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

WRIT PETITION NO.4261 OF 2014
WITH
WRIT PETITION NO.4228 OF 2014
WITH
WRIT PETITION NO.4230 OF 2014

The Manager,
Maharashtra Krushi Udyog Vikas
Mahamandal Ltd., Khatkarkhana,
Plot No.C-51, Additional MIDC, Jalna,
Tq. & Dist.Jalna.

...PETITIONER in all (3) petitions

-VERSUS-

- 1 The State of Maharashtra.
Through the Secretary,
Industries, Energy and Labour
Department, Mantralaya, Mumbai.
(Copy to be served through
Standing Counsel, High Court Judicature
Bombay, At Aurangabad.)

...RESPONDENT NO.1 in all (3) petitions

- 2 Vinod s/o Krushnarao Kulkarni,
Age : Major, Occ : Service,
R/o C/o Kishanrao Suryabhan Bhojane,
Beside NRB Credit Society,
Samarth Nagar, Old Jalna,
Tq. & Dist.Jalna.

...RESPONDENT No.2 in WP/4261/2014.

- 2 Ram Madhukar Manvatkar,
Age : Major, Occ : Service,
R/o C/o Rajesh Ramesh Godse,
Shankar Nagar, Jalna.
Tq. & Dist.Jalna.

...RESPONDENT NO.2 in WP/4228/2014.

- 2 Kishor Ratan Pandit,
Age : Major, Occ : Nil,

R/o Ramabai Nagar, Motibag,
Beside ZP Quarters, Old Jalna,
Tq. & Dist.Jalna. ...RESPONDENT NO.2 in WP/4230/2014

**ALONG WITH
WRIT PETITION NO.9944 OF 2014
WITH
WRIT PETITION NO.9945 OF 2014
WITH
WRIT PETITION NO.9946 OF 2014
WITH
WRIT PETITION NO.9947 OF 2014**

Gajanan Babasaheb Dengale,
Age : 34 years, Occ : Nil,
R/o Shankar Nagar, Old Jalna,
Dist.Jalna. ...PETITIONER in WP/9944/2014.

Balaji Omprakash Swami,
Age : 34 years, Occ : Nil,
R/o Shiv Nagar, Old Jalna,
Dist.Jalna. ...PETITIONER in WP/9945/2014.

Vishnu Tulshiram Mohite,
Age : 34 years, Occ : Nil,
R/o Kucha Vata, Old Jalna,
Dist.Jalna. ...PETITIONER in WP/9946/2014.

Rajesh Ramesh Godsey,
Age : 26 years, Occ : Nil,
R/o Shankar Nagar, Old Jalna,
Dist.Jalna. ...PETITIONER in WP/9947/2014.

-VERSUS-

Maharashtra Krushi Udyog Vikas
Mahamandal Maryadit, Khat Karkhana,
Plot No.C-51, Additional MIDC, Jalna,
Tq. & Dist.Jalna.
Through it's Manager. ...RESPONDENT in all (4) petitions.

...

Mr.Bikram Chaudhuri, Advocate i/by Abhay Nevagi & Associates holding for Mr.B.V.Virdhe, for the Establishment.

Mr.U.S.Mote, AGP, for the Respondent/State.

Mr.Vinod Prakash Patil, Advocate for the Employees.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th August, 2015

Oral Judgment:

1 In the first three petitions filed by the Petitioner/ Establishment, it is stated that the State of Maharashtra has been wrongly arrayed as Respondent No.1. Leave to delete the State of Maharashtra is prayed for. Leave granted. Deletion be carried out forthwith.

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

3 The first three petitions are preferred by the Establishment challenging the judgments and awards of the Labour Court dated 28.02.2014 in Reference (IDA) Nos.03/2009, 01/2009 and 02/2009, respectively. By the said Awards, the references are partly allowed and the Petitioner Establishment has been directed to reinstate the Respondents/

Workmen with continuity of service and 50% back-wages.

4 In the next four Writ Petitions, the Employees have assailed the judgments and awards of the Labour Court dated 17.08.2013 delivered in Reference (IDA) Nos.05/2011, 04/2011, 09/2011 and 06/2011, respectively. By the impugned awards, all the reference cases have been answered in the negative.

5 For the sake of brevity and to avoid repetition, the litigating sides in these seven petitions will be referred to as “the Establishment” and “the Employees”.

6 In this judgment, in the event the term Establishment is referred to as the Employer and the Respondents are referred to as the Employees or Workmen, it shall not tantamount to this Court having arrived at a conclusion that the litigating sides share an Employer-Employee relationship (inter-se).

7 In the first three petitions, the learned Advocate appearing for the Establishment, specifically draws my attention to the nature of activities indulged into by the Establishment. It is a Government of Maharashtra undertaking which engaged in manufacturing of granule

mixed fertilizer. The said factory is located at Jalna Additional Industrial Area. The activity is confined to sowing seasons of the farmers/agriculturists thereby, it having a seasonal character.

8 The learned Advocate further indicates that the object of the Establishment is to make fertilizer available to the agriculturists in the State of Maharashtra on subsidized rates. The activity of manufacturing the fertilizer is closely linked to the agricultural season and depending on the crop condition.

9 The concerned Respondents/Employees in all these matters have claimed to be in the employment of the Establishment. Their durations of service rendered with the Establishment have been so stated in their petitions. The Establishment has taken a stand that none of these Employees were ever engaged or appointed by the Establishment directly. There was no privity of contract between the parties. There was no Employee-Employer relationship inter-se between them. All these employees were deployed by the Labour Contractor by name B.V.Gunjral. It is undisputed that despite this stand being taken, the labour contractor B.V.Gunjral is not a litigating party.

10 All these Employees had alleged oral termination at the hands

of the Establishment. They raised industrial disputes before the competent authority. The Establishment claims that it took a stand as recorded above that it is not a direct Employer and at best, could be termed as Principal Employer going by the definition as is found in the Contract Labour (Regulation and Abolition) Act, 1970.

11 The Establishment has specifically taken a stand before the Labour Court that the labour contractor B.V.Gunjal had deployed these Employees. It is not disputed that the references made to the Labour Court arrayed the Establishment and the Employees as litigating parties. The labour contractor was not arrayed as one of the litigating side. All these matters before the Labour Court have proceeded without appearance of the labour contractor.

12 In these first three petitions filed by the Establishment challenging the awards which grant reinstatement, continuity and 50% back-wages to the Employees, the Establishment points out the conclusions drawn by the Labour Court while delivering the impugned awards.

13 It is indicated from paragraph 11 of the impugned awards that the Labour Court has considered the defence of the Establishment

that the second party workmen before the Labour Court were employed by the contractor. It is further indicated from paragraph 13 of the impugned award that though the first party Establishment drew the attention of the Labour Court to the documents at Exhibit U/32 to U/49, the Labour Court held that it is not required to go into the details of the documents placed on record by the Establishment.

14 The Labour Court in the impugned awards has specifically observed in paragraph 12 as under:-

“Present Reference is based on the point, whether, the second party is a workman or employee of the first party or the contractor of the first party Mr.B.V.Gunjali? present reference resolves (revolves) around this point only.”

15 The learned Advocate for the Establishment, therefore, takes a serious exception to these Awards as they are in opposition to the tenets of law. Every court is supposed to consider in totality the effect of documentary evidence. Dehors the documentary evidence, the Labour Court could not have proceeded to decide the references, is the submission of the learned Advocate. The Labour Court has observed that the establishment had not taken this stand before the Conciliation Officer.

16 Shri Patil, learned Advocate appearing for the Respondents/

Employees in these first three petitions, strenuously defends the impugned judgments and awards. He submits that the Labour Court has arrived at a conclusion that the Employees are deployed by the Establishment. The Employer-Employee relationship is established between these parties. The references were, therefore, tenable. The findings on facts by the Labour Court should not be interfered with by this Court in its writ/ supervisory jurisdiction.

17 Having considered the submissions of the learned Advocates to the extent of the first three petitions, it needs no debate that the Labour Court by its conclusion in paragraph 14 has declined to go into the documents placed on record. Even while answering the issues, I do not find that the Labour Court has referred to the said documents which would have assisted it in properly adjudicating these reference cases.

18 Very denial to consider the documentary evidence and especially those documents which have been placed on record by the Establishment and consequentially, the considering of only the evidence put forth by the Employees, is not an acceptable procedure while dealing with the case. Primarily on this count alone, these petitions deserve to be allowed.

19 The Apex Court in the matter of *Vividh Kamgar Sabha v/s Kalyani Steels* reported in **AIR 2001 SC 1534 : 2001 (2) SCC 381** has observed 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.”

20 In similar circumstances, the Apex Court, in *Cipla Limited v/s Maharashtra General Kamgar Union* reported in **AIR 2001 SC 1165 : 2001(3) SCC 101**, has observed 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 workmen 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.”

21 In the light of the ratio laid down by the Apex Court, it is clear that in a reference case under the Industrial Disputes Act, 1947 the factum of employment between the Workman and the Principal Employer can be gone into. Whether, the contract is sham and bogus and whether, the contractor is a camouflage, can also be gone into. The issue of maintainability of reference was, therefore, strictly not before the Labour Court. In my view, the issue was as to whether, the contractor could be arrayed in the said proceedings for a proper adjudication of the dispute

and to avoid multiplicity of the litigation. This has also not been done by the Labour Court.

22 The learned Advocates for the litigating sides in the above backdrop have, therefore, submitted that there could not have been any opposition to arraying the purported contractor B.V.Gunjal in the proceedings before the Labour Court since his participation would have assisted the Labour Court to decide the reference proceedings in the light of the observations of the Apex Court in the cases of Kalyani Steel and Cipla Limited (supra).

23 At this juncture, it would apposite to refer to the observations if the Apex Court in the case of M/s Hochtief Gammon Vs. Industrial Tribunal, Bhubaneswar, AIR 1964 SC 1746. Paragraph Nos. 7 to 12 and 18 read thus :-

*“7. In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the **Industrial Tribunal** is a **Tribunal** of limited jurisdiction. Its jurisdiction is to try an **industrial** dispute referred to it for its adjudication by the appropriate Government by an order of reference passed under s. 10. It is not open to the **Tribunal** to travel materially beyond the terms of reference, for it is well-settled that the terms of reference determine the scope of its power and jurisdiction from case to case. Section 10 itself had been subsequently*

amended from time to time. Act 18 of 1952 made substantial amendments in s. [10](#). One of these amendments was that s. [10\(1\)\(d\)](#) now empowers the appropriate Government to refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule, or the Third Schedule, to a **Tribunal** for adjudication. In other words, under s. [10\(1\)\(d\)](#), the appropriate Government can refer to the **Industrial Tribunal** not only a specific **industrial** dispute, but can also refer along with it matters appearing to be connected with, or relevant to, the said dispute. In that sense, the power of the appropriate Government has been enlarged in regard to the reference of **industrial** disputes to the **Tribunal**.

8. Section [10\(4\)](#) which was also added by the same amending Act provides, inter alia, that the jurisdiction of the **Industrial Tribunal** would be confined to the points of dispute specified by the order of reference, and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of dispute have been referred to the **Industrial Tribunal** for adjudication, it may, while dealing with the said points, deal with matters incidental thereto, and that means that if, while dealing with such incidental matters, the **Tribunal** feels that some persons who are not jointed to the reference should be brought before it, it may be able to make an order in that behalf under s. [18\(3\)\(b\)](#) as it now stands.

9. Section [10\(5\)](#) has now conferred power on the appropriate Government to add to the reference other establishments, groups or classes of establishments of a similar nature, if it is satisfied that these establishments are likely to be interested in, or affected by, such

dispute. In other words, if **industrial** dispute is referred to a **Tribunal** for adjudication, and in the area within the territorial jurisdiction of the appropriate Government there are other establishments which would be affected by, or interested in, such a dispute, the appropriate Government may add them to the said reference either at the time when the reference is initially made, or during the pendency of the said reference proceedings; but in every case, such additions can be made before the award is submitted. Now, if such persons are added to the reference, the **industrial Tribunal** may in exercise of its powers under s. [18\(3\)\(b\)](#) summon them to appear before it.

10. Section [18\(b\)](#) with which we began, has also been amended by Act 36 of 1956, and it has now been renumbered. As a result, s. [18\(b\)](#) is now included in s. [18\(3\)\(b\)](#). Section [18\(3\)](#) provides, inter alia, that an award passed by an **Industrial Tribunal** which has become enforceable shall be binding on :

(a) all parties to the **industrial** disputes;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the **Tribunal** records the opinion that they were so called without proper cause.

11. The material words in s. [18\(3\)\(b\)](#) are the same as they were originally included in s. [18\(b\)](#), and so, the implied power which could be exercised by the **Industrial Tribunal** under s. [18\(b\)](#) can now be exercised by it under s. [18\(3\)\(b\)](#). If the **Tribunal** thinks that the parties who were summoned to appear before it were so summoned without proper cause, it may record its opinion to that effect and then the award which it pronounces would not be binding on them.

12. Reverting then to the question as to the effect of the power which is implied in s. [18\(3\)\(b\)](#), it is clear that this power cannot be exercised by the **Tribunal** so as to enlarge materially the scope of the reference itself, because basically the jurisdiction of the **Tribunal** to deal with an **industrial** dispute is derived solely from the order of reference passed by the appropriate Government under s. [10\(1\)](#). What the **Tribunal** can consider in addition to the disputes specified in the order of reference, are only matters incidental to the said disputes; and that naturally suggests certain obvious limitations on the implied power of the **Tribunal** to add parties to the reference before it, purporting to exercise its implied power under s. [18\(3\)\(b\)](#). If it appears to the **Tribunal** that a party to the **industrial** dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee, it may direct that other persons should be joined who would be necessary to represent such interest. If the employer named in a reference does not fully represent the interests of the employer as such, other persons who are interested in the undertaking of the employer may be joined. Similarly, if the unions specified in the reference do not represent all the employees of the undertaking, it may be open to the **Tribunal** to add such other unions as it may deem necessary. The test always must be, is the addition of the party necessary to make the adjudication itself effective and enforceable? In other words, the test well be, would the non-joinder of the party make the arbitration proceedings ineffective and unenforceable? It is in the light of this test that the implied of the **Tribunal** to add parties must be held to be limited.

18. The results is, though we accept Mr. Chatterjee's argument that

s. [18\(3\)\(b\)](#) postulates the existence of an implied power in the **Tribunal** to add parties and summon them, in the present case that power cannot be exercised, because having regard to the limited nature of the implied power, **M/s.** Hindustan Steel Ltd. cannot be regarded as a necessary party under the provisions of s. [18\(3\)\(b\)](#). The appeal accordingly fails and is dismissed with costs.”

24 The Division Bench of this Court has recently dealt with a similar issue in the case of Digambar Madye and others Vs. Union of India and others, 2015(II) CLR 540. The issue involved was regarding addition of a party and amendment to one clause of the Schedule to the Reference as observed in paragraph No.16 of the said judgment. The Court concluded in paragraph Nos.19, 20 and 21 as under :-

“19. We find that if the Respondent No. 3 is made a party and the amendment as sought is made, it would not expand the scope dispute. The only additional question that would be decided is if in the event the petitioners are successful in justifying their claim against Respondent No. 2, whether the Respondent No. 3, who steps into the shoes of Respondent No. 2, would be liable to perform the obligations of Respondent No. 2 from 3.5.2006 or not.

20. In that view of the matter, we find that the Respondent No. 1 has erred in rejecting the application. The only ground given in the application is that on 27th December, 2014, the Respondent No. 3 was not in existence and, therefore, it cannot be impleaded as a party respondent. Had the Respondent no. 1 has gone into the averments made on behalf of the applicant in this application, he

could have very well seen as to why, according to the petitioners, the presence of Respondent No. 3 was necessitated.

21. In ordinary course, we could have remitted back the matter to the Respondent No. 1 for considering afresh. However, we find that the litigation between the parties is pending right from 1998. In any case, since we are of the considered view that presence of Respondent No. 3 is appropriate and proper, if not necessary for the decision of the Reference, we do not propose to adopt that course. We find that the application which seeks an amendment to clause 2 of Schedule to the Reference and addition of Respondent No. 3 is necessary for complete adjudication of the dispute between the parties. In any case, we find that if the same is done, it will also avoid multiplicity of litigations. As such, we are inclined to allow the application made by the petitioners. We are fortified in the view taken by us, in view of the Judgment of the Apex Court in the case of *Telco Convey Drivers Mazdoor Sangh and another v. State of Bihar and others* AIR 1989 SC 1565 and of the Division Bench of this Court in the case of *Ramruch Pande and others vs. State of Maharashtra & Ors.* 2002 (94) FLR 961.”

25 With due circumspection, I am, therefore, of the view that the impugned awards in the first three petitions deserve to be quashed and set aside and the reference cases deserve to be remitted back to the Labour Court. Necessary directions to ensure the presence of the contractor are required to be issued, in light of the ratio laid down in the case of Hochtief Gammon case (supra).

26 Insofar as the remaining four petitions filed by the Employees are concerned, Shri Patil, learned Advocate, has voiced the grievance of the concerned employees on a limited aspect. He submits that in all these four cases the Labour Court has proceeded in a hurried manner and despite the reference cases not being pending for too long, has concluded that the employees are causing delay since their lawyer travels from Aurangabad to Jalna and is not available on a few occasions. Shri Patil, therefore, submits that the Court has to ensure that justice is dispensed. If the conduct of the employees could lead to an impression that they have deliberately and willfully delayed the proceedings, the Labour Court would have been justified in deciding the references by refusing adjournments.

27 He further submits that the references were received in December, 2011 and in a span of about 20 months, these references have been decided by the Labour Court which delivered the impugned award on 17.08.2013. He, therefore, makes a grievance that such haste was neither warranted nor expected.

28 He further submits that the affidavits in lieu of examination in chief which were filed by these Petitioners/ Employees have been disregarded for the reason that the affidavits were not verified by the

Advocate of the Employees in the Court. Certain documents were filed in the form of xerox copies. The attendance report produced before the Conciliation Officer was also not proved.

29 Shri Patil, therefore, submits that the above fact situation led to the impugned awards being delivered in a hurried manner. A proper opportunity of leading evidence was not granted. The labour contractor B.V.Gunjai was also not arrayed in the proceedings. He, therefore, prays for quashing and setting aside of the impugned awards.

30 The learned Advocate for the Establishment relies on the affidavit in reply. He points out that the Labour Court had noticed that the employees were not seriously pursuing the cause of action and they had sought adjournments. The issue of change in advocate had also cropped up though the Establishment is not concerned with the said issue. Ample opportunities to lead oral evidence and produce documentary evidence were also granted.

31 He further submits that the Law of Evidence and the provisions of the Code of Civil Procedure need to be followed when it comes to placing the documents before the Court. Had the employees taken the necessary efforts, they could have properly led oral and

documentary evidence in support of their cases. Having failed to substantiate their contentions set out in the statements of claims, the Employees cannot take the stand that due opportunity was not afforded to them while recording the oral evidence. He, therefore, prays that these four petitions be dismissed with costs.

32 By my conclusions recorded above, the first three petitions are being allowed so as to enable the addition of the labour contractor as a party to the reference proceedings. These cases are also covered by the said conclusions arrived at in this judgment. For the said reasons, the matters need to be remanded.

33 So also, it appears from the conclusions of the Labour Court in paragraph 8 of the impugned judgments and awards in the four petitions preferred by the Employees that their oral evidence has been disregarded since there was no verification before the Court and the affidavit in lieu of examination in chief was not in accordance with the provisions of law. The documents which were sought to be pressed into service were either xerox copies or were not proved.

34 I quite see that the Labour Court could have granted an opportunity to the Employees looking at the fact that their lawyer used to

travel from outstation and on some occasions had found it difficult to reach the Court in time. The reference cases cannot be said to be pending for too long as they were registered before the Labour Court in December, 2011 and they stood decided within a period of one year, eight months and 28 days.

35 For all these reasons, I find it appropriate to quash and set aside the impugned judgments and awards and remit the reference cases to the Labour Court for addition of parties, framing of proper issues and permitting the litigating sides to lead additional evidence.

36 In the light of the above, the impugned judgments and awards in the reference cases as stated below are quashed and set aside:-

WRIT PETITION NOS.	REFERENCE NOS. (IDA)	JUDGMENTS AND AWARDS DATED
4261/2014	No.03/2009	28/02/2014
4228/2014	No.01/2009	28/02/2014
4230/2014	No.02/2009	28.02.2014
9944/2014	No.05/2011	17.08.2013
9945/2014	No.04/2011	17.08.2013
9946/2014	No.09/2011	17.08.2013
9947/2014	No.06/2011	17.08.2013

37 The reference cases are, therefore, remitted back to the Labour Court for a fresh decision on the following conditions:-

- (a) Both the litigating sides shall appear before the Labour Court, Jalna on 14/09/2015.
- (b) The Labour Court shall permit the Second Party Workmen to amend the statement of claim by adding the Labour Contractor as the First Party No.2, within three weeks from the date of appearing and issue notice to the added First Party No.2.
- (c) The Labour Court shall direct the appropriate Government to add the contractor as First Party second in the order of reference and transmit the corrected order of reference to the Labour Court, forthwith.
- (d) The Labour Court shall frame appropriate issues looking at the rival contentions of the Establishment and the Employees.
- (e) The Labour Court shall not disregard the oral and documentary evidence already recorded.
- (f) The litigating sides will be at liberty to adduce additional oral and documentary evidence.
- (g) The Labour Court shall note that since this Court has not dealt with the merits of the matters and has not made any observation with regard to the same, these reference cases shall be decided on their own merits.

38 The first three petitions filed by the Establishment as well as the other four petitions filed by the Employees are partly allowed. Rule is made partly absolute in the above terms.

39 No costs.

(RAVINDRA V. GHUGE, J.)