

**IN THE LABOUR COURT NO.2, PUNE**  
**(Presided over by Kiran R. Deshpande, Judge)****Complaint (ULP) No. 59/2020.**

Rashtriya Shramik Aaghadi  
Through – General Secretary,  
Age :- 34 years; Occupation : General Secretary,  
R/at. Saint Tukaram nagar, Pimpri,  
Pune – 411 028. .. Complainant.

V/s.

Technosis Equipment Pvt. Ltd.,  
Through – Director Mr. Arun Saudagar Jadhav  
Address :- Plot No. 144, Sector No. 10,  
MIDC, Bhosari, Pune-411026. .. Respondent.



**Appearances :-** Adv. Shri. S.G. Mane for the Complainant.  
Adv. Shri. D.D. Shendge for the Respondent.

**ORDER BELOW EXH. U-2**

(Dictated and declared in open Court on 11/02/2021)

**1) Brief facts of the case are as under -**

The Complainant is recognized union and for its 11 members, this complaint is filed. The members of Union are working with the Respondent Company since last 15 years, they are permanent. In the month of February, 2020 there was new agreement and settlement talks going on regarding hike in wages. The members of Union working honestly sincerely without any complaint.

2) It is contended that the Respondent Company employing new workers by removing permanent workers of the company. In March-2020 to May-2020, the lock-down was declared by the Government step by step. Due to Covid-19 pandemic, it was difficult for the members who are residing in Pimpri-Chinchwad Corporation

area to come out from the house and go for work.

3) The Government permitted to start the Company. The members of Union were informed to join the duty on 18/05/2020, then again on 29/05/2020, the Respondent informed the members of Union that 33% workers are allowed to start the Company production and requested to join the duty on 01/06/2020. The Union sent letter on 01/06/2020 and demanded half month salary of March and full salary of April and requested to deposit salary of May in the Bank Accounts of the members. It was further requested to inform what measures are made available towards safety.

4) The Respondent again issued letter on 03/06/2020 and informed that they are not playing with the life of workers and the members are disbelieving the company and also informed that they have taken all necessary measures of safety. Again on 13/06/2020, letter was issued by the Respondent and asked the members of Union to join the work on 19/06/2020, otherwise they will be removed from service. On 15/06/2020 the members of Union gave answer and informed to discuss with President of union regarding what facilities and measures provided in the Company. Again on 17/06/2020, the Respondent informed the Union members other peoples are working in the company and asked them to join on duty on 19/06/2020.

5) It is contended that on 24/06/2020, the members of the Union are removed from service and no notice, no enquiry was conducted on 26/06/2020, the Union has filed complaint before the Labour Commissioner where the Respondent did not present and thereafter on 04/07/2020, the members of the Union went in the Company asking for explanation as to why they are removed, however, they were restrained on gate of the Company, the

Respondent filed false complaint against the members of Union adopted unfair labour practices neglected the directions of Government that no employee should be removed during the period of Covid-19 pandemic. Since the settlement could not be arrived at therefore, the Union has filed this complaint. The present application is filed for interim relief seeking reinstatement as well as direction to the Respondent to pay salary till the disposal of complaint.

6) The Respondent filed W.S./Say and resisted the complaint and application. The preliminary objection is taken and contended that agreement for hike in salary is made and the facilities of new scale, Dearness allowance, earned leaves, casual leaves, bus, petrol allowance, safety measurements, medical facility, policy, loan, bonus, education allowance, exgratia allowance, family tour, canteen facility are provided.

7) It is further contended that as per the Government direction production with 33% workers was to be start, the management intimated through letters dated 29/05/2020, 03/06/2020, 13/06/2020, 17/06/2020, 24/06/2020 to the Members of Union and requested them to resume the duty, however, they kept themselves away from work, these persons have restrained one Rudal Yadav from coming on work, therefore, police complaint was filed. The members of union were not ready to resume the duty though they were assured to implement safety and precautionary measures as per the notification issued by MIDC.

8) The Respondent was facing monetary loss and it survival was at the stake, the members of Union did not join the duty inspite of several request, the goodwill of company was in danger if production work was not completed within time, company was facing



irreparable loss, the members of the Union were assured to pay the salary of March and April, however, the Union members refrained themselves from resuming the work, therefore, their services came to be terminated w.e.f. 24/06/2020. Their accounts are settled and new persons are employed from whom the work was got done. Therefore, prayed for dismissal of complaint and application.

9) Following points arise for my consideration and I have recorded my findings thereon as under.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether the complainant prove that he has a prima facie case to prove unfair labour practice by the respondent?	... No.
2.	Whether balance of convenience lies in his favour?	... No.
3.	Whether the complainant prove that he will suffer irreparable loss if interim relief is not granted?	... No.
4.	What Order?	... Application is rejected.

### **REASONS**

#### **AS TO POINT NO. 1 TO 3 :-**

10) I have perused record. The Complainant and Respondent have filed written notes of argument.

11) It is undisputed fact that the members of Union were working with the Respondent as a Permanent employee. It is undisputed fact that during period of Covid-19 pandemic the Government has declared lock-down and therefore, all the

companies, factories were closed. It is also undisputed fact that step by step the Government permitted to open the companies and in the month of May with 33% strength of workers, the company was allowed to work.

12) In view of above situation, the Respondent company was to be started with 33% strength of workers. It is undisputed fact that the Company has informed the members of the Union to resume the duties and the members did not resume, therefore, their services ultimately came to be terminated. Their accounts are also settled. The documentary evidence to that effect are placed on record at Exh.C-30.

13) According to the written notes of argument of the Complainant the preliminary objection raised by the Respondent is baseless, illegal, the members are permanent, their service record is good and the blot of stopping of the work levelled against the members of the Union is baseless. It is further submitted that the members of Union are residing in Pimpri-Chinchwad Corporation area where the strict restrictions were imposed, they were unable to come out from the house, they were not paid salary, March, April, May and therefore, they were unable to join the duty. The Respondent did not follow the rules and insisted the members of Union to attend the duty, this Rudal Yadav also approached the Court of Law and the false complaint to that effect was filed. The members of Union suddenly removed from the work when there is direction of Government not to remove the employee during the period of Covid-19 pandemic. The amount of final settlement is sent back by the members of Union and therefore, prayed for allowing the application.

14) As per the written notes of the argument of the Respondent, the members of Union were not ready to resume the

duty, the company was suffering from financial crises, its goodwill was at the stake, job-work was to be completed within time, however, the members of Union under pretext of salary of March, April refused to join the work, they were assured about the payment of salary, about the safety measures provided in the company because other peoples are also working there and as per the directions of M.I.D.C. all the measures regarding safety were taken, still the members of the Union failed to resume the duty inspite of several requests and therefore the respondent left with no alternative than to terminate the services of the members of Union and got work done from appointing new persons. Their accounts are settled, therefore, prayed for rejection of the application.

15) After considering the submissions of both the parties, I find that though the strict restrictions were imposed on public at large during Covid-19 pandemic lockout, the employee with pass and permission of the concerned authority allowed to go at work. Therefore, I find that the justification tried to be given by the members of Union cannot be accepted.

16) It is true that salary for March, April, May is not pay, however, it is specifically claimed in W.S. by the Respondent that they have filed proceeding before the Apex Court regarding "no work no pay" and still they assured to pay subject to decision of Court. I find that only because two months salaries are not paid, it cannot be said that the members of union were unable to go at work place.

17) It is clear that the Respondent requested several times to the members of Union to resume the duty, however, they did not join under the pretext of payment of salary and what precautionary measures are provided. I find that twice the members of Union were

warned that if they don't resume the duty on date the strict action will be taken, considering that they are not not in need of work. I find that, this was serious warning and therefore, at any cost the members of Union required to join the duty on given date. However, they failed to join the duty and therefore, they are removed from the services.

18) Had the members of the Union joined the duty they could have found what the measurements of safety are provided, because even otherwise also the Respondent had to provide the safety measurements as per the norms laid down by the concerned Authority. If really there were no safety measurements provided by the Respondent, the members of Union could make complaint with the concerned authority. It cannot be ignored that apart from the members of Union there were other persons who were working in the Company for those persons the safety measurements must be provided by the Respondent. There is no complaint from any other person regarding non providing of safety measures.

19) I find that filing of Police-complaint joining of Rudal Yadav in this proceeding, all these aspects are not important. What is important is that the members of union were requested time and again even they were warned to remove from the work, still they did not join the duty. This conduct on the part of the members of Union made them disable from getting equitable relief in this matter. They are not removed from Respondent side. But it is the Complainant who abandoned the duty therefore, question of non-followance of Rules and Directions of Government do not arise.

20) The interim relief and final relief are same and at this stage final relief by way of interim cannot be granted and this position of Law is very much clear. I find that the complainant has not proved



prima facie case in its favour. Already they are out of service from June-2020 and new persons are appointed on their place, therefore, balance of convenience also does not lie in their favour. The full and final settlement of accounts were made, the amount through the Cheques were sent to the Members of Union, however they claimed to be resent it to the respondent, it is on their own risk. I therefore find that irreparable loss would not cause to the Complainant, hence, I answer points No. 1 to 3 are in negative and pass the following order.

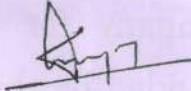
**ORDER**

- i) The application Exh. U-2 is rejected.
- ii) Cost in cause.

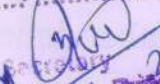
Place :- Pune.

Date :- 11/02/2021.  
amj/-



  
( K.R. Deshpande )  
Judge,  
Labour Court No.2, Pune.

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