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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4334 OF 2013

GANPAT NAMDEV WAGH,
Age : 49 years, Occ : Labour,
R/o Waghacha Akhada, Taluka Rahuri,
District Ahmednagar.

...PETITIONER

-VERSUS-

1 MAHARASHTRA STATE COOPERATIVE MARKETING
FEDERATION LTD.,
Kanmoor House, Narsi Natha Street,
Mumbai-400009.
Through it's Managing Director.

2 Vaibhav Cattle Food Factory,
At Nepti, Taluka and District Ahmednagar.
Through it's Manager.

...RESPONDENTS

....
Mr.Barde Parag Vijay, Advocate for the Petitioner.
Mr.Suryawanshi D.N., Advocate for the Respondents.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th July, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is an employee who challenges the judgment

and award dated 18.09.2012 delivered by the Labour Court in Reference (IDA) No.67/2007 by which he was denied the relief of reinstatement with continuity and backwages. His reference was answered in negative.

3 The Petitioner claims to be working from January, 1994 and has been terminated from 17.10.1996. It is vehemently contended by Shri Barde that for this entire period, the Petitioner had worked continuously. He suffered a minor accident on 16.10.1996. There is no contention that the accident caused such injuries to the Petitioner that he was precluded from reporting for duties. It is further contended that when he tried to resume duties on 25.03.1997, he was orally told by the Respondent/ Management that he has already been terminated from 17.10.1996.

4 The Petitioner raised an industrial dispute on 29.05.2006 after 10 years. The Respondents appeared in the said proceedings and contended that there was no Employer-Employee relationship between the Petitioner and the Respondents. It is contended that the Petitioner is not an employee of the Respondents. One Raosaheb Tamnar was engaged for doing the operational activity of Respondent No.2, which was first party No.2 before the Labour Court. The appropriate Government referred the dispute only between the Petitioner and the Respondents to the Labour Court which is registered as Reference (IDA) No.67/2007. Raosaheb

Tamnar was not arrayed as a party in the reference proceedings.

5 Shri Barde submits that he has produced several documents on record below Exhibit U/9 including the attendance card issued by Respondent No.2, copy of letter dated 30.01.1995 addressed to the Management of the establishment, the duty chart dated 10.02.1996, the application dated 29.04.1996 for marking his attendance in the muster roll and a copy of the proposal dated 19.09.1996 prepared by Respondent No.2 including the Petitioner's name as Typist-cum-Clerk.

6 Shri Barde submits that the Petitioner led oral evidence and tried to establish that he was in continuous employment with the Respondents for 240 days. Respondent No.2 was a factory operated by Respondent No.1. His accident dated 16.10.1996 occurred while travelling in the Jeep owned by Respondent No.1. Similarly situated employees had filed complaints before the Industrial Court and were granted permanency. He, therefore, submits that the reference was erroneously rejected by the conclusions drawn by the Labour Court in the concluding paragraph 24. He, therefore, prays for setting aside of the award and for allowing the reference.

7 Shri D.N.Suryawanshi, learned Advocate appearing for

Respondents, has strenuously supported the impugned judgment and award. He submits that the Respondents, right from the beginning, have taken a plea that Raosaheb Tamnar was a contractor who was engaged to deploy the contract labourers at Respondent No.2 factory. The Petitioner may have been deployed through the labour contractor. There was business agreement with Raosaheb Tamnar to operate Respondent No.2 factory. The reference is made after a delay of 10 years and therefore, the industrial dispute does not exist. There was no Employer-Employee relationship between the Petitioner and the Respondents.

8 He further submits that Raosaheb Tamnar used to raise monthly bills for the work performed by his labourers. The Management never directly paid wages to the Petitioner. There was no supervision, control and direction by the Respondents over the Petitioner. He, therefore, submits that the award has been rightly delivered and no interference is called for. He prays for the dismissal of the petition by imposition of costs.

9 Having considered the submissions of the learned Advocates, I have gone through the petition paper book with their assistance.

10 It is not disputed that even before the Government Labour

Officer and the Conciliation Officer, the Respondents had taken a plea that the Petitioner was engaged through the labour contractor. It is also apparent from the Written Statement that the Respondents had specifically set out in paragraph 4 that the Petitioner was engaged on temporary basis through the contractor, namely, Raosaheb Tamnar. It was averred that the said contractor raised monthly bills towards service charges of the labourers/employees deployed by him with the Respondents/ Employer Undertaking. The Employer-Employee relationship was thus, refuted by the Respondents.

11 The Labour Court has framed the following issues in the reference proceedings:-

- “1. *Whether second party workman Ganpat Namdeo Wagh is entitled for reinstatement with continuity of service and full back wages w.e.f. 17.10.1996?* NO
2. *What Award?* :As per final award.”

12 It is beyond comprehension as to what precluded the Labour Court from framing an issue as regards Employer-Employee relationship since the proceedings before the Labour Court were reference proceedings under the Industrial Disputes Act, 1947. In the matter of *Vividh Kamgar Sabha v/s Kalyani Steels* reported in **AIR 2001 SC 1534 : 2001 (2) SCC 381**, the Apex Court has concluded in paragraphs 4 and 5 as under:-

- “4. At this stage it must be mentioned that this Court has also in the case of *Central Labour Union (Red Flag) Bombay v. Ahmedabad Mfg. & Calico Printing Co. Ltd. and Ors.* reported in (1995) 2 LLJ 765 : 1995 Supp.(1) SCC 175, held that where the workmen have not been accepted by the Company to be its employees, then no complaint would lie under the MRTU & PULP Act. We are in full agreement with the above mentioned view.
5. The provisions of MRTU & PULP Act can only be enforced by persons who admittedly are workmen. If there is dispute as to whether the employees are employees of the Company, then that dispute must first be got resolved by raising a dispute before the appropriate forum. It is only after the status as a workmen is established in an appropriate Forum that a complaint could be made under the provisions of MRTU & PULP Act.”

13 In the matter of *Cipla Limited v/s Maharashtra General Kamgar Union* reported in **AIR 2001 SC 1165 : 2001(3) SCC 101**, the Apex Court has concluded in paragraphs 7, 8 and 9 as under:-

- “7. In this Court it was submitted that the High Court had proceeded entirely on wrong lines. In *Gujarat Electricity Board, Thermal Power Station, Gujarat v. Hind Mazdoor Sabha* (1995(5) SCC 27) the question raised was whether the workers whose services were engaged by the contractors but who were working in the thermal power station of the Gujarat Electricity Board at Ukai can legally claim to be the employees of the Gujarat Electricity Board. The industrial tribunal had adjudicated the matter and held that the workmen concerned in the reference could not be the workmen of the contractors and, therefore, all the workmen employed by the contractor should be deemed to be the workmen of the Board. The industrial tribunal also gave consequential directions to the Board for payment of

wages, etc. The award of the industrial tribunal was upheld by the High Court in appeal. The contention put forth before this Court was that after coming into force of the Act it is only the appropriate Government, which can abolish the contract labour system after consulting the Central Board or the State Board, as the case may be, and no other authority including the industrial tribunal has jurisdiction either to entertain such dispute or to direct abolition of the contract labour system and neither the appropriate Government nor the industrial tribunal has the power to direct that the workmen of the erstwhile contractor should be deemed to be the workmen of the Board. The Central Government or the industrial tribunal, as the case may be, can only direct the abolition of the contract labour system as per the provisions of the Act but it does not permit either of them to declare the erstwhile workmen of the contractor to be the employees of the principal employer. As to what would happen to an employee engaged by the contractor if contract employment is abolished is another moot question yet to be decided by this Court. But that is not a point on which we are called upon to decide in this matter.

8. But one thing is clear – if the employees are working under a contract covered by the Contract Labour (Regulation & Abolition) Act then it is clear that the labour court or the industrial adjudicating authorities cannot have any jurisdiction to deal with the matter as it falls within the province of an appropriate Government to abolish the same. If the case put forth by the workmen is that they have been directly employed by the appellant-company but the contract itself is a camouflage and, therefore, needs to be adjudicated is a matter which can be gone into by appropriate industrial tribunal or labour court. Such question cannot be examined by the labour court or the industrial court constituted under the Act. The object of the enactment is, amongst other aspects, enforcing

provisions relating to unfair labour practices. If that is so, unless it is undisputed or indisputable that there is employer-employee relationship between the parties, the question of unfair practice cannot be inquired into at all. The respondent union came to the Labour Court with a complaint that the workmen are engaged by the appellant through the contractor and though that is ostensible relationship the true relationship is one of master and servant between the appellant and the workmen in question. By this process, workmen repudiate their relationship with the contractor under whom they are employed but claim relationship of an employee under the appellant. That exercise of repudiation of the contract with one and establishment of a legal relationship with another can be done only in a regular industrial tribunal/court under the I.D.Act.

9. Shri K.K. Singhvi, the learned senior Advocate appearing for the respondent, submitted that under Section 32 of the Act the labour court has the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of the Act. Section 32 would not enlarge the jurisdiction of the court beyond what is conferred upon it by other provisions of the Act. If under other provisions of the Act the industrial tribunal or the labour court has no jurisdiction to deal with a particular aspect of the matter, Section 32 does not give such power to it. In the cases at hand before us, whether a workman can be stated to be the workman of the appellant establishment or not, it must be held that the contract between the appellant and the second respondent is a camouflage or bogus and upon such a decision it can be held that the workman in question is an employee of the appellant establishment. That exercise, we are afraid, would not fall within the scope of either Section 28 or Section 7 of the Act. In cases of this nature where the provisions of the Act are summary in nature and give drastic remedies to the parties concerned elaborate consideration of the question as to

relationship of employer-employee cannot be gone into. If at any time the employee concerned was indisputably an employee of the establishment and subsequently it is so disputed, such a question is an incidental question arising under Section 32 of the Act. Even the case pleaded by the respondent-Union itself is that the appellant establishment had never recognised the workmen mentioned in Exhibit A as its employees and throughout treated these persons as the employees of the second respondent. If that dispute existed throughout, we think, the labour court or the industrial court under the Act is not the appropriate court to decide such question, as held by this Court in General Labour Union (Red Flag), Bombay v. Ahmedabad Mfg. & Calico Printing Co. Ltd & Ors. (1995 Supp (1) SCC 175), which view was reiterated by us in Vividh Kamgar Sabha v. Kalyani Steels Ltd. & Anr., (2001) 2 SCC 381.”

14 It is, therefore, trite law that the dispute as regards Employer-Employee relationship and as to who is the actual Employer of the workman and whether, the contractor is a sham and bogus arrangement, can be gone into in the reference proceedings. However, it cannot be overlooked that neither of the litigating sides have assisted the Labour Court by citing the above referred judgments so as to enable it to frame an issue and decide it. None of the parties have suggested framing of an additional issue after the Labour Court framed two issues which are reproduced herein above.

15 In paragraph 24 of the impugned judgment, the Labour Court

summarized its conclusions on the basis of documentary and oral evidence that the dispute cannot be raised after 10 years and the dispute cannot be said to be in existence after it is raised by delay of about 10 years. It is also concluded that the Petitioner has no right to claim reinstatement since he is daily-wager. The issue as to whether, the Petitioner can be said to be an employee of the Respondents and whether, he was a contract-labourer, was not dealt with. However, the Labour Court brushed aside the controversy regarding the Employer-Employee relationship on the ground that the reference has been raised after 10 years.

16 It is crystallized law that there is no limitation prescribed for making a reference under Section 2(k) or Section 2A of the Industrial Disputes Act, 1947. The circumstances in which the reference has been raised after a long span of time, are to be looked into on case to case basis. The worst that can happen is that the concerned second party workman can be deprived of all monetary benefits for the delayed period in raising of an industrial dispute so as to ensure that the Employer is not penalised or prejudiced by raising of industrial dispute after 10 or 15 years.

17 I have considered the conclusions drawn by the Labour Court.

It appears that the issue of Employer-Employee relationship was not framed by the Labour Court despite the pleadings of the Respondents in their written statement. This could be a reason for proper evidence having not been brought on record before the Labour Court in respect of the said issue. So also, the Respondents could have moved an application either for addition of the contractor as the first party No.3 or could have moved an application making out a case of non-joinder of parties, thereby, enabling the Labour Court to refer the matter to the appropriate Government for addition of a party and for correction of the terms of reference. To say the least, it appears that the litigating sides have not rendered proper assistance to the Labour Court and which has, therefore, resulted in the impugned judgment and award.

18 In the light of the above, the impugned judgment and award dated 18.09.2012 is quashed and set aside. Reference (IDA) No.67/2007 is remitted back to the Labour Court for framing of proper issues.

19 The Respondents, if so desire, may move an application for addition of the contractor or for referring the order of reference for correction to the appropriate Government. In the event, such an application is filed, the Labour Court shall consider the same on its own merits after hearing the litigating sides.

20 Needless to state that both the sides are at liberty to lead additional evidence in support of the issues which would be cast by the Labour Court.

21 The litigating sides pray for a specific date to appear before the Labour Court so as to avoid wastage of time. As such, the Petitioner and the Respondents shall appear before the Labour Court at Ahmednagar on 07.08.2015.

22 The Writ Petition is, therefore, partly allowed. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)