

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No. _____ of 2013

Modelama Workers' Union

.....Petitioner

Versus

State of Haryana and others

.....Respondent(s)

I N D E X

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Total Court Fee affixed Rs:

Note:-

- i. The main law points are contained in para on page of the petition.
- ii. Relevant Statute: @ 226 & 227 of the Constitution of India.
- iii. Whether caveat petition has been filed in this case. No
- iv. Identical Case:-.

Chandigarh

Dated: 01.06.2012

THROUGH COUNSEL:

(R.S. Bains) & (Kawaldip Singh Goraya) Advocates

P-687/85

P-1700/10

Counsels for the Petitioner

**IN THE HIGH COURT OF PUNJAB AND HARYANA
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COURT FEES

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LIST OF DATES AND EVENTS

That the Modelama Workers' Union is a trade union that applied for registration of Union under section 5 of the Trade Unions Act, 1926 on dated 19st December, 2012 in the office of the Registrar, Trade Unions, Labour Department, Haryana. The application for registration of union has been rejected by The Labour Commissioner-cum-Registrar by letter no. IR-2/2013/20846 dated 08/07/2013 by citing imaginary and wrong reasons and without due-diligence and proper investigation of the facts submitted by the union. This is non-performance by the Respondent as he has failed to discharge the duties that he is legally bound to do under provisions of Trade Unions Act, 1926. Furthermore, he has refused to recognise the fundamental right provided by the Constitution of India under Article 19(1)C

19.12.2012: Petitioner applied for registration of 'Modelama Workers' Union under section 5 of the Trade Unions Act, 1926 on dated 19st December, 2012 in the office of Registrar under the Trade Unions Act, 1926 according to prescribed method under law. Office of the Registrar, Labour Department of Haryana,

Chandigarh, has given proper receiving of the application for registration.

08.01.2013 After submission of application for registration of Modelama Workers' Union, Gurgaon, the Modelama management came to know about it and started transfer and forceful termination of office-bearers of the Union. Ashok Kumar, General Secretary of the Union was transferred to Manesar unit of factory. The Union filed a complaint of unfair labour practices with the Labour-cum-Conciliation officer, Circle-1, Gurgaon. No action was taken by labour office.

15.01.2013 to

17.02.2013 Most of the office-bearers were either transferred or forcefully terminated from factory by active effort of personnel manager Arvind Sangwan, General Manager Arvind Rai and other officials on different dates. Union filed complaints of unfair labour practice and demand notices to Labour-cum-Conciliation officer, Circle-1, Gurgaon. Meanwhile, conciliation meetings took place between the Union president Retu Singh and Ashok Kumar and General Manager Mr. Arvind Rai, but no settlement could take place due to continued violations and adamant nature of management. Non-action on the part of labour department, Gurgaon continued.

18.02.2013 Union started a peaceful 'Dharna' at the gate of factory demanding that workers (who are also union leaders) be allowed to resume duty in the factory, as the job is

a question of survival for them. Office-bearers of union were sitting at the factory gate demanding to go to work in the factory. Management did not pay any attention to their legitimate demands. Union started getting wider support of workers and general public. Management took ex-parte-stay order from local court through misrepresentation and concealment of material facts to the court. Negotiation meetings also continues between management and union. Meanwhile, workers were threatened and offered huge sums of money by management so that the workers would leave the union.

12.03.2013 Workers protest (Dharna) got over with an agreement between union and management and illegally terminated workers were allowed to resume their duty at their workplace.

08.07.2013: Office of the Registrar (Under Trade Unions Act, 1926) -cum Labour Commissioner, Haryana, Chandigarh has rejected the application of Modelama Workers' Union by letter no. IR-2/2013/20846 dated 08/07/2013 based on fabricated and imaginary reasons and without proper investigation of the factory and without due-diligence. During this period of of consideration, the Union did not received any communication from the office of Registrar of Trade Unions which his office may well have done under section 7 of the Trade Unions Act, 1926.

19.07.2013 Office-bearers of the Union approached the office of the Registrar (Under Trade Unions Act, 1926) –cum Labour Commissioner, Haryana, Chandigarh to review his denial of registration by review petition dated 19-07-2013. But the same office refused to review its own decision, stating that his office had no power to review its own order. Instead he instructed petitioner to approach Hon'ble Labour court of concerned district. The much- delayed and unjust order came about through non-performance and wrongful use of authority. The Registrar-cum-Labour Commissioner had full knowledge of the dispute and the status of workers; however, he chose to ignore facts and the law, delayed his order and at the end gave a wrong and unjust review, with the intention of denying workers their fundamental rights.

18.09.2013: Hence the writ petition.

Chandigarh

Dated: 18.09.2013

THROUGH COUNSEL:

(R.S. Bains) & (Kawaldip Singh Goraya) Advocates

P-687/85

P-1700/10

Counsels for the Petitioner

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No. _____ of 2013

1. Modelama Workers' Union, Rao Maichand Complex, First Floor, Plot No.1, Jwala Mill, Old Delhi- Gurgaon Road, Gurgaon, Haryana, through Vikas Kumar Barnwal.

.....Petitioner

Versus

1. State of Haryana through Secretary *****
2. The Additional Chief Secretary, Labour and Employment Department, Government of Haryana
3. The Labour Commissioner, Haryana
4. The Deputy Labour Commissioner, Circle-1, Gurgaon, Haryana.
5. The Labour-cum-Conciliation officer, Circle-1, Gurgaon, Haryana
6. Haryana, through General Secretary.

.....Respondent(s)

Petition under Article 226/227 of the Constitution of India praying for issuance of an appropriate writ, order or direction for proper inspection before union registration and for giving opportunity to other party before rejection of the file and accordingly register union (Modelama Workers' Union) under Trade Unions Act, 1926 without any delay.

With further prayer for the appropriate direction and order to the respondents to stop habitual practice of undue delay in union registration by Labour Department, Haryana and ensure registration of unions without any delay and within prescribed time limit.

RESPECTFULLY SHOWETH: -

1. That this Civil Writ Petition is filed in the name of Modelama Workers' Union. Office-bearers of Modelama Workers' Union passed a resolution and appointed Retu Singh their representative for contesting this civil writ petition.
2. That the petitioner is citizen of India and resident of State of Haryana and being the citizen of India, is entitled to invoke the writ jurisdiction of this Hon'ble Court under Article 226/227 of the Constitution of India by way of filing the present writ petition. The address for service for all processes and notices on the appellant is that of Retu Singh, Address Plot No.1, Rao Maichand Complex, First Floor, Near Jwala Mill, Old Delhi-Gurgaon Road, Gurgaon.
3. It is submitted that the Appellant is social activist who has been involved in the organizing of the workers of Modelama Export with other workers for the betterment of their conditions. It is submitted that in Gurgaon there are a number of garment factories that manufacture garments for export. It is submitted that the workers are not given secure conditions of employment and are much exploited. They do not have the welfare measures to which they are statutorily entitled under the Factories Act. They are made to work for long hours but live below subsistence level. Therefore, the workers always aspire to have a trade union but the unfortunate situation is that the moment the workers exercise their Freedom of Association guaranteed under Article 91 (1) C of the Constitution of India they are terminated from service and victimized, making their lives worst than before. Under these circumstances the Appellant herein has been striving to organize the workers of Modelama

Exports into a trade union, to enable them to improve their conditions and to be able to have the benefit of collective bargaining as other industrial workers do. Therefore, for the purpose of the betterment of Modelama Workers the Applicant and other workers started organizing a trade union and in the General Body Meeting of 15th December, 2012, 156 workers working in various Units of Modelama Exports, resolved to form the Union by name 'Modelama Workers Union' and the first office bearers were elected as follows:.

- | | | |
|-----|----------------------|-------------------|
| 1. | President: | Retu Singh |
| 2. | General Secretary: | Ashok Kumar |
| 3. | Organizing Secretary | Shravan Kumar |
| 4. | Publicity Secretary | Ramraj |
| 5. | Secretary | Shakuntala Devi |
| 6. | Secretary | Bramhanand Bhuyan |
| 7. | Secreary | Murari Kumar |
| 8. | Treasurer | Vinod Kumar |
| 9. | Joint Secretary | Manoj Kumar |
| 10. | Joint Secretary | Ranjeet Kumar |

4. The aforesaid persons applied for registration with the Respondent by the application dated 19.12.2012. The said application together with the resolution and all other documents filed therewith is filed herewith as **Annexure -1**.
5. That thereafter, there was considerable delay in response from the office of Registrar and he responded after more than 6 months. This is in violation of Haryana State Labour Policy 2006, which states four months as maximum time period for union registration.

Under Reference No. IR -2/20846 dated 08.07.2013 the Respondent has rejected the Application for registration as not maintainable and it is respectfully submitted that the said order is liable to be set aside and the Respondent directed to register the Modelama workers Union.

6. That the Registrar under Trade Unions Act, 1926 has not given registration to 'Modelama Workers' Union and sent a rejection letter to union without performing his duty judiciously. Office of the Registrar has not discharged his statutory duty and also did not given the union an opportunity to be heard, which is against the principle of natural justice, rule of law and notion of objectives of Trade Unions Act, 1926.
7. That the petitioner sent a representation of office-bearers to appear before the Office of Registrar to allow for physical verification, to make a statement asserting their willingness to form union. Furthermore they intended to inform in person about the management obtaining their resignation by force through unfair labour practices under schedule V of the Industrial Disputes Act, 1947, and about the management's union busting and denial of their fundamental right to form union and collectively bargain. But respondent's office did not heed the workers petition asking for a review of the order of the respondent office.
8. That the writ application is inter alia based on the following main grounds:
 - I. It is submitted that the garment export Industry is a powerful lobby which wields considerable influence on the Labour Department and prevents registration of any Union in the Industry. Till date not a single union is registered in

Gurgaon for the Garment Export workers and more importantly in any particular factory. This shows the collective might of the employers in the Garment industry, and in particular with regard to the Labour Department. Therefore, it is virtually the policy of the Respondent to reject an application for registration by citing some reason or the other, the motive being not to register the Union somehow or the other. In other words, the policy of the Registrar of Trade union is to not register a trade union for Garment Export Industry Workers to ensure that the said workers are totally at the mercy of the employers.

- II. That the rejection of union registration is totally based on wrong assumptions and demonstrates partiality towards management. It is a result of lack of fairness and failure to discharge administrative functions by the Registrar of Trade Unions. The respondent's office has not performed his legal duty and failed to evaluate ample available evidence. It is relevant to mention here that application for union registration has been filed with office of the Registrar on dated 19.12.2012 and transfer and forceful termination of workers by the respondent management began only a few days later. On dated 08-01-2013, Ashok Kumar, General Secretary of the Union has got transfer letter. On dated 15.01.2013 Vinod Kumar (Treasurer) and Ranjeet Kumar (Joint Secretary) were transferred. On dated 19.01.2013 two active members Manju Devi and Rajendra Kumar were forcefully terminated by management officials. On dated 26.01.2013 Bramhanand Bhuyan, office bearer of union has

been forced to sign on blank documents and then terminated. On dated 03.02.2013, Ramnath, member of the union and Ramraj, office bearer of the union, were forcefully terminated. On dated 12.02.2013 Shravan Kumar, an office bearer, has been terminated. On dated 18.02.2013, two more members have been terminated. Applicant have sent representation to labour department and sent demand notices of workers to management as well as labour office. Union has raised industrial dispute by sending demand to management and it is submitted that even a terminated worker is a workman under Section 2(s) of the Industrial Dispute Act and therefore, the reason given under para 2 of point 2 is also not sustainable. Union has made all efforts to negotiate with management on these illegal terminations, but the management did not pay any heed and refused to listen to workers' simple demand for justice. Union has also complained to Labour-cum-Conciliation officer, Circle-1, Gurgaon about unfair labour practices under schedule-V of the Industrial Disputes Act, 1947 by the management with clear intention of union busting and of preventing union activities in the company. Labour Department includes the office of Registrar who is a superior authority of labour department and therefore may be presumed to know the facts and figures of union busting activities. Labour-cum-Conciliation officer, Circle-1 in the same office, and authority and department, and his sub-ordinate labour inspectors have duty to inspect the factory for the purpose of registration of union. But the whole department was silent,

while frequent illegal terminations were going on and have not taken any action against the management and not referred this case for prosecution under section 25U of the Industrial Disputes Act, 1947. This whole incident shows corrupt nexus between labour department and respondent management and Registrar is also a part of this larger nexus. The rejection letter which fails to consider relevant evidence and provides no opportunity to hear the other party is led by this nexus.

- III. It is submitted that the refusal to register is a deprivation of an a registered entity for the concerned workers and the applicants and therefore, in deciding the issue the Respondent should have necessarily given a personal hearing. The Respondent has relied on information solely from other sources and such a procedure is not fair. Such a procedure is also in violation of principle of natural justice. It is submitted that the information given in para 2 of point 2 of rejection letter given as reasons by the Respondent are not true. It is submitted that the applicant has submitted a review petition to the office of Registrar on dated 19.07.2013 and in this review petition documentary proof has been attached. This attached documentary proof is recent salary-slip of Vinod Kumar, Murari Prasad and Shravan Kumari, which has been provided by Modelama Exports to their workers. All these attached identity cards and salary-slip were of recent months and clearly proves that, these workers are working in the factory, contrary to the claim of the Registrar in the rejection letter.

- IV. It is submitted that after several illegal terminations, Modelama Workers Union has arranged a peaceful protest at factory gate and during working hours, workers started sitting there peacefully demanding to be allowed to do their duty in the factory. Respondent management has threatened workers by various ways to break unity of workers and even approached them in their homes and offered huge sums of money to them. But workers did not agree to leave the union and their peaceful protest. Later on, management has taken a stay order from local court by ex-parte-hearing and through misrepresentation and concealment of material facts. But workers continued their protest and management was forced to have a settlement with union. In this settlement, management agreed for all workers to resume duty. Copy of this settlement is also attached in review petition, which proves presence of workers in the factory, -- workers who are supposed to have taken full and final dues from the company and whose relationship with company is supposed to have been over. Such portrayals are a delaying and falsifying tactic of the Registrar in order to stop trade union registrations. Registrar's rejection letter to union and his conduct is totally against the objects and provisions of the Trade Unions Act, 1926.
- V. Article 19 of the Constitution of India Provides for protection of certain right of citizens and these rights has been provided against the state.
- 19. Protection of certain rights regarding freedom of speech, etc.—*

(1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

*(c) **to form associations or unions;***

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(g) to practise any profession, or to carry on any occupation, trade or

It is duty of the state to ensure and protect the rights provided under Article 19 to citizens and if the state fails to protect these rights it is a failure of the very system of the state. Even after repeated complaints, the labour department, Haryana has not taken any step to prevent illegal terminations of workers who only asserted their Constitutional right. This is a gross violation of law and willful non-performance of labour department who knowingly ignored all related and relevant material facts. The state has miserably failed to perform its duty to prevent factory owner from unfair labour practices and to pursue appropriate and prompt action against the factory owner. The state has failed to start proceeding against factory owner against frequent practices of unfair labour practices. In this process, it has also sent message to the management of other factories that they can freely practice unfair practices.

- VI. That according to section 7 of the Trade Unions Act, 1926 **Registrar has Power to call for further particulars and to require alteration of name.** - (1) *The Registrar may call for*

further information for the purpose of satisfying himself that any application complies with the provisions of section 5, or that the Trade Union is entitled to registration under section 6, and may refuse to register the Trade Union until such information is supplied.

The Act provides power to Registrar to ask for further information from Union. In this case Registrar did not do so and in fact did the opposite – refused to receive information from the Union and did not consider it relevant to look at the information provided even once. It is violation of the section 7 of the Act. This spirit of the Registrar is totally against the objects and philosophy of the Trade Unions Act, 1926.

- VII. It is submitted that trade unionism is a part of industrial relation. Industrial relations are not a matter between employer and employee alone but also a matter of vital concern of the community. Realising the importance of industrial peace, the Government have passed necessary legislations from time to time to provide for better relationships between management and workers. Trade union is an outcome of the factory system. It is based on the basic doctrine of labour philosophy that "united we stand, divided we fall." The industrial revolution in India changed the traditional outlook in the labour management relationship. The modern labour movement has been an inevitable reaction to the industrialisation process. Trade unions are formed by Workers to solve the problems created by modern industry. With rise in modern industry, the

personal relationship between employers and employees disappeared and consequently has given rise to many Socio-economic ills and ailments. The formation of trade unions proved to be a panacea which had proved indispensable and provided solution to all such ills and ailments.

VIII. That the applicant cannot rely on the remedies provided under the Act as the rejection by the Registrar is not based on facts, but rather an outcome of prejudice, non-performance, and failure to discharge statutory duties and obligations. It is a blatant case of negligence and denial of fundamental right to form union. The respondent is not ready to consider evidence and facts before him and instead suggests appeal. His non-performance and appeal in labour court, Gurgaon will frustrate the object of the Union as appeal under the Trade Unions Act, 1926 takes a long time. The Supreme Court of India in **Air India Statutory Corporation case reported in : 1997 (9) SCC 377** held that, "the Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts." An union has been rejected. Right to Freedom of association of many of the workers has been violated, because state was not vigilant towards his duty to prevent it. It is true that factory management was terminating workers, but question is what measures has the state taken to prevent this after receiving information. Now it needs to be

checked by Hon'ble court immediately. Let us examine that who is responsible for unfair labour practices and consequently violation of freedom of association: - primarily management and secondary state. No, primarily state, because state owed a duty to ensure fundamental rights and it is his duty to protect this right.

IX. The Trade Union Act of 1926 defines a trade union as "any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more trade unions. Various definitions of the word trade union are given. A "trade union" to quote Webb & Webb, "is a continuous association of wage earners for the purpose of maintaining or improving the conditions of their working lives. It is also an association of workers in one or more occupations..... an association carried on mainly for the purpose of protecting and advancing the members', economic interests in connection with their daily work. It is thus, essentially a worker's organization constituted for the purpose of improving their well being.

X. Trade unions play an important role in an industrial society. In fact," there is no industrial community at the heart of which the relation between trade unions and the public is not of pivotal importance. They are a major instrument of social change. Unions provide the worker "the means for a

powerful attack on his problems. Unions cherish and guard their interests. Trade unions are the associations of the employed persons for collective bargaining about their conditions of employment and also for the provisions of benefits, legal defence and the promotion of their members' interests by bringing pressure to bear on governments and parliaments and in certain cases by political actions. Since the trade unions came into existence their growth and functions have depended on the political, economical and intellectual development in the country. In short the trade unions all over the world have now become a central force for organising the working class for achieving a better state of living within and outside the four walls of the industry they belong.

- XI. The Trade Union Act is a promotional concept. Its Intention is to allow unionization based on a Constitutional right under the Indian Constitution. Therefore, it is an enabling Act. It is submitted that Art 19 (1) (c) speaks about the Fundamental right of citizen to form an associations and unions. Under clause (4) of Article 19, however, the State may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right of association pre-supposes organization. It as an organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, trade union, and political parties. Formation of this union is

not contravention with clause 4 of Article 19 of the Constitution of India.

- XII. It is submitted that this is not some issue between two litigants but rather about the core issue of an Act whose intention was and is to allow, promote and enable unionization. It has been clearly mentioned in the objectives of the Act that “An Act to provide for the registration of the trade unions and in certain respects to define the law relating to registered trade union”. In 1947 the Act was amended for providing compulsory recognition of the trade unions by the employers and any dispute regarding was to be decided by the labour court set up under the Act. But it is very unfortunate that compulsory recognition have not been put in to operation and remained a dead letter so far.
- XIII. It is submitted that minor technicalities, (even if they exist can be easily corrected) cannot be a ground for rejection. Rejection from registration is violative of constitutional principle and intent of the Trade Unions Act, 1926. It has been done with malafide intention and may be under pressure of collective might of employers. Union was formed on the day of resolution of 158 workers and they are denied recognition as a trade union under law.
- XIV. It is submitted that rejection from registration of union will be preventive for the practice of collective bargaining and may be a demoting act for harmonious relation, peaceful and participatory form of functioning of industry. Rejection of union may disable workers to be a part of collective demand for better wages, working conditions, job security and other

legitimate demands of workers, which is a core objective of the Trade Unions Act, 1926 and other labour laws.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No. _____ of 2012

Garment and Allied Workers' Union

.....Petitioner

Versus

Union of Indian and others

.....Respondent(s)

Affidavit of Vikas Kumar Barnwal, S/o- Rajendra Kumar Barnwal, Age 26
Years, Permanent Resident of At+P.O.-Kopa, Distt.-Saran, Bihar

I, the above named deponent, do hereby solemnly affirm and
declare as under:-

1. That I, the deponent, am the petitioner in the present Civil Writ
Petition and I am well acquainted with the facts of the case and
hence competent to swear this affidavit.
2. That I can read and write and understand English language. The
averments of the Civil Writ Petition have been read and understood
by me. I have understood the averments of the petition and say
that facts mentioned therein are true to my knowledge and belief.
3. I further say that no other such or similar petition has been filed
earlier in this Hon'ble Court or before Hon'ble Supreme Court of
India.
4. That the averments made in the petition are true to my knowledge
and belief. No part of it is false and nothing material has been
concealed therein.

Chandigarh.

Dated:

Deponent

Verification

I, deponent, do hereby solemnly affirm and declare that the
contents of the above affidavit are true and correct to my
knowledge and no part of it is false. Nothing material has been
concealed.

Chandigarh.

Dated:

Deponent