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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3570 OF 2024

Kamgar Rajya Vima Yojna
Karamchari Sanghatana
(Maharashtra) & Ors. .. Petitioners

Versus

Union of India & Ors. .. Respondents

Ms. Annie Nadar a/w Mrs. O. S. Nadar for petitioners.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 13th MARCH, 2024

P.C.:

- 1.** Learned counsel for the petitioners states that respondents have been served. Let an affidavit of service be filed by the petitioners within a week.
- 2.** However, since no one has put in appearance on behalf of the respondents, let notices be issued to the respondents, returnable on **10th April, 2024**.
- 3.** Learned counsel for the petitioners prays for grant of interim relief to the effect that during the pendency of the writ petition, petitioners may not be repatriated to their parent department.
- 4.** Prior to its merger with Employees' State Insurance Corporation (hereinafter referred to as "the Corporation"),

Employees' State Insurance Hospital at Andheri was run by the State Government. Under a Memorandum of Understanding entered into between the State Government and the Corporation, the hospital was taken over by the Corporation and so far as the employees of the State Government working in the hospital are concerned, a scheme contained in Circular dated 24th June, 2008 was floated for their absorption in the Corporation. According to the said scheme, the employees were initially treated to be on deputation with the Corporation and were required to submit their options for being absorbed in the services of the Corporation. There was some dispute between the Corporation and the employees, which led to a meeting held on 30th January, 2009 and certain decisions in the said meeting were taken, including the decision that the employees will have to submit their option for deputation or absorption in the Corporation.

5. The submission is that pursuant to the decision taken in the meeting dated 30th January, 2009, the petitioners and other like employees were never given any opportunity to exercise their option for absorption and their claim for absorption has been rejected only on the ground that the petitioners failed to make their application seeking absorption within the cut-off date mentioned in the Circular dated 24th June, 2008. It has, thus, been argued that the petitioners were, in fact, denied the opportunity of exercising the option for absorption in the services of the Corporation. Our attention has also been drawn to Clause No.3 of Terms of Absorption contained in the Circular dated 24th June, 2008,

which provided that an employee opting for absorption with the Corporation has to resign from the State Government of Maharashtra service. It is, thus, submitted that in case the prayer for absorption with the Corporation by employee was rejected and prior to that he was made to resign, that would create a very harsh situation for such an employee prejudicing him seriously. It is the submission of the learned counsel for the petitioners that the Central Administrative Tribunal, Mumbai Bench, Mumbai, while passing the impugned judgment and order has not taken into consideration the aforesaid aspects of the matter.

6. Accordingly, we are of the *prima facie* opinion that the impugned action on the part of the Corporation has resulted in denial of the opportunity to the petitioners and like employees to apply for absorption in the services of the Corporation.

7. We, thus, direct that till the disposal of the writ petition, the petitioners shall not be repatriated to their parent department.

8. The respondents shall file their affidavit-in-reply by the next date of listing.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)