

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10442 OF 2019

1. **Complete Solution Facility Management Private Limited**, having its office at 8, Angela Baptista, Behind Maha Auto, C.S.T. Road, Kalina, Santacruz (East), Mumbai – 400 098
2. **Ashok Vishnu Sawant**,
Managing Director, Complete Solution Facility Management Private Limited, having its office at 8 Angela Baptista, Behind Maha Auto, C.S.T. Road, Kalina, Santacruz (East), Mumbai 400 098

... Petitioners

Vs.

1. **Maharashtra Suraksha Rakshak Aghadi**,
104 “Shramik” (Royal Crest),
Plot No.31, Lokmanya Tilak Colony,
Road No.3, Dadar (East),
Mumbai – 400 014
2. **Vijay Nikalje**,
Flat No.04, Shri Yog CHS.,
Kharegaon, Kalwa, Thane 400 605
3. **Dinesh Nakashe**,
Area Manager, 8 Angela Baptista,
Behind Maha Auto, C.S.T. Road,
Kalina, Santacruz (East),
Mumbai – 400 098
4. **Avinash Oza**,
Assistant General Manager,
8, Angela Baptista, Behind Maha Auto,

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GANESH
KULKARNI

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C.S.T. Road, Kalina, Santacruz (East),
Mumbai – 400 098

5. **Dattatray Sahadev Madye**,
Age Adult, Occupation Nil,
R/at: 104, Shivranjan Housing Society,
Kurar Village, Malad East,
Mumbai 400 094
6. **Vijay Balkrishna Raul**,
Age Adult, Occupation Nil,
R/at Ramdas Chowk, Rajbali Dube
Chawl, Chawl No.343, Room No.6,
Mill Road, Kurla (W), Mumbai 400 070
7. **Uday Hjrui Palaye**,
Age Adult, Occupation Nil,
Mayekar Chawl, Waghari Wada,
Datta Mandir Road, Near Vakola Bridge,
Kalina, Santacruz (E), Mumbai 400 055
8. **Vivek Sadashiv Palav**,
Age Adult, Occupation Nil,
R/at: Amar Jyoth Building,
1st Floor, Room No.4, Hatav Pull
Pipe Line, Kurla (W), Mumbai 400 070
9. **Pandurang Bala Parab**,
Age Adult, Occupation Nil,
R/at:- 3/5, National Chawl,
Kranti Nagar, Aakurli Road,
Kandivali (East), Mumbai 400 101

... Respondents

Mr. Avinash Jalisatgi with Mr. T.R. Yadav, Ms. Divya Wadekar and Mr. Mulanshu Vora i/by Mr. Vaibhav Jagdale for the petitioner.

Mr. Nigam C. Kumar with Mrs. Shilpa D. More i/by N.K. Juris for respondent Nos.7 and 9.

CORAM : **AMIT BORKAR, J.**
RESERVED ON : **APRIL 9, 2026.**
PRONOUNCED ON : **APRIL 10, 2026**

JUDGMENT:

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioners have called in question the legality and correctness of the judgment and order dated 3 May 2019 passed by the Industrial Court at Mumbai in Complaint (ULP) No. 466 of 2009. By the said judgment, the Industrial Court, while rejecting the remaining allegations, reliefs and claims advanced in the complaint, nevertheless proceeded to record a finding that the petitioners had engaged in unfair labour practices falling under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Consequential directions were issued thereby requiring the petitioners to pay retrenchment compensation and gratuity to 35 employees named in the complaint.

2. The facts giving rise to the present petition, as set out by the petitioners, may be briefly stated. The petitioners are engaged in the business of providing utility services, housekeeping, office assistance and other allied services to various clients, which includes supply of security personnel. Having regard to the nature of such business, the deployment of employees is dependent upon the availability of contracts and work sites. It is, therefore, an inherent feature of the petitioners' operations that employees are required to be deployed and re-deployed at different locations

from time to time, depending upon the contractual requirements. It is the case of the petitioners that in or about the year 2009, certain employees declined to comply with orders of transfer or relocation issued by the petitioners and further failed to report for duty at the locations to which they were assigned. According to the petitioners, such employees thereafter remained absent and did not resume their duties.

3. Respondent No. 1, claiming to espouse the cause of all employees in the employment of the petitioners, instituted Complaint (ULP) No. 466 of 2009 before the Industrial Court at Mumbai under Section 28 read with Items 1, 4 and 6 of Schedule II and Items 5, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971. In the said complaint, several allegations were levelled against the petitioners and respondent Nos. 2 to 4. It was alleged that the petitioners had failed to extend statutory benefits available under various labour legislations. Specific allegations were made regarding non-payment of benefits such as house rent allowance, privilege leave, sick leave, casual leave and national holidays with wages. It was further alleged that the petitioners had not issued Employees' State Insurance cards and had not provided documents under the Employees' Provident Fund Scheme. The complaint also contained allegations that wages were not being paid in accordance with the provisions of the Minimum Wages Act, 1948 and that overtime wages were not being paid as required under law. Additionally, it was alleged that upon employees joining respondent No. 1 union, the petitioners adopted hostile conduct by threatening such employees and discontinuing the allotment of

work. The complaint was stated to have been filed on behalf of approximately 39 employees. However, no list of such employees was annexed and reliance was placed solely upon certain membership forms purportedly executed by them.

4. Subsequent to the filing of the complaint, respondent No. 1 preferred an application dated 18 January 2010 before the Industrial Court, asserting that an additional 25 employees had, after institution of the complaint, become members of the union. It was prayed that the interim as well as final reliefs sought in the complaint be extended to such additional members. Notably, the said application did not contain the names of these alleged employees nor was any list annexed. Only certain membership forms were produced. The said application came to be marked as Exhibit U-8. The petitioners opposed the said application. It is material to note that the Industrial Court did not pass any order on the said application. Further, no steps were taken by respondent No. 1 to amend the complaint so as to incorporate these alleged additional members. In such circumstances, according to the petitioners, the said persons never formed part of the proceedings before the Industrial Court.

5. During the pendency of the proceedings, the Industrial Court, by an interim order dated 20 April 2010, directed the petitioners to provide work to the persons named in Annexure-A to Exhibit U-14, subject to such workmen reporting for duty within seven days from the date of the order. The petitioners contend that none of the concerned workmen complied with the said condition by reporting for duty, nor did they seek any further directions from

the Industrial Court thereafter.

6. The petitioners filed their written statement before the Industrial Court controverting the allegations made in the complaint and placing on record their version of facts. It was specifically contended that the workmen named in Annexure-A had abstained from duty at the instance of respondent No. 1 union. The petitioners asserted that several communications were addressed to such workmen calling upon them to resume duty, however, the same were returned undelivered as the addressees refused to accept them.

7. Upon hearing the parties, the Industrial Court, by its judgment and order dated 3 May 2019, partly allowed the complaint. While the allegations pertaining to Items 1, 4 and 6 of Schedule II and Items 5 and 10 of Schedule IV were rejected, the Industrial Court held that the petitioners had engaged in unfair labour practices under Item 9 of Schedule IV. On that basis, directions were issued to the petitioners to pay retrenchment compensation and gratuity to approximately 35 persons named in the order. Being aggrieved thereby, the petitioners have preferred the present writ petition.

8. Mr. Jalisatgi, learned Advocate appearing for the petitioners, submitted that the concerned employees had voluntarily abstained from reporting for duty and that there was no act on the part of the petitioners preventing them from resuming work. He invited attention to the findings recorded by the Industrial Court itself, wherein it has been held that the petitioners had not restrained

any employee from reporting on duty and further that the employees were not entitled to wages for the intervening period. It was contended that once such findings were recorded, it necessarily followed that no cause of action survived against the petitioners and the complaint ought to have been dismissed in its entirety. It was further urged that mere omission on the part of the employer either to terminate the services of employees or to initiate disciplinary proceedings cannot, by any stretch, constitute an unfair labour practice, much less one falling under Item 9 of Schedule IV of the MRTU and PULP Act, 1971. It was submitted that the statutory provision under Item 9 contemplates failure to implement an award, settlement or agreement, and does not encompass a situation where no such obligation is shown to have been breached. On this basis, it was contended that the findings recorded by the Industrial Court are contrary to law and unsustainable.

9. It was further submitted that assuming the Industrial Court had come to the conclusion that the petitioners had engaged in unfair labour practice under Item 9 of Schedule IV, it was incumbent upon the Court to specifically identify the award, settlement or agreement which had allegedly not been implemented by the petitioners. It was pointed out that the impugned judgment is completely silent on this essential aspect. According to the learned Advocate, such omission strikes at the root of the impugned order, rendering it legally untenable and liable to be set aside. The learned Advocate further submitted that none of the concerned employees, nor respondent No. 1, had

challenged the orders of transfer or posting issued by the petitioners. Even during the pendency of the complaint, no effective or concrete steps were taken by the employees or the union to resume work or seek appropriate directions for the same. It was highlighted that, except for two employees, none of the concerned persons entered the witness box. These circumstances, whether considered individually or cumulatively, indicate that the employees were not inclined to continue in employment. It was thus contended that the complaint was instituted and pursued with mala fide intent, with a view to exert pressure upon the petitioners. In such circumstances, it was submitted that the Industrial Court ought to have dismissed the complaint.

10. It was further contended that it was never the case of the respondents that the petitioners had terminated the services of the concerned employees. Neither the employees nor the union initiated any proceedings before any forum alleging termination. This circumstance, coupled with the admitted position that no steps were taken by the employees during the pendency of the proceedings to obtain work, clearly establishes that the employees had no intention to resume duties. It was submitted that the Industrial Court failed to consider this material aspect and thereby arrived at conclusions which are not sustainable in law. It was further urged that no relief could have been granted in favour of the employees unless a clear finding was recorded that the petitioners had illegally prevented them from reporting for duty. On the contrary, the Industrial Court has categorically held that there was no such prevention. The Industrial Court also rejected

the allegation of illegal lockout and dismissed the complaint under Item 6 of Schedule II. Additionally, it held that the principle of “no work no pay” applied, thereby denying wages for the intervening period. In view of these findings, it was submitted that the employees themselves were responsible for not working and were, therefore, not entitled to any relief. The grant of relief, in such circumstances, is stated to be internally inconsistent and contrary to the findings recorded. It was further submitted that the direction issued by the Industrial Court to pay retrenchment compensation and gratuity is contrary to the provisions of the Industrial Disputes Act, 1947 and the Payment of Gratuity Act, 1972. It was contended that in the absence of any act of retrenchment by the petitioners, and considering that the employees had not rendered any service during the period from 2010 to 2019, the Industrial Court had no jurisdiction to award retrenchment compensation or gratuity for such period.

11. The learned Advocate also contended that the Industrial Court erred in granting reliefs to persons who were not parties to the original complaint. It was submitted that the complaint, as initially filed, pertained to 39 employees whose names were set out in Annexure ‘A’. Subsequently, by an application at Exhibit U-8, respondent No. 1 sought to include an additional 25 employees. The said application was opposed by the petitioners and was never adjudicated upon by the Industrial Court. It was further submitted that no amendment to the complaint was sought or carried out for incorporating such additional employees. In the absence of any such amendment and without any order allowing the said

application, the Industrial Court could not have extended reliefs to persons who were not part of the original proceedings.

12. Per contra, Mr. Kumar, learned Advocate appearing for respondent Nos. 7 and 9, submitted that the petitioners are financially sound and carry on business with considerable profits, yet have exhibited an indifferent attitude towards their employees. It was contended that despite assurances, the petitioners failed to extend statutory benefits under various labour laws. Repeated representations made by the employees did not yield any result. It was alleged that house rent allowance, though legally payable, was not granted. Similarly, privilege leave, casual leave and sick leave were not provided. National holidays with wages were also denied. It was further submitted that although contributions under the Employees' State Insurance Scheme were deducted from wages, the employees were not provided with ESI cards or identification numbers, thereby depriving them of benefits under the scheme. It was also alleged that several employees were not paid wages in accordance with the Minimum Wages Act. Though provident fund contributions were deducted, no corresponding records or slips were provided, and in some cases, such contributions were not deposited. No provident fund account numbers were issued. It was also alleged that overtime wages were not paid despite employees being required to work beyond prescribed hours, and that adequate safety measures were not provided.

13. It was further submitted that respondent No. 1 had collected information regarding wages paid to security guards deployed by the petitioners at various locations. It was contended that the

petitioners were in the practice of abruptly withdrawing security personnel from one site and directing them to report at another location. In such situations, the employees were required to remain present at the office for extended periods, but were thereafter sent back without any work assignment or posting order. It was alleged that wages were not paid for such days, despite the employees being available for work.

14. It was further submitted that during the pendency of the complaint, an interim application was filed seeking a direction to the petitioners to allot work to the concerned employees. It was contended that the petitioners did not file any reply to the said application, and accordingly, by order dated 20 April 2010, the Industrial Court directed the petitioners to assign work to the employees named in the application within a period of seven days from the date of the order.

REASONS AND ANALYSIS:

15. Having heard the learned Advocates for the parties and having gone through the pleadings and the material placed on record, the real issue is whether the petitioners can be said to have committed unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act, 1971, and whether the reliefs granted by the Industrial Court can stand when tested on the touchstone of the record and the findings itself recorded by that Court.

16. The petitioners have taken a clear stand that the concerned employees had themselves stopped reporting for work and that the petitioners had not prevented them from joining duty. This

submission cannot be brushed aside lightly, because the Industrial Court itself has recorded a finding that the petitioners had not stopped any employee from reporting on duty. Once such a finding is there, the foundation of the complaint becomes weak. The Court below has also held that the employees were not entitled to wages for the interregnum on the principle of no work, no pay. If that is so, then the necessary consequence was to examine whether any further relief could still survive against the petitioners. In my view, the answer would be no, because when the Court itself accepted that there was no prevention from work and no entitlement to wages for the period in question, the complaint could not have been partly converted into a case of unfair labour practice under Item 9 without a proper legal basis.

17. Item 9 of Schedule IV is very specific. It speaks of failure to implement an award, settlement, or agreement. Therefore, if the Industrial Court wanted to hold the petitioners guilty under Item 9, it was first necessary for the Court to record which award, which settlement, or which agreement was not implemented. The impugned order does not show this. There is no clear finding on any award. There is no clear finding on any settlement. There is no clear finding on any agreement. In such situation, the finding under Item 9 becomes without support of law. The petitioners are right in saying that omission to terminate services or omission to start disciplinary action cannot by itself be treated as unfair labour practice under that item.

18. The case of the petitioners also gets support from the conduct of the employees. The orders of transfer or posting were

never challenged by the concerned employees or by respondent No.1. Even during the pendency of the complaint, there is nothing to show that the employees made any sincere or effective effort to resume work in the manner required by law. Except two employees, the other concerned persons did not step into the witness box. When a party claims denial of employment or denial of work, it is expected to come before the Court and speak to the facts. Silence of most of the employees, coupled with absence of any challenge to the transfer or posting orders, does create serious doubt about the genuineness of the complaint. The petitioners have, therefore, a fair point that the complaint appears to have been pursued more as a pressure tactic than as a genuine grievance of denial of service.

19. A further important aspect is that it was never the case of the respondents that the petitioners had formally terminated the services of the concerned employees. No proceeding was brought before any Court or authority alleging such termination. If there is no termination, the normal legal case of retrenchment does not arise. If there is no retrenchment, direction to pay retrenchment compensation becomes difficult to sustain. The Industrial Court seems to have lost sight of this basic distinction. It has itself held that the petitioners had not prevented the employees from performing duty and had also denied the plea of illegal lockout. Once that is the position, then the employees cannot be treated as retrenched employees for purpose of compensation.

20. The direction to pay gratuity also stands on weak ground. Gratuity is not a benefit which can be granted in a vacuum. It is

tied to the actual service conditions and to the legal event which makes it payable. If the employees had not worked for more than five and if there was no termination by the petitioners, then an award of gratuity for that period cannot be justified in the manner done by the Industrial Court. The Court below has not shown how the Payment of Gratuity Act, 1972 was attracted in the facts of this case so as to fasten such liability upon the petitioners. The direction, therefore, appears to be legally unsound.

21. The grievance of the petitioners regarding inclusion of persons not covered by the original complaint is also well-founded. The complaint was filed in respect of employees shown in Annexure A, which was said to contain 39 employees. Thereafter, Exhibit U-8 was filed seeking to bring in 25 more employees. That application was opposed by the petitioners. More importantly, no order was passed by the Industrial Court on that application. When there is no order, there is no valid enlargement of the scope of the complaint. Also the complaint was never amended to include those additional employees. In such circumstances, the Industrial Court could not have extended reliefs in favour of persons who were not part of the original complaint and who were never properly brought on record. That part of the impugned order cannot be supported.

22. At the same time, the submissions of respondent No.7 and 9 also deserve notice, because the complaint was not entirely without factual allegations. They alleged non-payment of house rent allowance, leave benefits, national holidays, ESI benefits, provident fund slips, minimum wages, overtime wages and safety

measures. If proved, they would certainly show breach of labour obligations. However the problem for the respondents is that the Industrial Court has already rejected the main allegations under Items 1, 4 and 6 of Schedule II and Items 5 and 10 of Schedule IV. That means the foundation of those allegations did not survive. What remained was only Item 9, and on that aspect the Court below did not record the necessary legal finding with clarity. Therefore, even if some factual grievance existed, the final relief granted cannot be sustained merely on sympathy or on general dissatisfaction with the petitioners' conduct.

23. The statement that the petitioners used to shift security guards from one site to another and sometimes send them back without work also does not assist the respondents beyond a point, because the issue before this Court is not whether the petitioners were perfect employers, but whether the specific legal findings and reliefs granted by the Industrial Court are sustainable. Even if there were management practices which caused inconvenience, the Court below was still bound to examine the exact legal ingredients of the alleged unfair labour practice. The result is that the impugned order travels beyond the pleadings and beyond the findings recorded in the same judgment.

24. On the whole, the record shows a clear inconsistency in the approach of the Industrial Court. On one hand it has held that the petitioners did not stop the employees from reporting for duty and that wages for the intervening period were not payable. On the other hand it has still granted retrenchment compensation and gratuity, and has also proceeded under Item 9 without identifying

the award, settlement or agreement allegedly breached. Such an order cannot be allowed to stand. The grant of benefit to persons not properly included in the complaint is also without authority. Thus, the impugned judgment suffers from serious legal infirmity and cannot be sustained.

25. For these reasons, the proper conclusion is that the complaint, to the extent it has been partly allowed against the petitioners, cannot be upheld. The petitioners have shown that the employees had not been illegally prevented from work, that no termination was proved, that Item 9 was not correctly attracted, and that relief was wrongly extended to additional persons who were never validly brought into the proceedings. The order under challenge is therefore liable to be set aside.

26. In view of the foregoing discussion and reasons recorded hereinabove, the following order is passed:

- (i) The writ petition is allowed;
- (ii) The judgment and order dated 3 May 2019 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 466 of 2009 is hereby quashed and set aside to the extent it holds that the petitioners have engaged in unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act, 1971 and directs payment of retrenchment compensation and gratuity to the concerned employees;
- (iii) The complaint (ULP) No. 466 of 2009 stands dismissed;

(iv) It is clarified that the findings recorded by the Industrial Court rejecting the allegations under Items 1, 4 and 6 of Schedule II and Items 5 and 10 of Schedule IV shall remain undisturbed;

(v) No order as to costs.

27. Rule is made absolute in the above terms.

(AMIT BORKAR, J.)