

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6506 OF 2014

1. Sambhaji S/o Dagduba Deokule,
Age-39 years, Occu-Service,
R/o Latur,
2. Gulabpasha S/o Ismail Shaikh,
Age-39 years, Occu-Service,
R/o Latur,
3. Prabhavati Vishwambhar Patil,
Age-44 years, Occu-Service,
R/o Latur,
4. Hansraj S/o Dattoba Jadhav,
Age-38 years, Occu-Service,
R/o Latur,
5. Dyandev S/o Yashwant Jadhav,
Age-43 years, Occu-Service,
R/o Latur,
6. Balaji S/o Tulshiram Kadne,
Age-35 years, Occu-Service,
R/o Latur.

PETITIONERS

VERSUS

Municipal Corporation, Latur,
District Latur,
Through its Commissioner

RESPONDENT

Mr.V.P.Golewar, Advocate for the petitioners.

Mr.Ajinkya Deshmukh h/f Mr.A.V.Hon, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 31/08/2015

ORAL JUDGMENT :

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

2. The petitioner had preferred Complaint (ULP) No.23/2009 before the Industrial Court claiming benefits of permanency / regularization. All the petitioners are party to the same complaint. By the impugned judgment and order dated 04/07/2014, the complaint was dismissed. There were 32 complainants before the Industrial Court. Only 6 petitioners / original complainants are before this Court and hence this order is restricted only to the extent of the petitioners in this petition.

3. The petitioners had contended before the Industrial Court that they were working as “Clerks cum Community Organizers” from 1997 onwards. They are in employment even today. They contended that the respondent/Corporation exercised supervision, control and direction on the day to day working of the petitioners. They claimed completion of 240 days in the continuous and uninterrupted service of the Corporation in each calendar year and on the basis of which they have claimed permanency and benefits consequential thereto.

4. The respondent / Corporation has filed its written statement in

the complaint. The tenability of the complaint has been objected to. It is averred that there is no employer-employee relationship between the Corporation and the Employees.

5. It is further contended that a Society by the name *Jai Santoshi Mata Magas Vargia Majoor Sahakari Sanstha Latur* is the Labour Contractor Society and the persons mentioned in Annexure-A to the complaints are deployed by the said society. There is a contract of service between the Corporation and the said society. It is, therefore, prayed that since the Industrial Court has properly concluded that though there was supervision and control by the respondent / Corporation on the workers, that would not be the only test and hence the complaints were rightly dismissed.

6. By considering the submissions of the learned Advocates, I have gone through the petition paper book. The Industrial Court has framed issues and decided the complaint finally.

7. It is undisputed that the above stated Society, which is purportedly a labour/contractor society, was not arrayed in the proceedings before the Industrial Court. The respondent/Corporation had taken up the ground of no employer-employee relationship.

Complaint is of the year 2009. None of the parties prayed for framing of any preliminary issue. The respondent had not moved an application seeking dismissal of the complaint on the ground of employer-employee relationship having been disputed.

8. The petitioners have produced on record certain documents at Exh.U-23 to 70, U-80 to 82, U-88 and U-82(1 to 30). Attendance sheet maintained by the respondent bearing the signature of the respondent Officer, was before the Industrial Court. Identity cards were issued by the respondent. Details about whether the said Society was registered under the Contract Labour (Regulation and Abolition) Act, 1970, were not before the Industrial Court. Supervision and control by the respondent/Corporation was admitted in the cross examination by the Management witness.

9. I also find that besides merely taking a stand in the written statement, the respondent has not produced such documents as are mandatorily required to be maintained under the Act of 1970. Details about payment of wages to these workers were not brought before the Industrial Court.

10. When the respondent had prayed for the dismissal of the

complaint on the ground of no employer-employee relationship, it could have brought on record such documentary evidence, which would have established the existence of the society as a Contractor, on the basis of which the complaint could have been dismissed in the light of the ratio laid down by the Apex Court in the case of Vividh Kamgar Sabha Vs. Kalyani Steels Limited, reported in 2001[1] CLR, page 532 and Cipla Limited Vs. Maharashtra General Kamgar Union, reported in 2001 LLR page 305.

11. The judgment of this Court in the case of Hindalco Industries Limited Vs. Association of Engineering Workers, 2008(13) SCC 441 was cited. Yet, the Industrial Court concluded that even if supervision and control of the respondent / Corporation was established, it would not be the only test to decide employer-employee relationship.

12. Before coming to this conclusion, it was incumbent upon the Industrial Court to consider the documents on record and more so to assess as to whether the respondent / Corporation had brought the necessary documentary evidence before the Industrial Court to establish that the Labour Contractor Society had issued appointment orders to the workers. Whether the Contractor was raising monthly

bills, was paying salary directly to the employees and that the Corporation had never paid such salary and had not carried out statutory deductions directly.

13. In the light of the above, I find that the Industrial Court has dismissed the complaints merely on the statement of the respondent and the judgments cited without considering whether there was any evidence to disprove the factum of employer-employee relationship. A long period of engagement from 1997 onwards, which is practically about 18 years, could not have been disregarded by the Industrial Court.

14. As such, I find that the impugned judgment dated 04/07/2014 delivered by the Industrial Court in Complaint (ULP) No.23/2009 is erroneous and deserves to be set aside.

15. In the light of the above, this petition is partly allowed. The impugned judgment dated 04/07/2014 is quashed and set aside. Both the complaints are remitted to the Industrial Court for enabling the Corporation to produce documentary evidence which is in its custody, in support of its contentions in the written statement.

16. The litigating sides are at liberty to lead additional evidence and the Industrial Court shall consider the evidence recorded as well as the additional evidence and decide the complaint on its own merits, preferably on or before 29/02/2016.

17. The litigating sides shall appear before the Industrial Court on 15/09/2015. Formal notices are not required to be issued.

18. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)