

Exh.O-5

IN THE INDUSTRIAL TRIBUNAL AT DHULE
(Presided over by S. E. Bangar, Incharge Member)

REFERENCE (IT) No.1/2018

MHIC 19-000012-2018

President,
Jalgaon Jilha Majdoor Congress (INTUC)
Sanghtana, Jalgaon.

...First Party.

Vs.

Managing Director,
Jalgaon District Co-operative Milk Producers Federation Limited,
Jalgaon.

...Second Party.

C O R A M : S. E. BANGAR, Incharge Member,...

**(In the matter of Interim Applications filed in Ref.
(IT)No.1/2018.....)**

Appearances :-

Shri. C. B. Lohar, Ld. Advocate for the First Party.

Shri.Vikram Pawar, Ld. Advocate for the Second Party.

ORDER BELOW EXH. U-8 & U-13

(Dated- 27th June, 2018)

This is an application for seeking interim relief for restraining the Second Party/Respondent from terminating or discharging or retrenching the members of the First Party-Labour Union from the services of the Second Party, pending the adjudication of the Reference.

(2) The Second Party has also been sought to be restrained from discharging or terminating the members of the First Party working on temporary basis as contract labour with the Second Party in pursuance of the direct recruitment of the employees proposed by it.

(3) The facts in brief are as under :

[i] The First Party to the Reference is the President of Labour Union affiliated to Indian National Trade Union and has been recognized as Registered Trade Union.

[ii] The members of the said Union are working temporarily on contract basis with the Second Party/Respondent at its various establishments all over Jalgaon District.

[iv] The Second Party is the Managing Director of Jalgaon District Milk Producers Federation Ltd. Jalgaon, which is engaged in the business of collecting, processing and distributing

milk and byproducts. It has its Chilling Plants and Processing Plants at various places within Jalgaon District.

[v] The First Party has alleged that, the Second Party and the Board of Directors of Jalgaon District Milk Producers Federation Ltd. Jalgaon, have been engaged in unfair labour practices by not paying the salary or wages of the said temporary or contractual labour on the basis of the principle of “equal pay for equal work” as has been expounded by the Hon'ble Supreme Court of India in Writ Petition No. 213/2013 (State of Punjab & Ors. Vs. Jagjit Singh & Ors.) (Decided on 26 October, 2016) a complaint was made by the First Party to the Deputy Commissioner for Labour, Nashik Division, Nasik and to the Assistant Labour Commissioner, Jalgaon on 21/12/2016, thereby seeking their intervention for the implementation of the observations and guidelines laid down by the Hon'ble Supreme Court in the matter referred above, as it has been alleged that, the Second Party has avoided to entertain their representations in this regard made time and again.

[vi] Taking cognizance of the complaint, the Deputy Commissioner for Labour, Nasik appointed the Assistant Commissioner of Labour, Jalgaon as Conciliator, for conducting the conciliation of dispute between the parties and to make all endeavour to bring some settlement for maintaining the industrial peace. According to the provisions of Section-4 under Chapter II and according to the provisions of Section-11 under Chapter IV, the Conciliation Officer held several meetings for settlement while

discharging his duties under Section 12 of Chapter IV of the Industrial Disputes Act, 1947. However, no amicable settlement could be arrived through conciliator. He made a report of the failure in bringing any settlement between the disputed parties.

(4) Upon receiving the report of the Conciliation Officer cum Assistant Commissioner for Labour, Jalgaon, the Deputy Commissioner of Labour, Nasik Division, Nasik, has made a reference under Section 10-(1)(d) of the Industrial Disputes Act, 1947 by exercising the powers conferred upon him by the Appropriate State Government, to the Industrial Court, Jalgaon for adjudication under Section-12(5) of the Industrial Disputes Act, 1947. Learned Deputy Commissioner of Labour, Nasik has by his order dated 21/2/2018 bearing No. औ. सं/सौविअ/संदर्भ/आदेश/प्र.क्र.२/२०१८ made a reference mentioned in Schedule A to the Order of the Reference, the term, **“whether the contractual labour working with the management since about 10 years and have been working equally like the permanent labour and are entitled for equal pay for equal work as laid down by the Hon'ble Supreme Court of India in Writ Petition No.213/2013 for adjudication”**.

(5) Upon services of notices, both the parties have appeared. The First Party has filed the Statement of Claim at Exh. U-4 and has also produced various documents along with List Exh.U-7 and U-11.

(6) The Second Party has appeared but has not yet filed the Written Statement or objection, if any, to the Statement of Claim.

(7) It is alleged by the First Party that, during the pendency of this adjudication whereby the Reference regarding the arrears of pay, on the principle of “equal pay for equal work”, for a period of 10 years preceding from the Reference is sub-judice and the fate of the temporary or contractual labour is at stake, the Second Party has resolved in the meeting of its Board of Directors held on 31/3/2018 by Resolution No.12, to approve the expenses incurred for publication of advertisement for the direct recruitment of labour on its establishments to fill up the vacancies according to the sanctioned strength. Further it is alleged that, guidance has been sought for by the Second Party from the Divisional Deputy Registrar, Co-operative Societies (Dairy) Nasik Division, Nasik and the Regional Dairy Development Officer, Nasik on 27/4/2018, whether the provisions of the Act regarding the reservation for the reserved classes is applicable to the Jalgaon District Co-operative Milk Producers Federation Ltd. It is alleged that, by taking recourse to the policy of direct recruitment and by taking steps in furtherance thereto, the Second Party is trying to by-pass temporary or contractual labourers working with it, since past more than 10 years and without resolving the dispute regarding their claim about equal pay for equal work and is thus indulging in unfair labour practices.

(8) Pending the interim application at Exh. U-8, the Second Party has allegedly terminated 9 temporary or contractual labourers from its services on 22/6/2018 and prevented them from attending the work, at the first shift, by oral directions. It is also alleged that, on 26/3/2018 a news item regarding the action taken against the contractual or temporary labourers, being the members of the First Party Labour Union, has been taken by the Second Party. It is thus alleged that, the Second Party has been trying to subdue the due process of law by not making any progress in the settlement of dispute or regarding the adjudication thereof, but by adverting to terminate or discharge or retrench the temporary labourers from its employment by victimization or punishment for having been members of and supporting the First Party. Therefore, the Learned Advocate for the First Party has preferred these applications at Exh. U-8 and U-13 to bring on record the subsequent events pending the adjudication of the Reference and for seeking the interim reliefs for protection of the temporary labourers who are the members of the First Party.

(9) Written submissions have been placed on record at Exh.C-3 by the Learned Advocate for the Second Party, whereby jurisdiction of this Court to entertain and decide the applications for interim relief in the proceedings of the Reference, has been challenged. It is contended that, the First Party has taken recourse to the provisions of Rule-115 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 by causing service of notice for

appearance though the present Reference does not attract nor is governed by the provisions of the said Act. He has sought short time for preparing and filing the written statement and has opposed the grant of any interim relief.

(10) It has been submitted on behalf of the Second Party that, a question before this Court is restricted to the Reference regarding “equal pay – equal work” as like the permanent employees/labourers, for the temporary or contractual labour. It is submitted further that, there are no provisions under the Industrial Disputes Act, 1947 to grant any interim relief by entertaining such interim applications. The relationship between the Second Party and the members of the First Party as employer and employees is also disputed contending that, no appointment order has been issued by the Second Party to any of the members of the First Party for working on its establishment. It has been argued that, the present Reference being not for adjudication regarding absorption or regularization of temporary or contractual labourers, but being for adjudication regarding the entitlement of the temporary or contractual labourers for equal pay for equal work at par with permanent labourers. Hence this Court cannot entertain the interim applications and grant the interim relief as has been sought for due to lack of jurisdiction.

(11) Considering the submissions in the pleadings of the parties and the oral arguments advanced on their behalf by their advocates, I have perused the Reference and all the record of the proceedings meticulously to gather and

understand the background which has given rise to the Reference and to satisfy whether there is any scope for this Court to entertain the interim applications and to exercise any of its powers. Admittedly, the Second Party has engaged several workers on permanent as well as temporary basis on its establishments all over the Jalgaon District for conducting its business of collecting, processing and distributing milk and milk products. It is undisputed that, there have been several rounds of litigations between the parties to the dispute and the same have reached on several occasions before the Hon'ble High Court Bombay Bench at Aurangabad. In the past, the dispute had arisen in regard with the payment of Dearness Allowance as directed by the Industrial Court, Jalgaon by order dated 23/4/2004 which was challenged in Writ Petition No. 2586/2004 and Letter Patent Appeal No.86/2004, arisen from Complaint (ULP) No. 126/2002. The decision therein was in favour of the First Party and its members.

(12) It appears from the undertaking filed by the Second Party before the Hon'ble High Court of Bombay in Writ Petition No. 11138/2010 that the sanctioned strength of the posts at the establishment of the Second Party is 334 out of which 310 were functional on the date of filing of the undertaking, whereas the rest 24 posts were shown to be vacant. A copy of letter dated 13/10/2011 bearing No. MH/16410/PF/SRO/NSK/Compliance Cir-III/2331 by the Assistant P.F. Commissioner-Compliance, Sub Regional Office, Nashik to the Indian National Trade Union Congress Affiliation,

Jalgaon that, for the year March-2010 to February-2011, 895 employees were shown on the establishment of the Second Party and their contribution the P.F. and family pension Fund had been subscribed by the Second Party. The Statement gives details about the names of the employees who have been joined as the members of the Employees' Provident Fund Organisation, Sub-Regional Office, Nasik, the dates joining the said organization, contribution made by them etc.

(13) The copy of the proceeding book of the First Party produced along with List Exh. U-7 shows that, on 1/1/2017 , 155 members attended the Annual General Meeting. The List of the members of the First Party Labour Union for the period from July-2016 to December-2016 and the amounts of their subscription were placed before the Annual General Meeting by Subject No.(5) and a Resolution No.(3) was passed that the Second Party under the Leadership of its President to approach to the Assistant Labour Commissioner Jalgaon for taking legal recourse for settlement of their dispute regarding 'equal pay – equal work' , resting their claims on the principle expounded by Hon'ble Supreme Court of India in Writ Petition No.213/2013. The List of the members shows the names of 350 members, who were working at establishment of the Second Party.

(14) The aforesaid documents prima facie show that, members of the First party Labour Union have been working for about more than 10 years for the Second Party on temporary or contractual basis. It is the claim of the First Party

that, its members employed by the Second Party have been discharging the same work in the same condition and for same duration as like the permanent employees of the Second Party and therefore they are entitled for 'equal pay' at par with the permanent employees. The Reference is sub judice. The claim regarding the benefits of permanency would certainly arise as a dispute between the parties to the Reference though it has not been directly so raised at the time of making the Reference.

(15) The Gradation List of the employees on the establishment of the Second Party has been published on 22/7/2014 by Outward No. जा. क्र. / दुउसं / प्रशासन / २०१४ - १५ / २५१५ by the Manager (Personnel and Administration) for the Second Party. It shows that as on 30/7/2014 only 102 employees besides the employees in managerial and supervisory capacity and 10 employees in the Class of Assistant Technologies-III are working on permanent basis. Therefore the publication of an advertisement in the newspaper by the Second Party for the direct recruitment and also seeking of the guidance from the Divisional Deputy Registrar Co-operative Society (Dairy) Nashik Division, Nashik, are the steps in furtherance of the Resolution dated 31/3/2018 passed by the Board of Directors of the Second Party. It would certainly affect the claims and rights of the employees working on temporary or contractual basis with the Second Party since past several years.

(16) Learned Advocate for the First Party has submitted that, according to the provisions of Section

11-A of the Industrial Disputes Act, 1947, this Court or Tribunal is empowered to grant the appropriate relief in case of discharge or dismissal of workman in the cases of adjudication of proceedings and by its Award, may set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as this Court thinks fit or to give such other relief to the workman as provided under the said provisions. Therefore, the issue regarding the termination or discharge of the members of the First Party employed with the Second Party can be entertained pending adjudication of the Reference. Further it has been argued by the Learned Advocate for the First Party that, according to the provisions of Section 33-A of the Industrial Disputes Act, this Court or Tribunal is empowered to take into consideration the contraventions, if any, made by the employer pending the adjudication proceedings while submitting its Award to the appropriate Government, according to the provisions of the Industrial Disputes Act, 1947.

(17) Considering the provisions of Section 11 A and Section 33 A of the Industrial Disputes Act, 1947, I find prima facie that, the dispute in issue raised by the interim applications, would be under consideration during the adjudication of the Reference and it would be required to be adjudicated by passing an Award. Thus, prima facie I find that, the interim applications need to be entertained and decided on merits.

(18) It appears that, it would require reasonable time for hearing and adjudicating the Reference, since yet the Second Party is to file its Written Statement or objections to the statement of claim filed by the First Party. It is true that, issue regarding the termination of 9 of the temporary or contractual employees would directly be not within the purview of this Reference nor the question of apprehension of discharge or termination or retrenchment of the members of the First Party, would be directly sub judice in this Reference, it would certainly give rise to some disputes thereby disturbing the industrial peace at or around the establishments of the Second Party. Therefore, it would be just, proper and necessary to prevent further delay in verification of the dispute and to avoid multiplicity of the litigations pending the adjudication of the Reference that the Second Party would be restrained temporarily from either terminating or discharging or retrenching the members of the First Party Labour Union, working either temporarily or on contractual basis at its establishments, without following due process of Law, until the hearing and final disposal of these applications at Exh.U-8 and U-13 on merits. This Court would not deal into the Issues beyond its jurisdiction, but to prevent the parties before the Court for adjudication, it would be necessary to create a conducive atmosphere which can be done by preventing the Second Party from taking coercive measures against the members of the First Party Union, to deceive them receiving their claims in accordance with Law. The process of direct recruitment and filling up of the back log of the Reserved

Posts need not be stopped or stalled, but the outcome thereof shall be subject to the final outcome and decision in the adjudication of this Reference, as well as, it would be subject to the directions which ever have been issued by the Hon'ble High Court of Bombay in the previous litigations between the parties to the dispute. In such circumstances, there arises a necessity of passing interim orders which are as follows :-

ORDER

[1]	The Second Party is temporarily restrained from terminating or discharging or retrenching the members of the First Party working on its establishments, either temporarily or on contractual basis, without following due process of law, pending the hearing and disposal of the interim applications at Exh. U-8 and U-13 .
[2]	The process of direct recruitment resolved and undertaken by the Board of Directors of the Second Party shall be subject to the final decision upon adjudication of Reference (IT) No. 1/2018 .

Place: Dhule.

Sd/-xxx

Date: 27/6/2018

(S.E. BANGAR)

**Incharge Member/Incharge Presiding Officer
Industrial Court/Industrial Tribunal, Jalgaon.**