

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3861 OF 1994

1. The Superintending Engineer,
Environmental Engineering Circle,
(ENE-Circle), Nanded.

2. The Executive Engineer,
Environmental Engineering Works
Division No.1)ENE-Works Dn.No.1),
Shivaji Nagar, Nanded.

..Petitioners

Versus

1. Sk. Jainuddin Sk. Moulana,
Age major, Occ. Service,
R/o Workshop, Nanded.

2. Dharamsingh Charansingh
age major, Occ. service
r/o Nanded.

3. Sk. Hamid Sk. Ismail,
age major, Occ. service
r/o Nanded.

4. Sk. Rarkhan Nawaskhan
age major, Occ. service
r/o Nanded.

5. Chandu Kishan Kamble
age major, Occ. service
r/o Nanded.

6. sk. Jainuddin Sk. Aminsab,
age major, Occ. service
r/o Nanded.

..Respondents

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Advocate for Petitioners : Shri D.P.Bakshi

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CORAM : RAVINDRA V. GHUGE, J.
Dated : October 8, 2015

ORAL JUDGMENT :-

1. This petition was admitted by order dated 29.11.1994. Interim relief was granted to the petitioner on the following conditions:-

“ On the question of interim relief, Shri Bakshi, learned counsel for the petitioners files a purshis containing a statement that the respondents would be engaged on the work of loading and unloading as and when available in the store yard of petitioner No.2 at Nanded and the respondents would be paid daily wages for the work done.

2. The interim relief in terms of prayer clause (c) on condition that the petitioners shall engage he respondents on daily wages on loading and unloading work as and when available in the store yard by giving them prior notice in writing to join.”

2. The petitioners are aggrieved by the judgment and order dated 6.9.1994, delivered by the Industrial Court, Jalna in Complaint (ULP) 440 of 1994 (Old No. 387 of 1990).

3. The petitioner submits that the respondents had preferred the Complaint pleading therein that they were continuously working on the post of Hamal on daily wages from 1976 onwards. They have also contended that they were working in the loading and unloading section in the godown of the petitioner. They had completed 240 days in the uninterrupted and continuous service of the petitioners in each calender year.

4. Shri Bakshi, learned Advocate for the petitioners further submits that

the documents produced on record before the Industrial Court below Exhibits U/10, 11 and 13 were totally misread by the Industrial Court. He submits that there were no posts of Hamal in any Store yards or Godowns of the petitioners and in the absence of permanent vacant posts, the Industrial Court could not have directed that the complainants be brought on regular temporary rolls as if the Kalelkar Award was applicable to them.

5. He submits that the Industrial Court has misdirected itself and has partly allowed the Complaint. There was no evidence on record that there is any post of Hamal ever created by the petitioners, much less, a permanent vacant post of Hamal being available.

6. He points out from the record available that there was an internal correspondence amongst the officers of the petitioners by communication dated 17.1.1990, 20.2.1990, 18.4.1990 and 21.5.1990. At various levels, it was observed that these Hamals were working through a Contractor (Guttedar) for loading and unloading material as and when the said work is required to be done. No post of Hamal is created by the petitioners and hence these Hamals cannot be brought on the rolls of the establishment.

7. Shri Bakshi further points out that a communication was addressed on 14.6.1990 to the Joint Secretary of the Indian National Trade Union Congress, which had attempted to espouse the cause of the respondents, stating that none of these Hamals have been appointed or deputed by any Hamal Mandal. They have been working through Contractors, who offers

them the work as and when it is available and depending upon its availability. The work is not of a permanent nature and hence the demand to bring the hamals on the rolls of the petitioners cannot be accepted.

8. He further submits that pursuant thereto, the respondents preferred the Complaint (ULP) No.387 of 1990 which was renumbered as 440 of 1994.

9. Shri Bakshi further submits that since 1994, no activity of loading and unloading was continued by the petitioners at any of its locations. No work was available to the respondents / complainants pursuant to the order passed by this Court dated 29.11.1994. Ever since then, none of the respondents are in employment.

10. He points out that these respondents preferred Contempt Petition No.105 of 1995 before this Court, praying for imposition of punishment on the Superintending Engineer and the Executive Engineer for disengaging the respondents and for failing to offer them any work from 1994.

11. He points out that by order dated 3.4.1996, this Court concluded that there was no activity of loading and unloading and carried out in the godown of respondents and hence there is no question of regularization or disobedience.

12. Shri Bakshi relies upon the evidence adduced before the Industrial Court and submits that besides the oral statements of the respondents that

they should be regularized in the services of the petitioners, there had been no evidence before the Industrial Court either to indicate that the post of Hamal exists with the petitioners and/or there are vacant posts available. Despite the same, the complaint was allowed.

13. I have considered the submissions of the learned Advocate for the petitioners and have gone through the record with his assistance. Notice on Rule was served on the respondents. Though they had appeared in Civil Application No.2447 of 1999, praying for direction to provide work, they chose to remain absent in the petition.

14. By order dated 3.4.1996, this Court has dismissed the Contempt Petition No.105 of 1995, filed by the respondents, which reads as under:-

“1. Heard parties through Counsel.

2. On 11th December 1995, this Court had directed to furnish the statement along with the affidavit in respect of the activity of loading and unloading carried out in the godown of the respondent. The affidavit and the relevant statement is produced and annexed. It seems that after 1994, there was no activity of loading and unloading carried out in the godown of the respondents. In view of this, there is no question of contempt.

3. Contempt petition is dismissed. ”

15. It is apparent from the impugned judgment that besides the oral statement of the respondents, there was no evidence on record to indicate

that the work of loading and unloading was a perennial activity. There was no evidence to indicate that the post of Hamals was created by the petitioners. There was nothing on record to prove that vacant, permanent post of Hamal was available so as to absorb the respondents on the said posts. The Industrial Court had noted that the original complainants were given work on oral orders.

16. I also find from the impugned judgment that the Industrial Court has failed to note that these respondents used to be given work of loading and unloading as and when it was available and through a Contractor. These material aspects could not have been lost sight of since the issue whether employer - employee relationship can be said to exist between the petitioners and the respondents was before the Industrial Court inasmuch as no order of bringing the respondents on regular temporary rolls could have been passed without such posts being available. I am, therefore, of the view that the impugned judgment and order is rendered erroneous and perverse.

17. It also cannot be lost sight of that these respondents are without work from 1994 onwards for the past 21 years. The Contempt Petition has also been dismissed by this Court, concluding that the activity of loading and unloading is no longer available with the petitioners.

18. In the light of the above, the impugned judgment dated 6.9.1994 is quashed and set aside. Complaint (ULP) No.440 of 1994 stands dismissed.

19. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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