

**IN THE INDUSTRIAL COURT, MAHARASHTRA,
BENCH AT : AURANGABAD.**

[PRESIDED OVER BY VIMALNATH S. TIWARI, MEMBER]

COMPLAINT (ULP) NO.162 OF 2018

[CNR NO.MHIC20-000148-2018]

Dinkar Dnyanoba Ghayal
Age : 42 years, Occu.: Service,
R/o. Naigaon Khandewadi,
Tal. Paithan, Dist. Aurangabad.

APPLICANT

Versus

Nirlep Appliances Pvt. Ltd.
(Through Its Authorized Signatory)
Unit-3, Khandewadi,
Tal. Paithan, Dist. Aurangabad.

RESPONDENT

Appearance :- Adv. Shri. N. L. Dhobale for Applicant.
Adv. Shri. T.K.Prabhakaran for Respondent.

ORDER BELOW EXH. U-2

[Passed on 05/10/2021]

1] The Complainant has filed the present Complaint against the respondent for having committed unfair labour practice under Section 28 r/w. Items Nos. 5, 6, 9 and 10 of Schedule-IV of the MRTU and PULP Act, 1971 and have

accordingly prayed inter-alia for directing the respondent to cease and desist from commission of unfair labour practices and to grant benefits of permanency w.e.f. 01.07.2011 and for the payment of wages and arrears akin to other permanent workman of the respondent industry. Alongwith the said complaint, the applicant has also filed an application under Section 30(2) of the said Act seeking various reliefs therein.

2] The relevant fact for the purpose of deciding the present application are as under :

The respondent is a Private Limited Company engaged in business of manufacturing utensils and other household articles with admixture of aluminum, brass, copper and stainless steel, or other metal products like nature. Thus, the said Private Limited Company is an 'Industry' under Section 2(j) of the I. D. Act, 1947 and Section 3(7) of the MRTU & PULP Act, 1971. The complainant is a 'Workman' within the meaning of Section 2(s) of the I. D. Act, 1947 r/w. Section 3(5) of the MRTU & PULP Act, 1971.

3] The applicant was appointed on 01.10.2010 as Gardener -cum- Sweeper -cum- Office Helper, whose job is to maintain garden and clean the office of the respondent and to do other works as directed by it's superiors in the office. He has rendered eight years of continuous service and have completed 240 days in every calendar year since his appointment. He has

been drawing Rs.9,500/- lump sum as wages. Despite having been paid the said wages, the statutory benefits are not extended to the complainant as are extended to other workers in the factory nor the benefits of the Employees Provident Fund, ESIC, Bonus, Privileged Leave, Sick Leave, Casual Leave as are applicable to the other workman in the factory, extended.

4] The work of the complainant is of regular and perennial in nature and despite having worked for year's together, the services of the complainant has not been confirmed with an object to deprive the benefits of permanency and other incidental benefits. The payment of wages was given to the complainant vide cheque till 2016 and thereafter he was paid directly in his Bank Account. There are several representations made by the complainant to the respondent management, as regards to making his service permanent and to provide him other incidental benefits, but the same went unheard. His name was excluded from the Charter of Demand served by Nirlep Appliances Pvt. Ltd. Kamgar / Karmachari Sanghatana, which was included by the said Sanghatana. Thus, the applicant has prayed to direct the respondent not to change the service condition of the applicant and to pay the wages equal to the permanent workers of the respondent by allowing the present application.

5] The Respondent appeared upon the notice issued by this Court wherein Say -cum- W.S. is filed through Advocate

Shri.T. K. Prabhakaran at [Exh.C-4], wherein he has denied various contentions mentioned in the present application. The Learned Advocate for the respondent has strenuously argued that the applicant is engaged as a casual employee to work in the garden for plucking the grass and watering the plants and the said work is of unskilled in nature. The applicant is not employee in the Industry or Factory nor is he engaged in any activity connected to the manufacturing process. Thus, according to him, he is not a workman nor he is an employee either within the meaning of Section 2(s) of the I. D. Act, 1947 or Section 3(5) of the MRTU & PULP Act, 1971. He would further submit that the applicant is engaged on a part-time basis without any specific time schedule fixed or without any working hours. He further submits that the respondent is not engaged in any unfair labour practice as the applicant has not worked for either 240 days in every year nor continuous for 8 years. Thus, the applicants have failed to make out any prima facie case in his favour nor irreparable loss or harm and or inconvenience would cause to him. He has thus prayed to reject the said application with costs by vacating the ad-interim relief dated 04.10.2018 granted earlier by this Court.

6] Having gone through the contentions of rival parties, and the documents submitted in support of the same, following points arise for my consideration, and I record my findings thereon as under, for the reasons to follow.

Sr. No.	<u>P O I N T S</u>	<u>F I N D I N G S</u>
1]	Does the complainant make out a prima-facie case ?	Yes.
2]	Does the balance of convenience lies in favour of the complainant ?	Yes.
3]	Would the complainant suffer any irreparable loss or injury if the interim relief as sought for is rejected ?	Partly Yes.
4]	What order ?	As per final order

R E A S O N S

AS TO POINT NOS.1 TO 3 :-

7] The complainant in support of his contention has filed certain documents alongwith list [Exh.U-4] which includes the cheques issued in the name of the complainant by the respondent, Bank Pass-book, Attendance Record of the complainant for the period between June 2014 and July 2018 etc. The complainant has also later on filed few more documents alongwith list [Exh.U-11] which includes Bank Statement of the complainant for the period between 01.10.2018 to 11.02.2019 and the representation made to Labour Officer, Aurangabad dated 05.02.2019. There are no documents as such filed by the respondent in support of his contention. The complainant in order to obtain interim relief from this Court, has to prima-facie show that the respondent had shown favoritism or partiality, to one set of workers regardless of merits and that he has been

employed as casual for years together, deprive him from the status and privileges of permanent employee and there is failure on the part of the respondent to implement Award, Settlement and Agreement entered between the employees and the respondent and that the respondent has indulged in an act of violence.

8] Heard the Learned Advocates appearing for both the parties and I have gone through all the documents on record filed by the complainant and I have also perused the interim relief application, the say filed by the respondent and the ad-interim relief order dated 04.10.2018 granted earlier by this Court wherein, it is an admitted fact that the complainant is working with the respondent since last several years to be more specific since 2010 as a Gardner -cum- Sweeper and he has been regularly paid for the said services rendered by him. The cheques issued in the name of the complainant amounting to Rs.6,300/- for the month from February 2012 till April 2013 would show that complainant was duly paid by the respondent. The Bank Account Statement of the complainant is filed on record, which would show that the complainant was continued to be paid wages by the respondent from time to time. The attendance record of the complainant for the month between June 2014 to September 2018, apparently shows that he has been attending the work with the respondent, with the timings of attendance of his work.

9] It thus, appears from the above mentioned fact that the complainant has been working on temporary basis and he has continued to work on temporary for years together, thus deprive him, the status and privileges of a permanent worker. The duration and nature of work carried out by the complainant would also prima-facie show that the same is akin to the work carried out by the permanent employees. However, when it comes to granting the status and the privileges attached to it, the respondent appears to have not shown, the same set of policy that are applicable to the permanent employees. Thus, the contention of the Learned Advocate for the respondent that the complainant is engaged as a casual employee doing unskilled work and that he is not engaged in any activity connected to the manufacturing process or that he is engaged in part-time basis without any working hours can be looked into after adjudication of the matter. Though the complainant may not have prima facie made out a case as regard to the failure on the part of the respondent to implement Award, Settlement and Agreement entered between the employees and the respondent and that the respondent has indulged in an act of violence, nevertheless a case as regard to depriving him to grant permanency and the benefits incidental to it is prima facie made out. Thus, in the light of above discussion, I am of the considered view that the complainant has prima facie made out a case and there is balance of convenience in his favour. He has been working for years together with the respondent and in the event, the ad-interim that has been granted by the Court is not confirmed and

in that event, it would lead to irreparable loss to the complainant which cannot be compensated by any means. Hence, in my view, the present application for ad-interim relief at [Exh.U-2] deserves to be allowed by confirming the ad-interim order dated 04.10.2018 granted earlier, with some modification. Therefore, the points Nos.1 to 3 are answered in the affirmative. Hence, I pass the following order :-

ORDER

- 1] The application is hereby partly allowed.
- 2] The ad-interim order dated 04.10.2018 passed by this Court is hereby confirmed, with modification.
- 3] The respondent is hereby directed that the service conditions of the complainant should not be changed without following due process of law, till the disposal of the present complaint.
- 4] The application is disposed of in above terms.

Place :- Aurangabad

Dated :- 05/10/2021.

Sd/-
[VIMALNATH S. TIWARI]
Member,
Industrial Court, Aurangabad.