

BEFORE THE PRESIDING OFFICER, SECOND LABOUR COURT
AT AURANGABAD

(Presided over by Smt. V. S. Deshmukh)

Ref IDA No.45/2018
CNR NO.MHLC200004622021

The General Manager,
Maharashtra Gramin Bank,
Plot No.35, "Jeevanshree" Sector-G,
Town Centre, Cidco, Aurangabad.

..First Party

V/s.

01. **Pandit S/o. Totaram Vispute**
02. Shaikh Samshoddin Maheboob Pathan,
03. Sukhdev S/o. Trimbak Aher
04. Raju S/o. Bansi Gaikwad
05. Shaikh Atkalikar Alim Hyder
06. Bhimrao S/o. Govindrao Chouthmal
07. Rameshwar Satyavan Borade
08. Ganesh S/o. Jagannath Sonawane
09. Devidas S/o. Aba Nikam
10. Santosh S/o. Karbhari Bagul,
11. Ratan S/o. Sakharam Salve
12. Faridabi Abdul Rehman Pathan
13. Suresh Nagorao Raut
14. Bhalchandra S/o. Punjaram Ragade
15. Appasaheb S/o. Limbaji Sukhase
16. Rohan S/o. Kanta Mahajan,
17. Datta Kisanrao Korade
18. Sanjay S/o. Pralhad Ankushe
19. Asaram S/o. Vitthalrao Naherkar
20. Somnath S/o. Vishwanath Harkar
21. Arun S/o. Shamrao Khotkar
22. Shriram S/o. Laxman Tangde
23. Deepak Subhash Solunke
24. Dhondiram Madhukar Pathade
25. Baban S/o. Tukaram Dabhade
26. Umesh S/o. Chandrakumar Gondikar

27. Shaikh Taufik Shaikh Rafik,
28. Balasaheb Sahebrao Jawale,
29. Sachin Mojesh Aswale
30. Ramesh Bhanudas Bankar
31. Balasaheb Marutirao Kale

... **Second Parties**

Appearance :

Shri. P. P. Shahane, Advocate for First party
Shri. B. R. Kawre, Advocate for Second parties.

Order below Exh.U-54

(Passed on this 04th day of April, 2022)

1. This is an application filed by the second parties for interim relief against the first party.
2. The brief facts of the case are as under :-
3. The second parties are qualified and they are selected by constituted selection committee by following due procedure of law and appointed with first party bank and posted in respective branches as class-IV employees and designated as Peon cum Messengers. Since the date of joining they are working under the supervision and control of Marathwada Gramin Bank or other subsidiary banks prior to amalgamation. On 25.08.2008 and 20.07.2009 the Government of India through Department of Finance issued notification by amalgamating Aurangabad Jalna Gramin Bank and Maharashtra Godavari Gramin Bank in to the Maharashtra Gramin Bank (I.e.first party). Therefore, the services of the second parties with other regular employees unilaterally transferred to present first party bank without changing their service conditions. The second parties have completed 240 days

or more days continuous service but first party failed to extend them permanency and consequential benefits. They have been continued as temporary with object to deprive them from legitimate right / status / privilege of permanent employees. The second parties have filed representations before the earlier employer bank and then Board passed several resolutions and created documentation for absorption of services by granting permanency. Even after amalgamation in the first party bank i.e. 20.07.2009 the similar applications are forwarded to present first party employer but the claim applications are undecided. Lastly on 17.04.2015 Demand Notice was issued, demanding benefits of permanency and other monetary benefits. Copy of demand notice was also served on first party and Regional Labour Commissioner for conciliation. The RLC and Conciliation officer admitted the disputes under Industrial Disputes Act, 1947 and mediated into the matter. But first party failed to co-operate the Conciliation officer. Hence, Conciliation Officer submitted failure report dated 04.09.2015 to the appropriate Government for further action. The appropriate Government referred this dispute to this Court for adjudication.

4. According to second parties it is mandatory provisions that during pendency of dispute the first party is restrained from changing service conditions of employees without permission or approval of this Court. The first party has failed to release the monthly salary on time, not allowed to sign regular muster roll or salary register, the management frequently threatening oral transfer from one place to another, the bonus for accounting year

2021-22 is unpaid. The second parties are performing continuous work. But during pendency of dispute the first party is trying to introduce new agency / contractor as mentioned above by changing service conditions of second party. The first party management frequently creating pressure on workman to sign employment form of contractor as they desired and enroll their names on contractor roll. Therefore, by way of this application second parties have prayed for direction to the first party bank to allow the second parties to sign regular attendance and wage register and pay their wages through their respective salary accounts, to release unpaid monthly wages from April, 2021 to November, 2021, for direction to first party not to force the second parties to sign the employment Form of outsider agency labour Contractor, to stay the oral transfer orders, transferring the services of second parties from one place to another and pay exemplary cost to the tune of Rs.10 lakh for committing unfair labour practices.

5. The First party bank has resisted this application by filing its say / reply at Exh.C-36. The first party bank has empathetically denied all the averments, contentions, objections raised by second parties in the application for interim relief. According to first party bank the application is not legally tenable and bad in law. The second party has not understood the stages of the matter and has unnecessarily filed this application for interim relief. The application is not maintainable as it travels beyond the scope of reference. The issue referred to this Court by the Ministry of Labour, Government of India pertains to the grant of

regularization to the second party workmen and the issue of oral transfer, issue of change in service conditions, the issue of contractual service are not the issues referred for adjudication before this Court by the Govt.of India as per order under reference. They are neither the issues referred by the competent authority to this Court nor they are incidental issues which could be decided by this Court in a reference u/s.10(1)(d) of the Industrial Disputes Act, 1947. Therefore, the application for interim relief is wholly against the provisions and spirit of the Industrial Disputes Act, 1947 and as such it is liable to be rejected. It is submitted by first party that, there is no any provision for filing of such an application for interim relief under the provisions of the Industrial Disputes Act, 1947. The application is therefore, misconceived and is not maintainable under the provisions of the Industrial Disputes Act, 1947. It is denied by first party bank that they insisted the second party to fill up employment form of alleged contractor namely Yashodhara Mahila Sahakari Audyogic Utpadan Sanstha Ltd., Nashik. It is further denied that first party have stopped making payment to the second party and are making cash payment as per whims and wishes. It is also denied that, the first party failed to release the payment of the second parties. It is submitted by first party that, the second parties are working purely on daily wage basis at the branches to meet the exigency in the work and it is denied empathetically they are received monthly wages/salary and the bonus from first party as contended in para under reply. First party denied that they are threatening the second parties for oral transfer from one place to another place. It is also denied that the application dated 17.11.2021 was

filed agitating the issue of oral transfer and unpaid wages but the first party did not accept the letter or responded the same. Lastly, prayed for rejection of application.

6. On the basis of above rival contentions following points arise for my consideration, against which I have recorded my findings thereon as follows :-

	<u>Points</u>	<u>Findings</u>
1	Whether the applicant second parties have prima-facie case?	No
2	Whether the balance of convenience lies in favour of the applicant second parties?	No
3	Whether the second parties would suffer irreparable loss if interim relief is not granted?	No
4	Whether second parties are entitled for interim relief as prayed for?	No
5	What order?	As per order

REASONS

7. Heard Ld.Advocate B. R. Kawre for applicant second parties.

He relied upon following case laws :-

1. Sureshkumar K. Joshi & Ors., Vs. Gujarat Agricultural University, Law Finders Doc.ID No.401702
2. Dakor Temple Committee Vs. Gujarat Kamdar Mandal, Law Finder Doc.ID No.345209.

8. Heard Ld.Advocate P. P. Shahane for First party Bank. He relied upon following case laws :-

1. Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. AIR 1979 SC 1356

2. Delhi Cloth and General Mill Co. Vs. The Workmen, AIR 1969 SC 469

3. MRF Ltd., Vs. Goa MRF Employees Union, 2004 (1) LLJ 394. (Bom.H.C.)

As to point No.1 :-

9. Admittedly the second parties are working with the first party bank. The Central Government has referred this dispute for adjudication in exercise of the powers conferred by clause (d) of Sub-section 1 and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947. From the reference order it can be seen that the Central Government has referred the dispute for adjudication that *'whether the action of the Management, General Manager, Maharashtra Gramin Bank, Aurangabad by not regularizing the services of the second parties though they are working last 15 to 20 years as daily wagers is justified? If yes, to what relief the workmen are entitled to.'* It means the Central Government has in its referral order made it clear that this court has to adjudicate the issue of regularization of second parties.
10. On perusal of the pleadings of both the parties it is noticed that the second parties have claimed that they are the employees of the first party, whereas according to first party the second parties were engaged purely on daily wages basis at the Branches of first party bank to meet the exigency in the work as Peons / Messengers. From the reference order also it is clear that the second parties have claimed regularization of their services as they have allegedly put 15 to 20 years of service with first party bank.

11. The Central Government has made reference to this Court in the month of September, 2018. Thereafter about 3 years first party has moved this application for interim relief of direction to the first party bank to allow the second party to sign regular attendance and wage register, direction to pay wages through their respective salary accounts, direction to the first party to release unpaid monthly wages from April, 2021 to November, 2021, direct the first party not to force the second parties to sign the employment form of outsider agency / labour contractor and for staying the oral transfers of second parties from one place to another and to award exemplary costs of Rs.10 lakh to the second parties for unfair labour practices.
12. According to second parties the first party bank has failed to release the monthly salary on time, the first party bank is forcing the second parties to fill up employment form of Yashodhara Mahila Sahakari Audyogik Utpadan Sanstha, Nashik, a third party agent / contractor and when the second parties have refused to sign third party agency form then the bank salary payment credit facility is stopped and they are paying cash payment as per their whims and wishes. It is further allegation that the second parties are not allowed to sign the regular muster roll and salary register and the management is frequently threatening oral transfer from one place to another.
13. The first party bank has denied the allegations levelled against it. The second parties have produced a blank form of the Yashodhara Mahila Sahakari Audyogic Utpadan Sanstha Ltd.,

Nashik, at Sr.no.1 of list at Exh.U-56. It is pertinent to note that it is a blank form. It is neither filled up nor signed by anybody. Therefore from this form it is not possible to draw prima-facie inference that the first party bank is compelling or pressurizing the second parties to fill up the form of the Yashodhara Mahila Sahakari Audyogic Utpadan Sanstha Ltd., Nashik. It is further allegation that as the second parties have refused to sign the employment form of Yashodhara Mahila Sahakari Audyogic Utpadan Sanstha Ltd., Nashik the first party bank started paying started cash payment as per their whims and wishes and the first party has failed to release the monthly salary on time.

14. Prior to filing of this application the second parties have written to the General Manager of the First party bank. The correspondence is dated 17.11.2021 and it is produced at Sr.No.4 of the list at Exh.U-56. From the said letter it is seen that the Maharashtra Gramin Bank Rozandari Sandesh Vahan Kamgar Sanghatana has written this letter for non-payment of wages and oral transfer order. But the said letter is silent of which period the wages are withheld. The Sanghatana has complained of the oral transfers of the second parties to different locations. From the said letter it prima-facie appears that the second parties have complained of the withholding of wages and their oral transfer to the General Manager of First party Bank. But it is silent regarding not allowing the second parties to sign attendance register, wages register and forcing them to sign the employment form of labour contractor. Therefore, the second parties have prayed for interim relief of direction to the first party bank to release unpaid wages

for the period April, 2021 to November, 2021 and to stay the oral transfer orders. Ld.Advocate Kawre for the second parties has submitted that though the present matter is reference under the Industrial Disputes Act, 1947 this Court is empowered to grant interim relief. He relied upon the case laws reported in -

1. **Sureshkumar K. Joshi & Ors., Vs. Gujarat Agricultural University, Law Finders Doc.ID No.401702**
2. **Dakor Temple Committee Vs. Gujarat Kamdar Mandal, Law Finder Doc.ID No.345209.**

On perusal of both the case laws it is clear that the Hon'ble Gujarath High Court held that '*the Industrial or Labour Court is empowered to grant interim relief in the references under the Industrial Disputes Act, 1947.* In **Dakor Temple Committee Vs. Gujarat Kamdar Mandal, Law Finder Doc.ID No.345209** the Hon'ble Gujarat High Court observed in para 6 of the judgment that '*The Industrial Tribunal or Labour Court while dealing with interim relief application exercise the power u/s.10(4) of the Industrial Disputes Act, 1947 being ancillary / incidental matter to the main dispute.*' It means the Industrial Tribunal or Labour Court is having power to grant interim relief in respect of the matters ancillary / incidental to the main dispute.

15. Ld.Advocate Shahane for the first party bank has strongly opposed the arguments advanced by Ld.Adv.Kaware. He submitted that there is no provision under the Industrial Disputes Act, 1947 for filing application for interim relief. He relied upon the case laws reported in -

1. **Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. AIR 1979 SC 1356**
2. **Delhi Cloth and General Mill Co. Vs. The Workmen, AIR 1969 SC 469**
3. **MRF Ltd., Vs. Goa MRF Employees Union, 2004 (1) LLJ 394. (Bom.H.C.)**

The Hon'ble Apex Court has consistently held that "*the Industrial Tribunals or Labour Courts have no jurisdiction to go behind the references. The Industrial Tribunals or Labour Court or the National Tribunal as the case may be shall confine it's adjudication on those points or matters incidental thereto.*" The Hon'ble Apex Court has in **Delhi Cloth and General Mill Co. Vs. The Workmen, AIR 1969 SC 469** has observed in para 12 of the Judgment that "something incidental to a dispute" must mean something happening as a result of or in connection with the dispute or associated with the dispute. **Section 10 (4)** of the Industrial Disputes Act, 1947 provides that -

Section 10(4) - Voluntary reference of disputes to arbitration

(4) the arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

4(A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3A), or where there is a recognized union for any undertaking under any law for the time being in force and an industrial dispute has been referred to arbitration the appropriate Government may by order prohibit the continuance of any strike or lock out in connection with such dispute which may be in existence on the date of reference.

Thus, on conjoint reading of Section 10(4) as well as the ratios laid down by the Hon'ble Apex Court in the case laws cited supra it is clear legal position that the Labour Court or Tribunal or the National Tribunal shall confine it's adjudication to those points or matters incidental thereto.

On conjoint reading of provision u/s.10(4) of the Industrial Disputes Act, 1947 as well as the observation of Hon'ble Gujarath High Court in **Dakor Temple Committee Vs. Gujarat Kamdar Mandal, Law Finder Doc.ID No.345209** it appears that interim relief in respect of the matters being ancillary / incidental to the main dispute can be granted. But the Hon'ble High Court has in **MRF Ltd. Goa Vs. Goa MRF Employees Union 2004(1) LLJ 394** has specifically held that *“There is nothing in the Industrial Disputes Act, 1947 or rules either in express or implied which could be read that the Labour Court / Tribunal has a right to grant interim relief in the form of injunction.”* As per the view of Hon'ble Parent High Court this Court is not empowered to grant interim relief as there is no express or implied provision under the Industrial Disputes Act, 1947 to grant interim relief.

16. The second parties have also prayed for direction to the first party bank to allow the second parties to sign regular attendance and wages register and to pay their wages through the respective salary accounts. On perusal of letter dated 17.11.2021 at sr.no.4 of list at Exh.U-56 I have not come across the complaint that the first party bank is not allowing the second party to sign the regular attendance and wage registers and it is not paying wages through it's respective salary accounts. Hence, prima-facie I do not find any material on record showing that the first party bank is not allowing the second parties to sign the regular attendance and wage register. There is also no material on record to show prima-facie the bank is not paying their wages through it's respective salary accounts. Hence, I am of the humble opinion that there is

no substance in the allegations made by the second parties that the first party bank is not allowing them to sign regular attendance and wages register and not paying their wages through their respective salary accounts. The second parties have also prayed for interim relief of directing the first party not to pose them to sign the employment form of labour contractor. But the letter dated 17.11.2021 at Sr.No.4 of list at Exh.U-56 is silent on this point also. Further the blank form produced by the second parties cannot be relied upon to hold prima-facie that the first party bank is forcing them to sign the same. Further even if said reliefs are granted this Court is incapable of enforcing them as there is no provision under the Industrial Disputes Act, 1947 empowering this Court to enforce it. Thus, the interim reliefs prayed for, are incapable of enforcement and hence cannot be granted.

17. The aforesaid discussion makes it clear that the second parties prayer for direction to the first party bank to release unpaid wages is not incidental to the main dispute. Further the second party has alternative efficacious remedy under the Payment of Wages Act to recover their unpaid wages. So far as the prayers in Clause 'd' of Para 11 of the interim relief application is concerned, in the form of interim preventive relief which cannot be granted. Moreover the Hon'ble Apex Court has in **MRF Ltd. Goa Vs. Goa MRF Employees Union, Goa and another 2004(1) LLJ 394 (Bom.H.C.)** has clearly laid down in Para 23 of the judgment that *"There is nothing in the Industrial Disputes Act, 1947 or rules either in express or implied which could be read that the*

Labour Court / Tribunal has a right to grant interim relief in the form of injunction.” Therefore, I do not find either prima-facie case or balance of convenience in favour of the second parties. Even if it is assumed for a while that the first party bank has changed the service conditions of the second parties during the pendency of the present reference the second party has equal efficacious remedy u/s.33(A) of the Industrial Disputes Act, 1947. Hence, I do not find that even if the interim relief is not granted the second parties would suffer irreparable loss. In the result second parties are not entitled for interim relief as prayed for. Hence, I pass following order :-

Order

1. Application stands rejected.

Place: Aurangabad

Date: 04.04.2022

Order transcribed on : 04.04.2022

Order checked & signed on : 04.04.2022

GMP/-

[**Smt. V. S. Deshmukh**]
Presiding Officer,
2nd Labour Court, Aurangabad.