



**BEFORE THE JUDGE, LABOUR COURT No. 1 AURANGABAD
(D. S. Khedekar, Judge, Labour Court No. 1)**

**Comp. ULP No. 84/2017
(CNR: MHLC20001397-2016)**

Vinod S/o Narayan Ingale,
Age : 38 years, Occ. Terminated,
R/o Dwarka Nagar, Bajaj Nagar,
Aurangabad

...Complainant

Versus

Varroc Polymers Pvt. Ltd.
Through : It's General Manager,
M-138/139, MIDC, Waluj,
Aurangabad

... Respondent

Advocate: Shri S. S. Vidwauns, for Complainant

Shri S. V. Dankh for Respondent

ORDER ON INTERIM RELIEF APPLICATION (EXH.U-2)

(Delivered on : 31/12/2025)

This complaint is filed under section 28, 30 r/w item no. 1 (a), (b), (d),(f) and (g) of sch. IV of MRTU &PULP act for challenging termination order 04/09/2017 wherein the complainant has claimed interim relief to stay the operation, execution and implementation of termination order dtd. 04/09/2017 and withdraw termination order and reinstate him in service during the

pendency of complaint and direct to pay monthly wages to the complainant during the pendency of the complaint.

2] The brief facts of complainant's case is as under that :the complainant is workman under Section 2(s) of I. D. Act,1947 and respondent is an industry as per Section 2(j) of I. D. Act,1947. He has further claimed that he was working as permanent employee in respondent company in tool room job work base manufacturing company. The complainant was technically qualified person and suited for manufacturing process of the respondent and therefore he was appointed on probation basis on 02/04/2008 and confirmed as per letter of confirmation dtd. 02/10/2008 and worked with respondent till 04/09/2017 as workman. It contended that though the complainant has designated as supervisor for namesake or as nomenclature by the respondent with ulterior intention, the complainant had worked till 04/09/2017 on VMC machine before issuance of illegal and invalid termination letter by respondent.

3] It is the case of the complainant that his service was uninterrupted and continuous in nature without break and completed 240 days continuous service since joining till termination of service hence he is permanent workman of the respondent. The complainant had joined union namely Akhil Bhartiya Chhava Shramik Sanghatana in the year August 2017 in order to fight for his legitimate right against the exploitative nature of respondent factory and he become union member on 15/08/2017 and new members had decided to have meeting on 17/08/2017. It contended that because of joining union the view of respondent drastically and

dramatically changed towards the complainant and the union members had requested respondent management for not to take coercive action upon formation of union.

4] It contended that the respondent management immediately informed workers to face dire consequences if they continue to have union activities. The respondent management personnel were threatening to the complainant and other workers of termination from service and therefore, the complainant along with other co-workman had filed complaint with Dy. Labour Commissioner office and police station MIDC Waluj Aurangabad. The complainant and other workers who become members of the union had decided to file Com ULP No. 270/2017 and prayed interim relief but it was not granted.

5] The complainant contended that the termination of service of complainant by letter dtd. 04/09/2017 is nothing but an act of victimization on the part of respondent due to joining of union Akhil Bhartiya Kamgar Sanghatana and the act of termination is illegal and victimization under item 1(a) of MRTU & PULP Act, 1971. The termination issued by respondent by letter dtd. 04/09/2017 regarding unsatisfactory work of complainant is false and colourable exercise of respondent. The complainant is permanent employee and his work was satisfactory since respondent revises his salary continuously and recently on 25/05/2017 and issued appraisal letter for his good performance. Hence, termination order is illegal and patently false reasons and therefore, it is unfair labour practice on the part of respondent under item 1(b), (d) of

Sch. IV of MRTU & PULP Act, 1971 and on the basis of statement made in the complaint the complainant has claimed interim relief by filing application at Exh. U-2.

6] The respondent has filed written statement at **Exh. C-7** and contended that the complainant is not workman as defined in section 2(s) of Industrial Dispute Act and 3(5) of MRTU and PULP Act. The respondent is a company incorporated under the Companies Act, 1956 having its registered office at and one of its separate industrial establishment at Plot No. M-138, 139, MIDC Industrial Area, Waluj 431136 at Aurangabad. The respondent is engaged mainly in production of moulds at Aurangabad. The respondent employs 6 permanent workmen who are represented by Trade Union. The complainant was employed as permanent vide appointment dtd. 2.4.2008. The respondent appointed complainant on supervisory / administrative post of Sr. Supervisor-TDC S2 Grade on probation and confirmed in the employment on supervisory post of Tool and Die Maker from 2.10.2008 in the Junior Management Cadre.

7] The respondent states that at the time of termination, the complainant was drawing the monthly salary of Rs. 28,722/- (CTC Per Month). While in the employment of the respondent / company, the complainant was mainly discharging the duties of the administrative / supervisory nature in a given shift and section which include amongst others team based management of manufacturing activities of the production department on behalf of the respondent company. The complainant was authorized to impart

the Mitsubishi – Execution work with Tool plan and responsible for quality of machining within the time frame of CAM and supervise the work of others. The complainant was directly reporting to the Assistant Manager-Toolroom.

8] It contended that the complainant's basic purpose of employment was that of administrative and supervisory role in manufacturing activities. The complainant was having authority to attend General Meetings as a representative of his Section/Department. The complainant was having authority to report to the respondent the happenings at the shop floor to the extent of his shift. The respondent therefore states that the complainant is not workman under Section 2(s) of The Industrial Disputes Act, 1947 and as such is not employee under Section 3(5) of The MRTU & PULP Act, 1971.

9] The respondent contended that the complainant while in employment of company the performance of the complainant has been constantly below the expected level from July 2017 onwards and management in meeting was constrained to decide to terminate the complainant and accordingly the complainant is terminated for the reasons mentioned therein w.e.f. 04/09/2017. The respondent has paid requisite notice pay and also his full and final settlement. The termination order dtd. 04/09/2017 is legal, proper and sustainable. The complainant being found always given poor performance considering his post it is thought not desirable to continue to any further trust on the complainant which is legal and proper and accordingly respondent

has fully paid all arrears finally considering notice pay of Rs. 20,557/- and full and final payment amounting to Rs. 48,788/- from the record of respondent.

10] The respondent contended that the complainant is not workman and denied the allegations of the complainant as regards termination and unfair labour practice asserted by the complainant and claimed that the complaint is not tenable and this Court has no jurisdiction to grant interim relief in view of decision of Hon'ble Bombay High Court in the case of W. P. No. 4880 of 1998 in the case of Medical College and Hospital V/s Navgire and Ors. The respondent has relied upon case laws in the reply and claimed that the status of complainant is required to be decided finally and complainant is not entitled for interim relief and if the interim relief as prayed by the complainant is granted that will tantamount to grant the final relief in the main complaint, hence, application is liable to be rejected. The complainant has no prima facie case, balance of convenience for seeking interim relief. The respondent will suffer irreparable loss, manifest injustice and grave prejudice if interim relief is granted to the complainant. For the contentions and objections the respondent claimed rejection of application with cost.

11] On the basis of the contentions of both the parties, following points arise for determination of application. I have recorded my findings against each of them for the reasons given below :-

Sr No	Points	Findings
1	Whether the complainant proves that there is a prima facie case in his favour ?	Affirmative
2	Whether the complainant proves that balance of convenience lies in his favour ?	Affirmative
3	Whether respondent will suffer irreparable loss if interim relief is granted in favour of the complainant ?	Negative
4	What order ?	As per final order.

REASONS

12] The complainant has relied upon documents at **Exh. U-4** i.e. appointment letter, confirmation letter, increment letters, termination letter, union membership form, intimation letter, complaint against the respondent, intimation letter, applications to the respondent, application to the MIDC, Police Station, application to the Dy. Labour Commissioner. The complainant has also relied upon documents at **Exh. U-18** i.e. certified copy of inspection reports, certified copies of statements, certified copy of machine shop shift schedule at **Exh. U-20**.

13] The respondent filed documents at **Exh. C-13** i.e. computer generated copy of shift schedule. The respondent also relied upon documents at **Exh. C-29** i.e. the copy of Revision ULP No. 140/2025.

14] The complainant has relied upon citations filed at Exh. U-27 are as follows :

- 1] **Bombay Dyeing and Manufacturing Company V/s R. A. Bidoo, LAWS (BOM) 1989-6-16,**
- 2] **National Engineering Industries Limited V/s Kishan Bhageria, LAWS (SC) 1987-11-89,**
- 3] **Inamdar A. D. V/s Bajaj Tempo Ltd., LAWS (BOM) 2000-1-34,**
- 4] **The Management of Computer Graphics Ltd. V/s D. Ganeshan and Anr., W. P No. 12598/2010.**

15] The complainant has relied upon citations filed at Exh. U-28 are as follows :

- 1] **Mahindra and Mahindra Ltd. V/s Dwarkanath Babaji Dalvi, LAWS (BOM) 2006-2-127.**

16] The respondent has relied upon citations filed at Exh. C-33 are as follows :

- 1] **Ravindra Bhagyanarayan Thakur V/s Lokmat Media Pvt. Ltd., 2018(3) Mh. L. J. 730,**
- 2] **India United Mills No. 2 V/s Ram Murat Haridwar Kurni and Others, 1996 (3) L.L.N. 600.**

17] The respondent has relied upon citations filed at Exh. C-35 are as follows :

- 1] **Anup Engineering Ltd. V/s Shreenarayan Kanaiyalal, 1996 (2) L.L.N. 859,**
- 2] **Punjab Dairy Development Corporation Limited and Ors. V/s Kala Singh and Ors., MANU/SC/0704/1997,**

- 3] Engineering Laghu Udyog Employees' Union V/s Judge, Labour Court and Industrial Tribunal and Anr., (2003) 12 Supreme Court Cases 1,
- 4] Shankar Amrita Deshmukh V/s Paper & Pulp Conversions Ltd. And Ors., MANU/MH/0361/1995,
- 5] V. K. Engineering Works Pvt. Ltd. V/s Gunjotikar V. B. and Ors., MANU/MH/0369/1995,
- 6] India United Mills No. 2 V/s Ram Murat Haridwar Kurmi, MANU/MH/0258/1996,
- 7] Mahatma Gandhi Memorial Hospital V/s Madhukar Vishwanath Ranawade and anr., 1996 SCC OnLine Bom 49,
- 8] Executive Engineer, M. S. E. B. and Ors. V/s Industrial Court and Ors., MANU/MH/0783/2000,
- 9] Solapur Janata Sahakari Bank Ltd. & Anr. V/s Vilas Digambar Kamble, 2002 (10) LJSOFT 66,
- 10] Sidhnath Bhanudas Ghodke V/s Excel Industries, Ltd., 2002 SCC OnLine Bom 235,
- 11] Vajidali T. Kadri V/s M/s D. D. Shah and Co., 2007 SCC OnLine Bom 719,
- 12] D. D. Shah and Co. V/s Vajidali T. Kadri, 2007 (3) Mh. L. J. 878,
- 13] Cambata Aviation Pvt. Ltd. And Ors. V/s Vijay Murthy Nadar, 2008 SCC OnLine Bom 288,
- 14] Municipal Corporation of Gr. Mumbai and Anr. V/s Municipal Mazdoor Union, Mumbai, 2011 SCC OnLine Bom 1568,
- 15] Zilla Parishad, Jalgaon V/s Maya Tukaram Sonawane, 2015 SCC OnLine Bom 8359,

16] Western Coalfields Ltd. V/s Santosh Kumar S/o Babulal Gupta and Anr., 2017 SCC OnLine Bom 8662,

17] The management of Naharhabi Tea Estate V/s Presiding Officer Labour Court and Anr., (1997) 3 Gauhati Law Reports 3,

18] Gujarat Mazdoor Sabha V/s Indian Oil Corporation Ltd. And 3 Ors., MANU/GJ/0466/2005.

18] I have heard learned Advocate for complainant and respondent. The learned Advocate for complainant has filed written notes of argument at Exh. U-29 whereas the learned Advocate for respondent has filed written notes of argument vide Exh. C-32.

19] I have gone through the contentions of both the parties and documents, case laws relied upon and filed on record. I have given thoughtful consideration to the contentions of the both parties and proceeded to discuss the points arises for consideration mentioned herein above.

AS TO POINT NOS. 1 TO 3 :-

20] These issues are relates to the question of prima facie case, balance of convenience and hardship which are interlinked with each other, therefore, discussed under one head for the sake of convenience and brevity. Before proceeding to deal with the facts asserted by the parties, it is material state herein that the objection as regards whether the complainant is workman as defined under Section 2(s) of the I. D. Act, 1947 and consequently an employee under Section 3(5) of MRTU & PULP Act, 1971 was raised

by the respondent and accordingly preliminary issue was framed and on the basis of statement of parties preliminary issue of workman is decided on 10/10/2024 and thereby it is held that the complainant is workman and employee as defined under the I. D. Act 1947 and MRTU & PULP Act 1971 respectively and therefore, consideration of allegations of the complainant and statement of respondent for decision of interim relief is necessary.

21] The complainant has come with case that he is workman and employee of respondent by virtue of appointment on probation basis on 02/04/2008 and confirmed as per letter of confirmation dtd. 02/10/2008 and he had worked with the respondent till 04/09/2017 as workman. Whereas the respondent has disputed the status of complainant as workman, however has claimed that the complainant was appointed vide appointment dtd. 02/04/2008 and the respondent had appointed complainant on supervisory / administrative post of Senior Supervisor-TDC. The complainant was confirmed in the employment on supervisory post of Tool and Die Maker on 02/10/2008 in the junior management cadre and at the time of termination complainant was drawing monthly salary of Rs. 28,722/- per month.

22] In view of statement of complainant and undisputed facts asserted by respondent, the case of alleged termination asserted by the complainant needs to be considered when the complainant was working with the respondent and the respondent has issued termination letter dtd. 04/09/2017 to the complainant which is filed on record at Exh. U-4 Sr. No. 4 page No.

9. By perusal of termination letter, it appears that there is reference of contract of employment dtd. 02/04/2008 and it has been stated in the letter that it has been observed from efficiency record and evaluation that the performance of the complainant has been below expected levels in spite of management has cautioned the complainant to improve his performance. As a consequence there is serious administrative inconvenience for the management to administer production activities in efficient manner and the same is also effecting the over all discipline in the factory.

23] In view of aforesaid observation in the termination letter, the management has decided to terminate the contract of employment with immediate effect and complainant is terminated from the employment of company w. e. f. 04/09/2017. In view of contents of letter and the observation of the respondent with respect to the performance of the complainant, the act of management to give caution for the complainant in order to improve performance, the aspect of assessment of performance through respondents and through relevant and material documents thereof the action initiated by respondent needs to be examined.

24] It appears that the respondent has stand by with the case of issuing termination letter/ order against the complainant however, there is no specific case of respondent as regards issuing prior notice to the complainant under Section 25-F of the I. D. Act,1947 and before issuing termination no particulars of incidence or performance based notices are issued to the complainant for observing performance of the complainant below expected levels

and therefore, consideration of action of respondent against the complainant is necessary. It would be material to state that the actions initiated by the respondent against the complainant for assessment of performance would have definitely strengthen the case of termination with immediate effect, however, prima facie there are no particulars pleadings or prior action against the complainant from the respondent for forming opinion of performance of complainant before issuing termination against the complainant.

25] The case of respondent is that the performance of the complainant has been constantly below the expected level from July 2017 on wards and management had constrained to decide to terminate the complainant. From July 2017 till issuance of letter of termination the respondent has not pleaded to issue memos, notices or warning to the complainant for his performance below the expected level and no particulars are pleaded prima facie to justify immediate termination of the complainant was necessitated. It is alleged that there was loss of confidence against the complainant, however there are no such course of action through respondent to assess the performance of complainant, hence case of performance prima facie appears to be putforth as reason for termination without any supporting documents.

26] The complainant has stated that he was working on VMC machine till 04/09/2017 and issuance of letter for termination is illegal and victimization. According to the complainant in the month of August 2017 he had joined union Akhil

Bhartiya Chhava Shramik Sanghatana in order to fight for his legitimate right against the exploitive nature of respondent factory and become member on 15/08/2017 and thereafter new members have decided to have meeting on 17/08/2017 and because of that the view of respondent had drastically and dramatically changed towards the complainant. It is alleged by the complainant that the respondent management had threatened the complainant and co-workers for dire consequences, if they continue to have union activities and the ultimate result of the consequences of formation of union and becoming member of the complainant, it prima facie appears that the respondent has issued termination letter on 04/09/2017 to the complainant under the garb of unsatisfactory work of the complainant.

27] In view of statement of complainant and considering the activities of becoming members prima facie shows that the respondent has undertaken the action under colourable exercise of power against the complainant despite the fact that the complainant is permanent employee and he was satisfactorily performing his work and the respondent had issued appraisal letter to the complainant on 25/05/2017. By the contents of termination letter, prima facie action of respondent shows that the action of termination is taken without service of prior notice, memo or bringing the performance of complainant to his notice or any warning for improvements for the performance or by letter for any positive action as regards the work of complainant however, no such particulars are pleaded or no such documentary proof is produced on record by the respondent, therefore, the action of respondent

prima facie appears to be in colourable exercise of their powers for terminating services of the complainant since the complainant had joined the union and sought to fight for his legitimate right against the exploitive nature of respondent and decided to hold the meeting by the new member.

28] If the action of respondent is considered on becoming the complainant as member of union, prima facie issuing termination letter with immediate effect showing the clear intention of the respondent which is nothing but unfair labour practice against the complainant for terminating his services without following due procedure despite the fact that the complainant was permanent employee of the respondent. The respondent has issued termination letter by observing the performance of the complainant below the expected levels however, did not opted to issue any prior notice, warning, memo or no such reference thereof in the pleadings to justify the immediately effecting termination or immediate action of termination, therefore, the action of respondent prima facie shows act of victimization and unfair labour practice without following provisions of Section 25-F of the I. D. Act, 1947.

29] In view of statement of complainant and action of respondent by virtue of issuing termination letter prima facie shows that the termination letter is issued without considering the past performance, past record and the work of the complainant and therefore, no particulars and details of warning of performance is referred in the letter of termination and also it is not pleaded, this would show that the action of respondent is not as clear as claimed

in letter, however lack of consideration of past record or lack of issuance of memo or warning has shown unfair labour practice employed by the respondent as complained by complainant and showing the act of victimization. The action is initiated against the complainant for his action of joining member of the union and therefore, I am of the prima facie view that the issuance of termination letter is colourable exercise of powers of the respondent and issued under unfair labour practice falls under item 1 of Sch. IV of MRTU & PULP Act, 1971.

30] If there would have been below performance level work of complainant, then naturally being prudent man the respondent could have initiated action by memo or warning letter, however there was no such action and situation and therefore prima facie shows that no such action was undertaken by the respondent and therefore there is no such pleading and no material documents are relied by the respondent to justify the action of termination for below performance level work. Since the action is initiated with immediate effect under the colourable exercise of powers to terminate the complainant and it was proposed without following due procedure and therefore, prima facie case and balance of convenience lies in favour of the complainant for seeking interim relief.

31] The complainant has claimed to stay the operation, execution and implementation of the termination order dtd. 04/09/2017 and the reinstatement in service during the pendency of the complaint and also claimed to direct to pay monthly wages to

the complainant during pendency of the complaint. On this aspect the respondent has raised objection by virtue of written arguments and filing case laws on record referred herein above and claimed that the relief of reinstatement as sought at the interim stage would amount to granting final relief and restoring status quo ante which is impermissible in law especially in case of involving loss of confidence.

32] On the other hand the learned Advocate for complainant by virtue of written argument claimed that the termination of services of complainant who was working since last 10 years by violating provisions of Section 25-N, 25-F and 25-G of the I. D. Act, 1947. There is violation of provisions of law while issuing termination order and action under exercise of unfair labour practice by the respondent by leveling allegations of unsatisfactory work without issuing prior notice memo or warning for improving performance and that to without conducting domestic enquiry against complainant, and therefore there is colourable exercise of power. The action of respondent prima facie shows issuance of termination without memo, show-cause notice, charge-sheet and violating principles of natural justice and without following procedure under Section 25-N, 25-F and 25-G of the I. D. Act, 1947 and therefore in that view of matter prima facie the termination is illegal and victimization of the complainant, therefore, complainant is entitled for reinstatement as prayed.

33] In view of submission of learned Advocate for complainant and respondent consideration of case laws relied upon

by the complainant and respondent is necessary to find out the views on the aspect of interim relief on the claim of reinstatement and stay claimed by the complainant. The complainant has relied upon case laws at Exh. U-27. The complainant has relied upon case law Mahindra and Mahindra (supra) wherein the powers of Labour Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workman have been considered. By taking note of this decision it appears that therein it is held that the interim relief is always granted in the aid of final relief. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his right in suit or proceeding.

34] Whereas the respondent has claimed that the interim relief of reinstatement can not be granted as it would tantamount to granting final relief. The respondent has relied upon case laws at Exh. C-33 and C-35 and by considering these case laws it appears that most of the cases are arising out of domestic inquiry and the dismissal of workman by the management was held in a particular case and therefore, in these relied cases at the interim stage the reinstatement of the workman is not found suitable and it was declined by holding that granting relief of reinstatement at the time of interim stage would amount to granting final relief.

35] The respondent has relied upon case laws at Exh. C-33 which are referred as follows with the reference of decision for consideration of issue :

1] **Ravindra Bhagyanarayan Thakur V/s Lokmat Media Pvt. Ltd., 2018(3) Mh. L. J. 730**, wherein issue of dismissal from service on misconduct was in issue and reinstatement by way of interim relief was considered. The order of dismissal prima facie in violation of Section 33-2(B) and on the findings recorded therein interim relief of reinstatement was granted. It is held that the final relief of reinstatement depends upon proof of misconduct. If employer fails to prove misconduct relationship of employer-employee would continue and setting aside of dismissal order at that stage final relief would be entitled. Hence, employees are not entitled for reinstatement by way of interim relief. Order of granting interim relief by tribunal was quashed and set aside.

36] The respondent has filed citations at Exh. C-35 which are referred as follows with the reference of decision for consideration of issue

1] **Anup Engineering Ltd. V/s Shreenarayan Kanaiyalal, 1996 (2) L.L.N. 859**, wherein the dismissal of employee relates back to the date on which employee was dismissed or whether it takes effect from the date of Labour Court's award was considered.

2] **Punjab Dairy Development Corporation Limited and Ors. V/s Kala Singh and Ors., MANU/SC/0704/1997**, wherein the dismissal by management was held valid on recording findings and on evidence and it would relate back to the date of original dismissal and not from the date of Judgment of Labour Court.

3] **Engineering Laghu Udyog Employees' Union V/s Judge, Labour Court and Industrial Tribunal and Anr., (2003) 12 Supreme Court Cases 1**, wherein the power of Labour Court Tribunal and

National Tribunal to give appropriate relief in cases of dismissal or discharge of workman and its validation and effectiveness is considered.

4] **Shankar Amrita Deshmukh V/s Paper & Pulp Conversions Ltd. And Ors., MANU/MH/0361/1995**, wherein the termination of petitioner on the ground that continuation of service was detrimental to company's interest the relief of reinstatement was declined on the ground that action of employer was not illegal.

5] **V. K. Engineering Works Pvt. Ltd. V/s Gunjotikar V. B. and Ors., MANU/MH/0369/1995**, wherein the order of petitioner company directed to lock out within 8 days of passing order was challenged and ex-parte interim relief was granted and in such case grant of whole and consequential relief can only be granted after hearing the complaint and therefore, it was held that there was serious infirmity in the order and therefore, order is liable to be set aside.

6] **India United Mills No. 2 V/s Ram Murat Haridwar Kurmi, MANU/MH/0258/1996**, wherein the issue of extension of service order of not granting service was challenged and upholding order of retirement was held to be unjustified in ordering retention of first respondent in service till he attains the age of 63 years.

7] **Mahatma Gandhi Memorial Hospital V/s Madhukar Vishwanath Ranawade and anr., 1996 SCC OnLine Bom 49**, wherein the order of directing Junior Administrative Officer drawing Rs. 9,000/- as salary to retire at the age of 58 years was challenged by way of complaint and application of interim relief was allowed. The issue of allowing application was considered and the aspect of allowing application was under consideration and order of interim relief was granted by not only quashing retirement order but also

restraining employer from retiring till age of 60 years, therefore, order of interim relief was set aside.

8] **Executive Engineer, M. S. E. B. and Ors. V/s Industrial Court and Ors., MANU/MH/0783/2000**, wherein complaint challenging termination of service was filed and interim relief was sought and by virtue of interim relief final relief was granted and therefore, the Hon'ble High Court has held that care needs to be taken by the Court interim relief should not be such which would amount to grant of final relief at interlocutory stage unless there are exceptional circumstances and therefore, impugned order was set aside.

9] **Solapur Janata Sahakari Bank Ltd. & Anr. V/s Vilas Digambar Kamble, 2002 (10) LJSOFT 66**, wherein this issue relates to the application of interim relief to be postponed for consideration till the validity of enquiry is taken up for consideration by the Labour Court and decided.

10] **Sidhnath Bhanudas Ghodke V/s Excel Industries, Ltd., 2002 SCC OnLine Bom 235**, wherein the services of petitioner was terminated on charges of abnormal behaviour.

11] **Vajidali T. Kadri V/s M/s D. D. Shah and Co., 2007 SCC OnLine Bom 719**, wherein dismissal of appellant without holding domestic enquiry was in consideration and employer can justify the action by leading necessary evidence in support of such action before the Labour Court for the first time.

12] **D. D. Shah and Co. V/s Vajidali T. Kadri, 2007 (3) Mh. L. J. 878**, wherein dismissal of employee without enquiry prior to the dismissal is considered and the right of justify the action by leading

necessary evidence in support of such action for the first time before the Labour Court remains unaffected.

13] Cambata Aviation Pvt. Ltd. And Ors. V/s Vijay Murthy Nadar, 2008 SCC OnLine Bom 288, wherein dismissal of an employee for misconduct was considered and order of granting interim relief was quashed. It is held that if the order of dismissal is upheld by the Labour Court the dismissal order would relate back to the date of dismissal of the workman.

14] Municipal Corporation of Gr. Mumbai and Anr. V/s Municipal Mazdoor Union, Mumbai, 2011 SCC OnLine Bom 1568, wherein the tribunal by an interim order held that respondent corporation has prima facie has committed unfair labour practice under item 5 of Sch. IV and wherein it is held that recording of finding to that effect at the interim stage was not justified.

15] Zilla Parishad, Jalgaon V/s Maya Tukaram Sonawane, 2015 SCC OnLine Bom 8359, wherein issue of reinstatement by way of interim relief was considered in case of misconduct and dismissal from service. In granting interim relief in nature of reinstating complainant in service amounts to granting final relief at interim stage. Therefore, reinstatement by way of interim relief not permissible.

16] Western Coalfields Ltd. V/s Santosh Kumar S/o Babulal Gupta and Anr., 2017 SCC OnLine Bom 8662, wherein issue of termination of service of workman and it's validity on the ground of establishing misconduct is considered and on establishing misconduct termination of order was affirmed.

17] The management of Naharhabi Tea Estate V/s Presiding Officer Labour Court and Anr., (1997) 3 Gauhati Law Reports 3,

wherein power of Court to pass interim order in the matter which is considered by Hon'ble Apex Court in the Delhi Cloths and General Mills Co. V/s Shri Rameshwar Dayal reported in 1961(2) SCR page 590 is considered.

18] Gujarat Mazdoor Sabha V/s Indian Oil Corporation Ltd. And 3 Ors., MANU/GJ/0466/2005, wherein issue of completion of conciliation proceeding and completion thereof within one month and submitting report to the appropriate authority was considered and granting of main relief without final adjudication such prayer could not be granted till final disposal of reference and on adjudication by this Court.

37] By taking note of all the case laws and considering the principles laid down by the Hon'ble Supreme Court, Hon'ble High Court, there is no dispute about the propositions of law declared by the Hon'ble Supreme Court and Hon'ble High Court in the cases relied upon and it has held that at the interim stage granting of final relief is not tenable. In the present case the complainant has claimed reinstatement and stay to the execution, implementation of termination order dtd. 04/09/2017 and on withdrawal of termination seeking reinstatement with monthly wages during pendency of the complaint. In view of statement of complainant and respondent and considering the termination letter issued with immediate effect prima facie shows that there was no dismissal or termination of complainant by holding enquiry and therefore the facts and situation of the present case in hand is different than the case laws relied upon by respondent on the aspect of dismissal of employee on holding inquiry.

38] The complainant has claimed relief of declaration as regards action of respondent in engaging unfair labour practice and declaration of termination as illegal, improper and unjust and legally untenable and claiming stay to the termination order with direction of reinstatement in the main complaint. By virtue of interim relief application the complainant is claiming relief of reinstatement and stay to the order of termination and other reliefs are in the nature of final relief and therefore, the interim relief claimed by the complainant is in the aid of main relief. The relief mentioned in complaint para No. 23 of prayer clause a, b and c in the nature of declaration of unfair labour practice and the termination order dtd. 04/09/2017 issued to the complainant by respondent to be declared as illegal, improper and unjust which are of final nature and those are not claimed in the interim relief application.

39] The claim of reinstatement is in the aid of main relief on the ground of issuing termination letter dtd. 04/09/2017 by respondent with immediate effect prima facie appears to be issued without holding inquiry and without following due procedure of section 25 F of the I D Act, 1947. The termination is issued by act of colourable exercise of powers since complainant had joined union and become member and act of victimization of the complainant through respondent. The action of respondent and immediate action of termination without holding enquiry or prima facie establishing actual performance of the complainant below the expected level by giving particulars or details through warning, memo or notices,

therefore, the relief of staying the termination order and reinstatement is prima facie justified and it would not amount to granting of final relief in favour of the complainant.

40] From the case laws relied upon by the respondent and from the action of immediate termination by virtue of letter dtd. 04/09/2017 would shows that prima facie the performance of complainant was neither assessed nor examined and therefore there are no particulars or material to support the case of fair and legal termination and therefore the complainant has made out case for seeking stay to the termination order and reinstatement in service for the act of unfair labour practice committed by respondent and victimization by issuing termination order without considering the past service and record of complainant. The balance of convenience lies in favour of the complainant when the termination is issued without holding domestic enquiry as regards performance or the work of the complainant and proposing termination with immediate effect establishing prima facie act of victimization of the respondent since the complainant had become member of the union and the decided to fight for his legitimate right. The aspect of becoming member of union has resulted the action of termination which is prima facie appears to be in colourable exercise of power by the respondent. Hence, the balance of convenience lies in favour of the complainant for reinstatement as claimed by staying the termination order dtd. 04/09/2017.

41] The objection of respondent for the reinstatement is appears to be from by their statement and placing reliance on the

case laws filed on record, however, the case laws relied upon by the respondent mostly pertains to the dismissal of employees on domestic enquiry and in that context reinstatement of the employee was not found tenable. Some of the case laws are relates to the misconduct and in the circumstances when the misconduct if alleged could have been proved by the trial and in that case granting interim relief would amount to granting final relief which is not permissible. Here in the present case the respondent did not allege misconduct against the complainant or no case of termination by holding enquiry for the misconduct or no allegations of any other misbehaviour of the complainant therefore, the order of reinstatement on the post of the complainant does not cause prejudice on the right of respondent.

42] For the aforesaid reasons I am of the considered view that the complainant has made out prima facie case for staying the operation, execution and implementation of termination order dtd. 04/09/2017. The respondent has prima facie engaged in and engaging in unfair labour practice by issuing termination order without assessment of the performance of the complainant and without giving particulars details of memo, warning or letters issued to the complainant for improving his performance in support thereof and therefore, the claim of complainant for reinstatement in service become justifiable during the pendency of complaint till the decision of final relief of declaration claimed in the main complaint in terms of prayer 23 a, b and c of complaint.

43] The complainant has claimed the interim relief of stay and reinstatement and as prima facie action of termination is appears to be contrary to the provisions of the law and therefore it would automatically result the claim of complainant for entitlement of reinstatement and therefore such relief in the nature of temporary relief could be granted in favour of the complainant and no prejudice or loss would cause to the respondent. It is material to state that on being reinstated the complainant would perform work and after performing work the wages are required to be paid to the complainant till the decision of complaint as monthly wages applicable to the employees in the cadre of complainant during the pendency of the complaint.

44] In the facts and circumstances, I am of the considered view that by granting of interim relief of stay to the termination order coupled with reinstatement of the complainant during the pendency of the complaint does not cause prejudice to the respondent hence, in the facts and circumstances granting of interim relief as prayed would not amounting to granting final relief in favour of the complainant. In view of statement of the complainant and considering the action of termination through respondent with immediate effect due to the alleged unsatisfactory performance of the complainant without prima facie supporting material has resulted to grant equitable relief of reinstatement by considering principles of equality in comparative to the main relief claimed by the complainant and granting interim relief does not amount to granting final relief in favour of the complainant.

45] In view of stay of termination order and reinstatement of the complainant the respondent will not suffer any loss for the reasons that by reinstatement in service work would be extracted from the complainant. For the aforesaid reasons I hold that complainant has made out prima facie case, balance of convenience lies in favour of the complainant, no prejudice or loss would be caused to the respondent if interim relief as prayed is granted in favour of the complainant. Consequently, I answer point Nos. 1 and 2 affirmatively, and point No. 3 negatively and proceed to pass following order;

ORDER

1. The application is allowed.
2. The operation, execution and implementation of termination order dtd. 04/09/2017 is stayed and respondent is directed to reinstate the complainant in service within two months from the date of this order during the pendency of complaint and pay monthly wages to the complainant as applicable to the employees in the cadre of complainant in the respondent company.
3. Application is disposed of accordingly.

(Dictated and declared in open Court.)

**Place: Aurangabad
Date: 31/12/2025**

**(D. S. Khedekar)
Judge,
Labour Court-1, Aurangabad**