IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13300 OF 2023

1. The Maharashtra State Co-operative]
   Marketing Federation Ltd.]

2. Dr. Yogesh Mhase,]
   Managing Director,]
   The Maharashtra State Co-operative]
   Marketing Federation Ltd.]

3. Shri Thombre,]
   General Manager (Administration)]
   The Maharashtra State Co-operative]
   Marketing Federation Ltd.]
   All at Kanmoor House, Narsi Natha Street,]
   Mumbai – 400 009.] … Petitioners

Versus

Smt. Bhagyashree Pravin Kulkarni]
305, Konark Apartment, 'B' Wing, Vadalavi]
Section Ambernath (East), Dist.: Thane–421501.] … Respondent

Mr. Prashant Chavan a/w Mrs. Kinjal Jail & Mr. Hemal i/b Navdeep Vora & Associates for Petitioners.
Mr. Gautam Yadav for Respondent.

CORAM :- SANDEEP V. MARNE, J.
DATE :- 05 JANUARY, 2024

JUDGMENT :

1. ***Rule***. Rule is made returnable forthwith. With the consent of the learned counsel for parties, Petition is taken up for hearing.

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2. Petition is filed by The Maharashtra State Co-operative Marketing Federation Ltd., a Federal Co-operative Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960, challenging the Order dated 28 June 2023 passed by the Member, Industrial Court, Mumbai, on application at Exh.U-11 filed by the Respondent in Complaint (ULP) No.175 of 2019. By the impugned Order, the Industrial Court has granted interim protection to the Respondent in the form of direction to the Petitioners to pay her the wages from the date of her transfer to contractor along with all consequential benefits of annual increment till final disposal of the main complaint. The Petitioners are further directed to allow the Respondent to mark her attendance on the muster-roll till final disposal of the main complaint.

3. Considering the narrow controversy involved in the present Petition, it is not necessary to narrate all the facts in detail. Suffice it to record that the Respondent came to be employed as a Typist on daily wage basis by the Petitioners – Federation allegedly to cope up with the work of temporary nature. It is Respondent’s case that her engagement was made on intermittent basis due to temporary rise in the work. The Respondent filed Complaint (ULP) No.175 of 2019 under the provisions of Section 28 read with Item Nos.3, 6, 9 and 10 of Schecule IV of The Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (‘**MRTU & PULP Act**’) seeking a declaration that action of the Petitioners in transferring her from their regular muster-roll to the muster-roll of M/s. Brisk India Pvt. Ltd. (‘**Brisk**’) was illegal. She further sought direction for grant of regularization / permanency on the post of Typist. The complaint was filed alleging that despite being appointed as Typist on the roll of Petitioners-Federation with effect from 1 September 2016 and despite completion of 240 days of continuous service, she was

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not regularized and her services are exploited on payment of daily wages of Rs.500/- per day which were subsequently increased to Rs.600/- per day with effect from 1 March 2017. The Respondent alleged in her complaint that she noticed on 31 May 2019 that since February 2019, the Petitioners-Federation was routing her wages through Brisk, a contractor providing contractual workers to the Federation. That, her signature was taken on a blank page on a previous occasion which was utilized for attaching her services with Brisk, without her knowledge or consent. The Respondent is aggrieved by the action of the Federation in transferring her services to Brisk and has accordingly approached the Industrial Court by filing Complaint (ULP) No.175 of 2019.

4. In her complaint, the Respondent filed application at Exh.U-2 for interim relief. The application was allowed by Order dated 30 April 2022 directing Petitioners to maintain *status-quo* with regard to the employment of the Respondent till disposal of the complaint. Petitioners are not aggrieved by the said interim order dated 30 April 2022 and have apparently implemented the same. What has given rise to the present litigation is the action of the Respondent in filing further application for grant of additional interim relief / clarification on 14 September 2022 at Exh.U-11. The application is premised on *prima facie* finding recorded by the Industrial Court in order dated 30 April 2022 that the Respondent is an employee of Petitioner – Federation and not that of Brisk. On the basis of this finding, she addressed letter to the Petitioners for payment of wages through Federation and not through Brisk. Since the Petitioners continued paying wages through Brisk, she filed application at Exh.U-11 seeking additional relief seeking following prayers:

> "*[a] THAT the Hon'ble Court be pleased to issue necessary clarification vis-a-vis the Order dated 30.04.2022 that the Complainant having been held to be an employee of the Respondent No.1 Federation, is entitled to all consequential benefits thereof;*

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[b] THAT the Hon'ble Court be pleased to direct the Respondents, their officers and agents acting through them to pay the wages of the Complainant with effect from the date of illegal transfer along with all consequential benefits including annual increments being given to all other employees.

[c] THAT the Hon'ble Court be pleased to direct the Respondents, their officers and agents acting through them to allow the Complainant to mark her attendance on the muster roll of the Respondent Federation with immediate effect and to continue to allow the same till final decision in the present matter.

[d] For interim and ad-interim relief in terms of prayer clauses (a) to (c) above.

[e] For costs of this Application.

[f] For such further and other relief as the facts and circumstances of the case may require."

5. The application was resisted by the Petitioner – Federation by filing its reply. The Industrial Court, by its order dated 28 June 2023, has proceeded to allow the application at Exh.U-11 and has directed the Petitioner – Federation to pay wages to the Respondent from the date of her transfer to Brisk along with all consequential benefits including annual increment till final disposal of the main complaint. Petitioners are further directed to permit the Respondent to mark her attendance on the muster-roll of the Petitioner – Federation till final disposal of the complaint. Aggrieved by the order dated 28 June 2023, the Petitioner – Federation has filed the present Petition.

6. Mr. Prashant Chavan, the learned counsel appearing for Petitioner – Federation, would submit that the Industrial Court has committed a gross error in entertaining the Respondent's application for additional interim relief when she was sufficiently protected by the order dated 30 April 2022 directing maintenance of *status-quo*. That, Petitioner

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– Federation has complied with the order dated 30 April 2022 and has continued the employment of the Respondent. That, therefore, there was no occasion for the Respondent to file application for additional interim relief.

7. Mr. Chavan would further submit that the nature of additional interim relief granted by the Industrial Court by order dated 28 June 2023 is in the nature of final relief, which could only be granted at the stage of disposal of complaint. That the effect of the order dated 28 June 2023 is such that the Respondent is virtually directed to be treated as employee of the Federation and not of the contractor with a further direction to pay her annual increments. Mr. Chavan would further submit that the Petitioner – Federation has engaged services of Brisk for outsourcing some of the activities for which the contractor provides manpower. That, the Petitioner – Federation is entitled to do so. That, the Respondent is appointed by the Brisk in the year 2019. That, she had accepted and filed the appointment order issued by the Brisk and has reported to duty with Petitioner – Federation with effect from 16 March 2019. That, the Respondent cannot now take a *volte face* and feign ignorance about her engagement through the contractor. That, the Respondent has no semblance of case on merits and therefore the Industrial Court ought not to have entertained her application for grant of additional interim relief. He would pray for setting aside the impugned order.

8. *Per contra*, Mr. Gautam Yadav, the learned counsel appearing for the Respondent, would invite my attention to the contract executed by the Petitioner – Federation with Brisk in respect of period from 1 May 2019 to 30 April 2020 and he would demonstrate a contradiction in the

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alleged appointment order which envisages joining with effect from 16 March 2019. According to Mr. Yadav, if the contract is awarded to Brisk on 1 May 2019, how the Respondent could be shown to have been appointed by Brisk on 16 March 2019 is unfathomable. He would submit that the Respondent is actually employee of the Petitioner – Federation and has illegally been shown to have been recruited through Brisk, only with a view to avoid the liability to pay her wages, increment and regularization benefits.

9. Mr. Yadav would invite my attention to the finding recorded by the Industrial Court in the previous interim order dated 30 April 2022 that the Respondent is actually the employee of Petitioner – Federation and not of the contractor. He would submit that once the said finding was recorded, it was incumbent on the part of the Petitioners to pay her salary directly and to permit her to sigh the muster-roll. That, the Petitioners are not permitting her to sign the muster-roll and the Respondent is required to submit a handwritten application every day to prove attendance on duty. That, therefore, no patent error can be said to have been committed by the Industrial Court in directing the Petitioners to permit the Respondent to sign the muster-roll.

10. Mr. Yadav would further submit that there is no actual or physical transfer of services of the Respondent from the Petitioner – Federation to Brisk. That, the Petitioner continues to perform same work at same place even after engagement through the contractor. That, she was not issued any letter by the Petitioner – Federation for alleged transfer of her services to Brisk. That, there was no interruption in the two spells of services. That, she is illegally shown to be employee of Brisk without her knowledge and consent. Lastly, Mr. Yadav would submit that

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the complaint is at an advanced stage of trial and the Respondent's cross-examination is being conducted and that it would not be expedient for this Court to interfere in the directions issued by the Industrial Court at this stage. He would pray for dismissal of the Petition.

11. Rival contentions of the parties now fall for my consideration.

12. The complainant claims that she has been appointed by the Petitioner – Federation in its service with effect from 1 September 2016. Perusal of various documents produced along with complaint would show that the Petitioner – Federation used to pay her daily wages on the basis of number of days put in by her every month. While the claim of the Respondent is about continuous service, it is the defence of the Petitioner – Federation that the engagement was made intermittently, depending on the availability of work. This is something which the Industrial Court would decide at final disposal of the complaint. In her Complaint (ULP) No.175 of 2019, the Respondent has sought following reliefs :

"*[a] THAT this Hon'ble Court be pleased to hold and declare that the Respondents, their officers and agents acting through them have indulged in acts of unfair labour practices under items 3, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971.*

[b] THAT this Hon'ble Court be pleased to, by a mandatory order and direction, direct the Respondents, their officers and agents acting through them, to cease and desist from engaging in acts of unfair labour practices under items 3, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971.

[c] THAT this Hon'ble Court be pleased to hold and declare that the act of the Respondents in transferring the name of Complainant from their regular muster roll to the muster roll of M/s. Brisk India Pvt. Ltd. was ex-facie illegal and consequently quash and set aside the illegal transfer.

[d] THAT this Hon'ble Court be pleased to direct the respondents to grant Regularization / permanency to the complainant on the post of Typist with immediate effect along with all consequential benefits.

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[e] *THAT pending the hearing and final disposal of the Complaint, this Hon'ble Court be pleased to restrain the Respondents, their officers, agents and/or contractors acting through them from terminating the service of the Complainant and to continue to provide work to the Complainant uninterruptedly.*

[f] *For interim and ad-interim relief in terms of prayer clauses [e] to [g] above.*

[g] *For costs of this Complaint.*

[h] *For such further and other relief as the facts and circumstances of the case may require.*"

13. As observed above, the Industrial Court had already granted interim relief in favour of the Respondent by partly allowing her application at Exh.U-2 vide order dated 30 April 2022 directing the Petitioner – Federation to maintain *status-quo* as to the employment of the complainant till the disposal of the complaint on merits. Direction to maintain *status-quo* would imply continuance of same position as it existed as on 30 April 2022. There is no dispute to the position that as on 30 April 2022, the wages of the Respondent were being paid by Brisk. In her complaint, the Respondent averred that her name was transferred from the muster-roll of the Federation to the muster-roll of Brisk. This would show that as on the date of passing of the interim order dated 30 April 2022, the name of the Respondent appeared on the muster-roll of Brisk. Thus, the order of *status-quo* granted by the Industrial Court meant that the status as prevailed as on 30 April 2022 was required to be maintained till disposal of the complaint. No error therefore can be traced in the action of the Petitioner – Federation in maintaining the status by treating the Respondent as employee of Brisk, by paying her salary through Brisk and by not permitting her to sign the muster-roll of Petitioner – Federation in accordance with the interim order passed by the Industrial Court on 30 April 2022. If this is a position, it becomes quite incomprehensible as to what was the occasion for Respondent to file

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application at Exh.U-11 to seek additional interim order or for clarification.

14. The Respondent claims that she filed application for additional interim relief on the basis of *prima facie* findings recorded by the Industrial Court in the order dated 30 April 2022 that she is the employee of Petitioner – Federation and not of the contractor / Brisk. In this regard, the averments made by the Respondent in paragraphs 4 and 7 of the application at Exh.U-11 are relevant which read thus :

> "*[4] Whilst granting protection, this Hon'ble Court was also pleased to come to a prima facie conclusion that the Complainant was an employee of the Respondent Federation and not that of the alleged contractor, viz. Brisk India Pvt. Ltd. This Honble Court shall find the said observations in paragraph (9) and (10) of the above referred Order at Exhibit "A" annexed hereto. The Complainant craves leave to refer to the aforesaid Order when produced.*
>
> *[7] It is submitted that once this Hon'ble Court has come to a conclusion regarding her status as an employee of the Federation and not that of the alleged contractor, the consequential benefits, viz. allowing her to mark her attendance and further to make the payment of wages through Respondent Federation would automatically follow.*"

15. In my view, the very premise for filing application for interim relief at Exh.U-11 by the Respondent was totally baseless. The *prima facie* finding recorded by the Industrial Court was only for the purpose of granting the interim relief of *status-quo*. Based on such *prima facie* findings, the Industrial Court did not grant any further relief with regard to payment of salary by Federation or signing the muster-rolls of Federation in favour of the Respondent. Therefore, the said *prima-facie* finding could not have been used by the Respondent for claiming additional interim relief by filing application at Exh.U-11. The Industrial Court has thus committed a gross error in entertaining the Respondent's application at Exh.U-11, which ought to have been dismissed.

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16. Perusal of the impugned order dated 28 June 2023 would show that three directions are issued by the Industrial Court viz. (i) to pay wages from the date of transfer, (ii) to pay annual increments and (iii) to permit the Respondent to mark her attendance on muster-roll of Petitioner – Federation. I proceed to examine the effect of all three directions issued as additional interim relief by the Industrial Court.

17. So far as first direction of payment of wages from the date of transfer is concerned, the same appears to have been founded on the observation of the Industrial Court in paragraph 9 of the order that '*After passing of the Order dated 30.04.2022, it is the contention of the Complainant that she is not being paid wages and she is not being allowed to sign on the muster-roll.*' The finding of the Industrial Court about non-payment of wages after 30 April 2022 is factually incorrect. Mr. Yadav fairly concedes to the position that the Respondent is being paid wages, *albeit* through the contractor-Brisk. It appears that the Industrial Court was made to believe that the Respondent was not receiving any wages after passing of order dated 30 April 2022, which is factually incorrect. The Industrial Court has directed such payment of wages *'with effect from the date of transfer.*' Respondent's transfer with Brisk has happened in February 2019 as per Respondent's own case. Thus, the interim direction of the Industrial Court would mean that the Petitioner – Federation will have to pay her wages from February 2019. While passing such blanket interim order, the Industrial Court has lost sight of the fact that the Respondent has drawn wages from February 2019 till passing of impugned order through the contractor-Brisk. The interim order of the Industrial Court would result in payment of wages twice to the Respondent.

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18. The second direction of the Industrial Court is to pay wages *'along with all consequential benefits including annual increment being given to all other employees.*' While issuing this direction, the Industrial Court has glossed over the fact that the Respondent is a daily wage employee. According to her complaint, she earns daily wage of Rs.600/- per day. She has admittedly not placed in any pay-scale. Therefore, how increment could be granted is something which becomes perplexing. As of now, Respondent's complaint for regularization in service is pending. There is no prayer in main complaint for placement in regular payscale and award of increments. 'Increment' is payable in a payscale and not in respect of daily wages. If the impugned directions are to be implemented, services of the Respondents will have to be placed in a payscale w.e.f. February 2019 and she will have to be granted increments for the last about 5 years. This relief can flow through the relief of regularization, which prayer is pending determination at the time of final disposal of the Complaint. However the Industrial Court has proceeded to grant consequential reliefs flowing out of regularization at interim stage, that too by way of additional interim relief over and above the status quo granted earlier. Thus, the additional interim direction to pay increment suffers from glaring error.

19. So far as the third interim direction in the form of permitting Respondent to mark her attendance on muster-rolls of the Petitioner – Federation is concerned, I am of the view that there was no necessity for passing such order. The Respondent is already protected by interim order dated 30 April 2022, which mandated maintenance of *status-quo*. As observed above, the status of the Respondent as on 30 April 2022 was that she was treated as employee of Brisk, she was paid wages through Brisk and she was not signing the muster-roll of Petitioner–Federation.

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Thus, the direction now granted the Industrial Court by order dated 28 June 2023 is in direct contradiction of the interim order earlier granted by it on 30 April 2022. Therefore, even the interim direction for permitting the Respondent to mark her attendance on muster-rolls of the Petitioner – Federation is unsustainable.

20. After considering the overall conspectus of the case, I am of the view that the Industrial Court has completely misdirected itself in entertaining Respondent's application at Exh.U-11 and in allowing the same. The order passed by the Industrial Court on 28 June 2023 is thus unsustainable. Respondent is already protected in the form of continuation of her services. As per Respondent's own admission, she is being treated as employee of Brisk since February 2019. Thus, the position of treatment as employee of Brisk, payment of wages through Brisk and non-marking of attendance on muster-roll of Petitioner – Federation has been operating for the last 5 long years. I do not see any reason why this position, which is operating during last 5 years, warranted any change during pendency of the Respondent's complaint by passing any additional interim order. Respondent's contention is that the Compliant is at an advanced stage of hearing and her cross-examination is underway. If this is true, it was all the more necessary for the Industrial Court not to entertain her application for additional interim relief. The services of Respondent have already been protected by earlier interim order of *status quo*. Mr. Chavan has fairly submitted that the Petitioner-Federation would continue to act in accordance with the *status quo* order by continuing her services through Brisk and by paying her wages through Brisk. Paying her wages through the Federation, granting her annual increments or marking her attendance on the rolls of the Federation at this juncture is not at all warranted. The impugned Order dated 28 June

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2023 passed by the Industrial Court suffers from serious jurisdictional error and warrants interference by this Court.

21. I, therefore, find the impugned order of the Industrial Court to be indefensible. The Writ Petition accordingly succeeds. The Order dated 28 June 2023 passed by the Member, Industrial Court, Mumbai, on application at Exh.U-11 is set aside. Writ Petition is accordingly allowed. Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

UMESH RAMESH SHINDE

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