

BEFORE THE JUDGE, LABOUR COURT-2 AT AURANGABAD

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

Complaint ULP No.15/2022

CNR NO.MHLC200002792022

Subhash S/o. Rambhau Bhawar

..Complainant

Age : 54 years, Occ. Nil,
R/o. Krishnaur, Bidkin,
Tal. Paithan, Dist. Aurangabad.

V/s.

Nayantara Chemicals Pvt. Ltd.,

46,48, N.A. Paithan Road,
Chitegaon, Tal. Paithan,
Dist. Aurangabad.

Through it's Manager.

..Respondent

.....
Appearance :

Shri. P. B. Salunke, Advocate for complainant

Shri. B. R. Kawre, Advocate for respondent.
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Common Order below Exh.U-2 & C-4

(Passed on this 05th day of January, 2024)

This is an application U/s.30(2) of the MRTU & PULP Act, 1971 filed by complainant against respondents for interim relief of direction to the respondent to reinstate him in service or to pay 75% monthly salary till final disposal of the complaint.

The brief facts of the application are as follows :-

1. That the complainant was appointed as a worker in the year 2011 and he was allotted work of maintenance of machine and other works. He has worked continuously from 2011 till his oral termination dated 02.04.2022 and in each year he had completed 240 days continuous service. His last drawn wages were Rs.28,125/-p.m. Respondent given him identity card and also maintained his attendance register. In the attendance register from April, 2015 to 31.03.2021 his name and signature is duly shown. Respondent has sent the proposal of Life Insurance Policy of the complainant to the HDFC Life Insurance Company Pvt.Ltd., and on 04.04.2020 HDFC Life Progrowth Flexi Policy was issued. On 25.11.2021 he met with an accident and his right shoulder was fractured. He was admitted in Tirumala Hospital and taken treatment under Dr.S.P. Tekade from 25.11.2021 to 04.12.2021 and he was discharged on 04.12.2021. Due to illness he has taken bed rest for near about 1 month and 15 days. However, on 02.04.2022 the respondent industry did not allow him to sign and join duties and prohibited to work. He requested time to time and filed application on 08.06.2022 but till today respondent has not given reply. No departmental enquiry was conducted against him. The respondent has not followed procedure laid down by law and without following principles of natural justice orally terminated him on 02.04.2022. There is no fault of complainant. The action on the part of respondent is ab-initio, illegal it is violating the provisions of Sec.25F of Industrial disputes Act,1947 and Rules. The said action of respondent squarely fall in the domain of Unfair labour practice under Item 1 of Sch.IV of the

MRTU & PULP Act, 1971. The complainant was not given one month's prior notice or notice pay and retrenchment compensation and orally terminated. He is unemployed and having no source of income and facing starvation. Hence, he has prima-facie case for grant of interim relief. Hence, he prayed for interim relief of direction to the respondent to reinstate him in service or to pay 75% monthly salary till final disposal of the complaint.

2. Respondent filed written statement at Exh.C-2 and opposed the application. Respondent contended that, respondent has engaged about 09 employees including staff and workmen. The staff includes Managers, supervisors, technical & non-technical employees. Some of non-technical hands were recruited and management imparts them special training for creation of skill amongst them at cost of company. As complainant was having Professional experience in the maintenance field, therefore he is key workman of respondent. He is performing in improvement of machine maintenance, responsible for all maintenance as well as manpower smooth functioning. The management considered his past experience, job responsibilities by offering responsible position of workman maintenance department. He was directed to report to Manager Maintenance. At the time of joining his salary was Rs.19000/- per month. The appointment is duly accepted by the complainant without any protest. Due to new production technologies, increased in cutthroat market competition, production losses, inadequate market demands and other several

reason the management compelled to close Chittegaon factory w.e.f. 31.03.2022. Therefore, Management shifted employment of employees at Shalini Organic Pvt.Ltd., on same terms of employment. All staff and workmen were joined at new employment place and working with the same terms of employment. However, complainant was offered the employment at new place but he failed to join at new place and remained absent till this date in unauthorized manner. The complainant has suppressed material facts that his services are not terminated and he is on roll of company but despite of that present complaint is filed without cause of action. Therefore, this Court has no jurisdiction to entertain the complaint unless he proves that there is oral termination. In absence of specific cause of action the complaint of termination is raised, which is not maintainable. Complainant has committed serious illegality of insubordination and unauthorized absenteeism by this reason and fear of disciplinary action he has filed present complaint. Respondent has never terminated the services of complainant. Therefore, there is no cause of action to entertain the present complaint. Hence, prayed for dismissal of complaint as well as application for interim relief.

3. In view of rival pleadings of the parties, following points arises for arise 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 prima-facie case for grant of interim relief of reinstatement till pending disposal of main complaint? | 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 | What order? | As per final order |

REASONS

AS TO POINTS NO.1 TO 5 :-

4. Heard Ld. Counsels for both sides.
5. On perusal of complaint as well as the present application it appears that, the complainant came with case that, on 25.11.2021 the complainant met with an accident and his right shoulder was fractured. During 25.11.2021 to 04.12.2021 he has taken treatment. Later on on 02.04.2022 the respondent did not allow him to sign the muster roll and prohibited him from doing the work. Thereafter the complainant time and again requested the respondent to allow him to resume the duty. Later on he submitted an application on 06.06.2022 with respondent but the respondent has not given him reply. It is also submitted that, the respondent has orally terminated his service without issuing any charge sheet and holding departmental enquiry. Hence, the

complainant prays to direct the respondent to reinstate him in service till disposal of this complaint or in alternative direction be given to the respondent to pay 75% monthly salary to him.

6. On the other hand it is the contention of respondent that, the complainant himself unauthorizedly remained absent, so there is no question of violation of Section 25F. The respondents have not terminated the service of complainant. On the other hand he himself failed to report at the relocated place of factory. Hence, the respondent prays to reject the application.

7. It appears from the record that, the respondent has also filed application below Exh.C-4 for giving direction to the complainant to deposit accepted benefit of full and final settlement. It is contended by the respondent that, respondent factory has closed manufacturing activities situated at Plot no.46, 48, Paithan Road, Aurangabad on 31.03.2022. At the time of closing said factory respondent have given option to the employees working with them to join alternative employment with Shalini Organic Pvt.Ltd., Option was also given to accept lump sum amount of full and final settlement. As per the respondent the complainant has opted to accept full and final settlement. Accordingly, the respondent has paid Rs.85,000/- on 10.05.2022. It is further submitted that, as the complainant has alleged oral termination at the hands of respondent and he is seeking relief of reinstatement, hence it would be equitable to direct the complainant to return entire benefits received by him.

8. The complainant has filed say of this application. It is submitted by him that, the application is not tenable. It is denied that complainant chosen lump sum amount instead of accepting alternate employment. It is also submitted that the point raised by the respondent can be decided at the time of final hearing / disposal of complaint. Hence, the complainant prays to reject the application.
9. Certainly the complainant has sought for equitable relief of interim application. Therefore, it is necessary for him to come before the court with clean hands. Not only this, as he is seeking for equitable relief he has to do the equity. Admittedly, in the present case the complainant has come with the case that, the respondent has orally terminated his service. On the other hand the respondent has denied this fact. The respondent has shown their willingness to get resume complainant at their relocated factory namely Shalini Organic Pvt.Ltd., which is situated at Plot No.D-10, MIDC, Paithan. Considering this fact, as the respondent is ready to get join the complainant, it will not be necessary to give any directions to the respondent. The complainant may resume duty to the respondent factory i.e. Shalini Organics Pvt.Ltd.,
10. So far as the question of giving directions to the complainant to deposit amount of Rs.85,000/- is concerned, it appears that, there is no whisper in the complaint as well as in the application for interim relief about the said amount. It is specific contention of respondent that they have deposited said amount in the Bank

account of complainant on 08.06.2022. The complainant has not denied the fact that, respondents have deposited the said amount. It is the contention of complainant that, the respondent has terminated his service on 02.04.2022 and later on they have paid this amount on account of arrears of salary. However, on perusal of record it appears that, the complainant has himself filed copy of extract of his bank account bearing no.005002300003218. From the said extract it appears that the respondent has deposited salary in each month and they have deposited salary lastly on 04.04.2022. Therefore, at least prima-facie it can be gathered that, there was no salary outstanding. Hence, at least prima-facie I found substance in the contention of respondent that Rs.85000/- was deposited on account of full and final settlement. No doubt, the complainant has denied this fact. However, he has admitted the fact that, Rs.85000/- was deposited in his account. Not only this the complainant is seeking for the relief of reinstatement. Therefore, certainly he is not entitled to keep and enjoy Rs.85000/-, which was deposited in his account by the respondent. Because the person who seeks equity must do equity. Therefore, considering this aspect in my opinion it will be just and proper to issue direction to the complainant to deposit Rs.85000/- in court or he may pay the same to the respondent directly.

11. Considering all above referred facts and circumstances I came to the conclusion that, the complainant has prima-facie failed to prove the case for grant of interim relief. So also, balance of convenience not lies in favour of the complainant and

he will not suffer any loss, if interim relief is not granted. In the result, I answer points no.1 to 3 of application below Exh.U-2 in the negative and hold that, the application below Exh.U-2 is liable to be rejected.

12. So far as the application filed by respondent below Exh.C-4 is concerned, I have already held that, as the complainant has sought relief of reinstatement and the respondents are also ready to reinstate him, hence complainant is not entitled to withheld Rs.85000/- which was deposited by respondent in his bank. So the application of respondent below Exh.C-4 needs to be allowed and direction needs to be issued to the complainant to deposit the said amount either in Court or to pay the same to the respondent directly. In the result, I pass following order :-

Order

1. Application for interim relief stands rejected.
2. The application below Exh.C-4 is allowed. The complainant is hereby directed to deposit Rs.85000/- in Court or he may pay the same directly to the respondent.

Sd/-

[S. S. Sahasrabudhe]

Judge,

Labour Court-II, Aurangabad.

Place: Aurangabad

Date: 05/01/2024

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.

Order signed by PO : 05.01.2024

Order uploaded on : 05.01.2024

GMP/-