

# Definitive Report - Report No 383, October 2017

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**Allegations:** The complainant organization alleges forced transfer of union leaders, illegal termination, intimidation and physical threats against union members in retaliation for union activities. The complainant further alleges unjust denial of registration by the Registrar of trade unions in the Haryana State

1. **372.** The Committee last examined this case at its October 2016 meeting when it presented an interim report to the Governing Body [see 380th Report, approved by the Governing Body at its 328th Session (November–December 2016), paras 543–561].
2. **373.** The Government provided its observations in a communication dated 12 September 2017.
3. **374.** India has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

## A. Previous examination of the case

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1. **375.** At its October 2016 meeting, the Committee made the following recommendations [see 380th Report, para. 561]:
- (a) While observing that the specific issues raised in this case concern the State of Haryana, the Committee is bound to remind the federal Government that the principles of freedom of association should be fully respected throughout its territory. The Committee invites the Government to bring its conclusions and recommendations to the attention of the competent authorities in the State of Haryana with a view to resolving the issues of the case and to obtain full particulars from the State of Haryana for the Committee's next examination.
  - (b) As regards the 16 office-bearers, namely Bramhanand Bhiuyan, Brijesh Prasad, Manoj Kumar Singh, Murari Prasad, Rajendra Prasad, Ramnath, Manju Devi, Ashok Kumar, Vinod Kumar, Hem Narayan Jha, Shishu Pal, Ashutosh Yadav, Sharwan Kumar, Pramod Kumar, Ranjeet Kumar and Grijesh Kumar, who had been dismissed or forced to resign, the Committee regrets that the Government did not provide any comments on this allegation and requests it to ensure that the State of Haryana carries out an independent inquiry to determine whether their dismissals or forced resignations were due to their trade union activity, with due attention being paid to their role in the union and the abovementioned principles, and should it be found that their dismissals or forced resignations were motivated by trade union membership or legitimate trade union activities, takes the necessary measures for the reinstatement of workers in their functions without loss of seniority or the payment of adequate compensation. The Committee further requests the Government to ensure that the State of Haryana conducts an independent inquiry into the allegations of large-scale dismissals and forced resignations of around 200 trade union members in order to determine the real motives behind these measures and, should it be found that they were motivated by trade union membership or legitimate trade union activities, takes the necessary measures to reinstate the concerned workers in their functions without loss of seniority, if they so wish, or pay them adequate compensation. The Committee requests the Government to keep it informed of any developments in this regard.
  - (c) The Committee requests the Government to respond to the complainant's allegations indicating why the Labour-cum-Conciliation Officer did not take any action in response to the complaints of illegal dismissals and unfair labour practices. The Committee further requests the Government to take the necessary measures to encourage a climate where trade union rights can be freely and safely exercised, by effectively ensuring that trade union members and leaders are not subjected to anti-union discrimination or harassment, including dismissal, transfers, threats and other acts prejudicial to the workers based on their trade union membership or activities and that any complaints of anti-union discrimination or harassment are examined by prompt and impartial procedures.

- (d) The Committee requests the Government to ensure that the State of Haryana re-examines the application for registration fully taking into account all the documents submitted to the Registrar and duly bearing in mind the allegations of anti-union discrimination only weeks after the request for registration and to inform it of any developments in this regard. The Committee trusts that the Government will ensure that situations where there are serious allegations of anti-union dismissals which may have an impact on the union's registration are carefully examined by the Registrar in order to avoid anti-union practices further penalizing trade unions in their application for registration.
- (e) The Committee regrets that it had to examine this case without being able to take account of the observations of the enterprise concerned and requests the Government to obtain, through the relevant employers' organization, information from the enterprise on the questions under examination.

## **B. The Government's reply**

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1. **376.** In its communication dated 12 September 2017, the Government replies to the Committee's recommendations. The Government indicates that it has duly communicated to the Government of Haryana the observations of the Committee and the issue was duly examined by the Labour Commissioner, Labour Department, Government of Haryana. Comments were provided with regard to all recommendations, and are transmitted by the Government for the attention of the Committee.
2. **377.** The Government indicates that in the State of Haryana, there is total freedom of association and there are no restrictions on the formation of trade unions whatsoever. All registration applications received under the Trade Unions Act, 1926, are dealt with fairly and decided strictly as per the provisions of the Act and the rules framed thereunder.

3. **378.** With regard to the MWU office-bearers who were allegedly dismissed or forced to resign, the Government indicates that the Department of Labour of Haryana conducted a detailed record-based inquiry and as per the report provided the following indications:

- – Mr Ashok Kumar, MWU General Secretary, is still employed in the company and was also given a promotion;
- – Mr Sherwan Kumar, MWU Vice-President, had taken his full and final dues on 12 February 2013. He later joined the company again and is still working there;
- – Mr Brijesh Kumar is still working with the company and there is no issue or complaint;
- – Mr Rajendra Prashad, who is alleged to have been dismissed on 24 January 2013 had been working until 23 November 2013 as per the records of the company. He then left the job voluntarily and has also received his final dues;
- – Mr Bramhanand Bhuvan (spelt as Bhuyan in the CFA conclusions), MWU Organizing Secretary, has voluntarily left service, taking his full and final dues. He did not lodge any complaint alleging victimization after leaving his service;
- – the services of Messrs Ramnath, Ashuthosh Yadav and Shishpal are alleged to have been terminated on 24 January 2013, whereas Mr Ramnath worked until 8 January 2014, Ashutosh Yadav until 25 November 2013 and Shishpal until 13 April 2015. They all voluntarily left their jobs and took full and final payment. They did not lodge any complaint afterwards, hence the allegations concerning them are false;
- – Mr Manoj Kumar Singh, MWU Joint Secretary, left the service voluntarily on 12 February 2013. He later joined the company again and worked there until 21 July 2014. He did not lodge any complaint;
- – Mr Murari Prasad left the service voluntarily on 12 January 2013, rejoined the company on 1 May 2013, and finally resigned on 24 July 2014;
- – Mr Pramod Kumar was found to have left the service voluntarily in August 2013;
- – Mr Ranjeet Kumar, allegedly dismissed on 28 January 2013, worked in the unit until 13 December 2014. He left the service voluntarily on 24 August 2013;
- – Ms Manju Devi, allegedly dismissed on 28 January 2013, worked in the unit until 13 December 2014, when she left the service voluntarily;
- – Mr Vinod Kumar, MWU Treasurer, left his service voluntarily on 13 August 2015 and did not lodge any complaint.

4. The Government states that it is clear from the facts given above – obtained from the statutory records of the unit – that the workers were employed in the unit and some are still working there. The allegations of victimization are baseless, unfounded and mala fide. The Government further emphasizes that none of the workers made any complaints regarding any type of victimization before any authority of the state and the Labour Department did not receive any complaint of dismissal or forced resignation.

5. **379.** With regard to the allegations of large-scale dismissals and forced resignations of around 200 trade union members, the Government indicates that the Additional Deputy Commissioner, Gurgaon-cum-Additional Labour Commissioner (NCR), Government of Haryana was assigned to conduct an independent inquiry. The officer duly heard both parties and also constituted a team of officers to check the statutory record of the establishment to verify the averments of the management during the hearing. The independent committee observed that there was no abnormal increase in the number of workers leaving their jobs in the years 2013–15. The trend is the same as in 2011 and 2012. Most of the workers in the garment industry are migrant and return to their native places during the season of crops and festivals. They submit their resignation and receive full and final settlements and then return and join afresh the company they previously worked with or a new one. The Government further indicates that even though the Garments and Allied Workers Union of India (GAWU) were specifically asked to submit a list of names of the workers who were made to forcefully resign by the management, they could not provide such a list. In the absence of such a list the independent committee could not find any evidence of the alleged forceful resignation or dismissal of 200 workers. The independent committee further observed that no related industrial dispute is pending under the Industrial Disputes Act, 1947, and some workers named in the complaint are still employed in the establishment and a few have even been promoted to senior positions. Since large numbers of workers who frequently resign are paid their legal dues and none of them have come forward to make any claim, the independent committee has observed that it cannot be concluded that there is a specific case of victimization for attempt to form a union.
6. **380.** The Government has also attached a copy of the report of the independent inquiry to its observations that provides some details of the investigation directed by the Additional Deputy Commissioner, Gurgaon-cum-Additional Labour Commissioner (NCR), into the allegations of mass dismissals and forced resignations in the company. The report indicates that the management of the company and the General Secretary of the union were called to the Commissioner's office along with their respective records. Both parties were heard. The Commissioner together with officers of the Labour Department visited the premises of the company to inspect the records on-site. After hearing both parties and inspecting the relevant records, the Commissioner observed that the union was asked to provide the details of the 200 members who were allegedly dismissed or made to resign – names, employee ID number and date or month of dismissal or forceful resignation. The Secretary-General of the union said that he could not provide the above details as a considerable time had elapsed since those events. The management denied all allegations of large-scale dismissals or forceful resignations of trade union members at any time.

7. **381.** The report of the independent inquiry further indicates that it was found through the inspection of the records that 834 workers left their jobs in 2011, 815 in 2012, 546 in 2013, 707 in 2014 and 745 in 2015. Thus, the Commissioner observes, there is no abnormal increase in the number of workers leaving their jobs in 2013, 2014 or 2015. The trend is the same as in 2011 and 2012. In fact more workers left their jobs in 2011 and 2012 than in the following years. The report considers noteworthy the fact that the MWU submitted its application for registration on 19 December 2012. Would there have been any mass dismissals or forced resignations after submission of the application, it should have been reflected in the abnormal increase in the number of workers leaving their jobs in 2013 itself or the two following years, while as explained above this is not the case. Moreover the Labour Department did not receive any complaints alleging dismissal or forceful resignation during this period. The report concludes that, in view of the above, no evidence of forceful resignation or dismissals of 200 trade union members was found. The Labour Commissioner finally states that due to the seasonal nature of the industry, a large number of workers leave their jobs every year to go back to their native place for other seasonal employment. Such a large turnover of workers indicating a high attrition rate over the years does not indicate any victimization in a particular year, as has been alleged.
8. **382.** With regard to the Committee's recommendation that the Government take the necessary measures to encourage a climate where trade union rights can be freely and safely exercised, the Government indicates that India has ratified Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and that social dialogue and tripartism are hallmarks of India's labour policy discourse. The Management of Modelama Exports Pvt. Ltd have established different channels to register/express the issues of their employees and a works committee, elected democratically by the workers, is also in place where the grievances of the workers are solved.
9. **383.** With regard to the allegations indicating why the Labour-cum-Conciliation Officer did not take any action in response to the complaints of illegal dismissal and unfair labour practices, the Government indicates that no complaint regarding illegal dismissal or forced resignation was received by the Deputy Labour Commissioner concerned or any competent authority. The Government however admits that some other workers were terminated on grounds of indiscipline and they raised individual disputes, all of which were duly transferred to the competent Labour Court for adjudication. The report of the independent inquiry, also indicates in this regard that the findings of the inquiry and the government records show that the representatives of workers have never presented any complaint or raised a dispute under section 2-A of the Industrial Disputes Act, 1947, to contest or seek redress against the alleged illegal termination of the workers mentioned in the complaint presented to the CFA. Therefore, the Government of Haryana considered that it would be incorrect to allege that no action was taken against the management in this regard.

10. **384.** With regard to the MWU application for registration, the Government indicates that it has been informed that the general body of the union approved its name and constitution by a decision dated 17 June 2012 and, through another decision dated 22 June 2012, authorized ten applicants to submit the application for its registration, which they did. According to rule 4.1 of the constitution of the union, any worker employed in any capacity in any unit of the company in Haryana or all over India can become an ordinary member of the union provided that he or she pays the requisite admission and subscription fee. According to the Government, as four of the applicant workers resigned, one expressed in writing his lack of interest in the formation of the union and another one was an outsider, six out of ten applicants (more than half) ceased to be members of the union. Consequently, the registration application became invalid as per the provisions of section 4(2) of the Trade Unions Act 1926 read with rule 4.1 of the constitution of the union. Therefore the application for registration of the union was declined. The Government further adds that after the rejection of the application, the Registrar cannot review his own decision and the appropriate remedy for the workers is to file an appeal under section 11 of the Trade Union Act, 1926, before the Labour Court or to submit a fresh application for registration. According to the Government submission, the workers have not filed any appeal before the Appellate Court nor submitted a fresh application for registration of their trade union. The complaint is therefore an attempt to bypass the judicial process of the nation and unnecessarily obfuscate the issue.
11. **385.** In response to the Committee's request to obtain, through the relevant employers' organization, information from the enterprise on the questions under examination, the Government submits the observation of "Apparel Export Promotion Council (AEPC)". The AEPC, which defines itself as the official body of apparel exporters in India indicates that it has not received any complaint directly or indirectly against the company in recent times. The company has been running professionally while keeping the interest of its employees and that is the reason why they are in the industry for over 38 years. They maintain a good track record with their foreign buyers and local vendors and are always on the forefront of boosting the export business and thus creating more employment opportunities. The company has training centres all over the country for illiterate workers and helps mould them for a suitable job in the industry. The AEPC finally concludes with the statement that many states like Jharkhand and Orissa are extending all sorts of assistance to reputed exporters for setting up garment industries in their states so that employment opportunities are created there. It is therefore in the interest of all government bodies in Delhi and Delhi-NCR to extend all possible assistance to such exporters so that they carry out their operations smoothly.

## C. The Committee's conclusions

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1. **386.** The Committee recalls that this case concerns allegations of acts of anti-union discrimination, as well as refusal of registration of MWU by the Registrar of trade unions in the state of Haryana, bearing in mind that the acts of anti-union discrimination – notably dismissals of union members – allegedly took place only weeks after the request for registration and hence could have an impact on the registration of the trade union.
2. **387.** The Committee notes the information submitted by the Government. With regard to the allegations of dismissal and forced resignation of 16 union office-bearers, the Committee notes the Government's indication that the Government of Haryana conducted a detailed record-based inquiry which revealed that Messrs Ashok Kumar (the General Secretary of the union) and Brijesh Kumar are still working in the company; that Messrs Sharwan Kumar (Vice-President of the union) and Manoj Kumar Singh (Joint Secretary of the union) both left the service voluntarily on 12 February 2013 but then joined the company again later. Mr Murari Prasad left the service voluntarily on 12 January 2013, rejoined on 1 May 2013 and left again later. The Government further provides indications with regard to ten other union officials who accordingly left the service voluntarily at various dates in 2013, 2014 and 2015. The Committee recalls in this regard that the complainant alleged that it was part of a written agreement between the management and the union that 14 out of 16 union officials dismissed or transferred in January and February 2013 resumed their duty, but that this arrangement did not last later than June 2014 and in the months following June 2014 around 200 trade union leaders and members were either forced to resign or were illegally terminated [see 380th Report, para. 551]. The Committee finally notes that the Government does not provide any indication with regard to the status of Messrs Brijesh Prasad – allegedly dismissed on 24 January 2013 – and Hem Narayan Jha (Publicity Secretary of the union) who was allegedly transferred to a different unit on 15 January 2013.



3. **388.** Recalling that it had requested the Government to ensure that the State of Haryana carries out an independent inquiry to determine whether the dismissals or forced resignations of the union officials were due to their trade union activity, the Committee notes that the indications provided by the Government are based on a “detailed record-based inquiry”. The Committee notes that, with regard to Messrs Sharwan Kumar and Manoj Kumar Singh, the Government indicates that according to the records they left service voluntarily on 12 January 2013, whereas the complainant had alleged that they were individually called to the office of the human resources manager where they were surrounded by ten to 12 people, including security forces, and were forced to sign resignation and transfer letters and provide their fingerprints, while being told that they were dismissed because they were union leaders [see 380th Report, para. 548]. The Committee considers that, in view of the contradictory nature of the information, only an independent investigation with the direct engagement of the persons concerned would have enabled the Government to determine whether the allegations of anti-union dismissal and forced resignation were founded. Taking into account the contradictory information, but also the time that has elapsed, the apparent absence of use of the national procedures and the lack of any additional information from the complainant since the Committee’s last examination of the case, the Committee invites the complainant to bring forward any remaining claims it still may have to the State of Haryana for a full review in order to determine whether these allegations were founded.
4. **389.** With regard to the allegations of large-scale dismissals of 200 trade union members in 2014, the Committee notes the Government’s indications as to the independent inquiry conducted by the Labour Commissioner. It notes in particular that the Labour Commissioner has heard both parties in addition to the examination of the records of the establishment, that no abnormal increase in the number of the workers leaving their jobs was noticed, that the GAWU could not provide a list of names of the workers concerned and that in the absence of such a list no evidence of the alleged anti-union dismissals could be found. In this regard the Committee recalls that the complainant had attached to the complaint a list of names and dates of termination of 60 MWU members who were allegedly illegally terminated in 2014 and 2015. The Committee also understands that labour turnover is high in the garment industry and in the absence of evidence it is hard to establish the facts with regard to the real motives behind the terminations. In view of the divergence between the statement of the Government and the allegations of the complainant, the Committee is not in a position to determine that these dismissals were for anti-union motives.

5. **390.** With regard to the allegation of lack of action on the part of the authorities in response to the complaints of illegal dismissal and unfair labour practices, the Committee notes the Government's indication that no such complaints were received by the Deputy Labour Commissioner concerned or any other competent authority, but that some workers who were terminated on grounds of indiscipline raised individual disputes which have been referred to the competent Labour Court for adjudication. The Committee however recalls the complainant's allegation that the union filed several complaints to the Office of Labour cum-Conciliation Officer, Circle-1, Gurgaon dated 9 January 2013 and 28 February 2013 but no action was taken by the Labour Department on the continuous complaints of illegal and forced termination and unfair labour practices [see 380th Report, para. 548]. In light of the information available to it, the Committee can only recall that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [see Digest of decisions and principles of the Freedom of Association Committee, fifth (revised) edition, 2006, para. 820], and requests the Government to ensure respect for this principle.
6. **391.** With regard to the registration of the MWU, the Committee notes the Government's indication that the Registrar cannot review his own decision and the workers must either file a judicial appeal or submit a fresh application for registration. The Committee further notes the Government's statement that the present complaint is an attempt to bypass the judicial process of the nation. With regard to the latter statement, the Committee reminds the Government that the purpose of the procedure of the Committee is to promote respect for trade union rights in law and in fact; that the right to official recognition through legal registration is an essential facet of the right to organize, since that is the first step that workers' or employers' organizations must take in order to be able to function efficiently; and that although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [see Digest, *op. cit.*, paras 3, 295 and Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association – Annex I of the Digest, para. 30].

7. **392.** With respect to the grounds for the refusal to register the union, the Committee notes that according to the Government's indications, the Registrar has interpreted rule 4.1 of the constitution of the union providing that any worker in the company can become a member as meaning that by virtue of their resignation from the company, the workers who had applied for registration had ceased to be members of the union. The complainant on the other hand, maintained that the management had forcefully terminated the union leaders who had applied for registration. In its previous examination of this case, the Committee had requested the Government to ensure that the State of Haryana re-examines the application for registration fully taking into account all the documents submitted to the Registrar and duly bearing in mind the allegations of anti-union discrimination only weeks after the request for registration. The Committee notes the Government's indication that the Registrar cannot review his own decision, but that the applicants can file a judicial appeal or submit a new application for registration. Considering that in the absence of official recognition the union cannot function efficiently, the Committee invites the complainant to submit a new application should it still so desire and expresses its firm expectation that any new application submitted by the union will be examined promptly, with due consideration of the principles of freedom of association referred to above.

## The Committee's recommendations

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1. **393.** In light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
  - (a) Taking into account the contradictory information, but also the time that has elapsed, the apparent absence of use of the national procedures and the lack of any additional information from the complainant since the Committee's last examination of the case, the Committee invites the complainant to bring forward any remaining claims it still may have to the State of Haryana for a full review in order to determine whether the allegations of anti-union dismissal and forced resignation were founded.
  - (b) The Committee invites the complainant to submit a new registration application should it still so desire and expresses its firm expectation that any new application submitted by the union will be examined promptly and with due consideration of the principles of freedom of association referred to in its conclusions.