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

WRIT PETITION NO.:8019 OF 2015

The Executive Engineer Maharashtra State Electricity Distribution Co Ltd

VERSUS

Dinesh Bhimrao Parvide And Another

WITH

WRIT PETITION NO.:8020 OF 2015

The Executive Engineer Maharashtra State Electricity Distribution Co Ltd

VERSUS

Sunil Nina Bharambe And Another

WITH

WRIT PETITION NO.:8021 OF 2015

The Executive Engineer Maharashtra State Electricity Distribution Co Ltd

VERSUS

Bhagwant Murlidhar Zambare And Another

WITH

WRIT PETITION NO.:8022 OF 2015

The Executive Engineer Maharashtra State Electricity Distribution Co Ltd

VERSUS

Hakij Shaikh Abdul Rashid And Another

WITH

WRIT PETITION NO.:8023 OF 2015

The Executive Engineer Maharashtra State Electricity Distribution Co Ltd

VERSUS

Pundlik Vitthal Patil And Another

WITH

WRIT PETITION NO.:8024 OF 2015

The Executive Engineer Maharashtra State Electricity Distribution Co Ltd

VERSUS

Sachin Prabhakar Kirtikar And Another

WITH
WRIT PETITION NO.:8025 OF 2015

The Executive Engineer Maharashtra State Electricity Distribution Co Ltd
VERSUS
Sanjay Jagannath Jadhav And another

WITH
WRIT PETITION NO.:8026 OF 2015

The Executive Engineer Maharashtra State Electricity Distribution Co Ltd
VERSUS
Vikas Kanji Bhalerao And Another

WITH
WRIT PETITION NO.:8027 OF 2015

The Executive Engineer Maharashtra State Electricity Distribution Co Ltd
VERSUS
Ashok Motiram Chaudhary And Another

WITH
WRIT PETITION NO.:8028 OF 2015

The Executive Engineer Maharashtra State Electricity Distribution Co Ltd
VERSUS
Chandrakant Motiram Chaudhary And Another

WITH
WRIT PETITION NO.:8029 OF 2015

The Executive Engineer Maharashtra State Electricity Distribution Co Ltd
VERSUS
Tirthraj Pralhad Surwade And Another

...
Advocate for Petitioner : Shri Bajaj Anil S.

Advocate for Respondent No.1 : Shri K C Sant.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 15th September, 2015

Per Court:

1 I have heard Shri Bajaj, learned Advocate for the Petitioner/
Establishment and Shri Sant, learned Advocate for Respondent No.1/
Employees.

2 All the Petitioners are the same Electricity Distribution
Company. Respondent No.1 in all these petitions are the Employees who
were parties to the reference proceedings before the Labour Court.

3 At the very outset, it is submitted by Shri Bajaj that
Respondent No.2/ Contractor herein did not appear before the Labour
Court in all the proceedings below and as such, did not cause an
appearance, did not file it's Written Statement and did not lead any
evidence in the reference proceedings.

4 Considering the above and the order that I intend to pass, I
do not deem it necessary to issue notice to Respondent No.2 in this matter.

5 The Petitioner is aggrieved by the following judgments and
awards delivered by the Labour Court in the respective reference cases:-

Sr. No.	Writ Petition No.	Name of Employee	Reference (IDA) No.	Date of Award
1	8019/2015	Dinesh Bhimrao Parvide	78/2009	12/12/14
2	8020/2015	Sunil Nina Bharambe	75/2009	18/12/2014
3	8021/2015	Bhagwat Murlidhar Zambare	80/2009	20/12/2014
4	8022/2015	Hakij Shaikh Abdul Rashid	76/2009	11/12/14
5	8023/2015	Pundlik Vitthal Patil	83/2009	11/12/14
6	8024/2015	Sachin Prabhakar Kirtikar	85/2009	12/12/14
7	8025/2015	Sanjay Jagannath Jadhav	77/2009	20/12/2014
8	8026/2015	Vikas Kanji Bhalerao	79/2009	19/12/2014
9	8027/2015	Ashok Motiram Chaudhary	81/2009	23/12/2014
10	8028/2015	Chandrakant Motiram Chaudhary	82/2009	18/12/2014
11	8029/2015	Tirthraj Pralhad Surwade	84/2009	19/12/2014

6 Shri Bajaj submits that the Labour Court has concluded that the contract was sham and bogus. Since the contractor did not appear in the matter and assist the Court, the reference cases were virtually decided ex-parte as against the Contractor. Some records need to be traced from the Contractor. The Petitioner realized that the agreement between the Petitioner and the Contractor that was filed before the Labour Court in an earlier Complaint (ULP) No.162/1998, is stated to be destroyed officially by the Labour Court. This information is gathered from the communication dated 16.07.2015 obtained from the Labour Court which is placed on record.

7 The said communication dated 16.07.2015 is taken on record and marked as Exhibit X for identification.

8 I have considered the submissions of the learned Advocates for the respective sides for quite sometime. Insofar as whether, the contract is sham and bogus is concerned, it has been decided by the Labour Court on the basis of the available material and with no assistance having been rendered by the First Party No.2/ Contractor, who is Respondent No.2 herein, but without framing a proper issue. I also find that though the Labour Court has concluded that the Respondents/ Employees have worked continuously for 240 days, the same appears to be based on oral statements made by the Respondents/ Employees through their affidavits filed in lieu of examination-in-chief.

9 The cases before the Labour Court involved two important legal aspects. Firstly, whether, the existence of the Contractor was to be set aside on the ground of he being a camouflage, the contract being sham and bogus and an attempt to refute the Employer-Employee relationship between the Principal Employer and the Workmen. Secondly, if the contract is held to be sham and bogus and the contractor is eliminated for the said reason, whether, the Respondents/ Employees prove their

continuous service with the Petitioner, at least, in one calendar year preceding the date of reference from the date of their termination in the light of Section 25B of the Industrial Disputes Act, 1947.

10 I find from the impugned judgments that though the Labour Court has framed an issue as to whether, the Second Party Workmen are the employees of the First Party No.1/ Employer, no issue was cast as regards, whether, the Second Party Workmen prove that the First Party No.2/ Contractor is a camouflage, is sham and bogus and therefore, requires to be eliminated.

11 Considering the terms of reference under Sections 10(1) and 12(5) of the Industrial Disputes Act, 1947 having been made to the Labour Court by the appropriate Government and in the light of the rival contentions, the issue as to whether, the First Party No.2/ Contractor is fictitious, sham and bogus, was required to be framed and gone into.

12 Considering the fact situation as above, both the learned Advocates, on instructions from their respective clients, have frankly stated that the matter could be remitted back to the Labour Court for framing of issues with regard to the First Party No.2/ Contractor and for permitting all the sides to lead additional oral and documentary evidence

for proper adjudication of the reference cases.

13 However, I find that a direction needs to be issued to the extent that the Labour Court shall issue a fresh notice to the First Party No.2/ Contractor after the Petitioner furnishes the available address of the said contractor. After the court service, if the Contractor does not appear, the Labour Court shall proceed on the premise that the First Party No.2/ Contractor is disinterested and shall then, decide the reference cases in accordance with law. The option to the Petitioner to resort to a substituted service under the Code of Civil Procedure for serving the First Party No.2/ Contractor through paper publication is kept open, provided the said option is resorted to with promptitude.

14 In the light of the above, the impugned judgments and awards are set aside. All the above referred reference cases are remitted back to the Labour Court with the following directions:-

- (a) The Petitioner/ Establishment and Respondent No.1/ Workmen shall appear before the Labour Court on 01.10.2015 at 11:00 am.
- (b) The Petitioner shall move an application on the same date requesting the Labour Court to issue a fresh notice to the First Party No.2/ Contractor by furnishing available addresses in

the said application.

- (c) Alternatively, the Petitioner may request the Labour Court to permit the service of court notice on the First Party No.2/ Contractor through paper publication to be published in daily Marathi newspapers having wide circulation in Jalgaon district viz. Dainik Sakaal or Dainik Lokmat.
- (d) After the court service, if the First Party No.2/ Contractor does not cause an appearance, the Labour Court shall record that the reference proceedings shall proceed ex-parte against the said party and thereafter, shall frame the additional issues as observed herein above with regard to the existence of the First Party No.2/ Contractor.
- (e) The oral and documentary evidence already on record shall not be discarded by the Labour Court.
- (f) All the litigating sides are permitted to lead additional oral and documentary evidence.
- (g) The Labour Court shall, accordingly, decide the reference cases after conclusion of the final arguments of the litigating sides on its own merits and without being influenced by its observations made in the impugned judgments which have been set aside today.
- (h) Considering the fact that Respondent No.1/ Employees are

out of employment from 1997, these reference cases shall be decided by the Labour Court as expeditiously as possible and preferably on or before 31st March, 2016.

- (i) Considering the submissions of the learned Advocates made across the Bar, while delivering the final awards in all these reference cases, the Labour Court may consider the quantification of compensation in the light of the following four judgments of the Apex Court, only if the reference cases are being allowed:-

(a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal*, **[2013 LLR 1009]**;

(b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh*, **[(2013) 5 SCC 136]**;

(c) *BSNL Vs. Man Singh*, **(2012) 1 SCC 558**; and

(d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board*, **[(2009) 15 SCC 327]**.

15 All these petitions are, accordingly, partly allowed.

(RAVINDRA V. GHUGE, J.)