed the service conditions as submitted by the complainant. Therefore, considering this fact also interim relief cannot be granted.

13. Besides all these aspects, certainly if at all on merits the complainant succeed in proving that, the respondent no.1 and 2 have illegally changed his service conditions, in that regard the respondents would be punished, so also penalty can be imposed upon them, not only this directions can be issued to the respondents to reinstate the complainant with continuity of service and full back wages, in that event no loss, more particularly, financial loss which cannot be compensated in terms of money, will be caused to the complainant. Considering this aspect also I came to the conclusion that, interim relief as sought cannot be granted. There is no prima-facie case lies in favour of

complainant, so also the balance of convenience also does not lie in favour of complainant. Complainant will not suffer any irreparable loss if interim relief is rejected. Hence, I answer points no.1 to 4 in negative and in answer to point no.5 I proceed to pass following order :-

Order

1. Application stands rejected.

Place: Aurangabad
Date: 02/08/2023

[S. S. Sahasrabudhe]
Judge,
Labour Court-II, Aurangabad.

CERTIFICATE

I affirm that the contents of this PDF file judgment/order are same, word to word, as per the original judgment/order.

Name of Stenographer : G. M. Patil
Court : 2nd Labour Court, Aurangabad.
Date : 02.08.2023
order transcribed on : 02.08.2023
order uploaded on : 02.08.2023
GMP/-