

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4337 OF 2014

Ashok Prabhakar Kolge,
Age-35 years, Occu-Labour,
R/o Bhalerao Vasti,
Taluka - Rahata, Dist.Ahmednagar

PETITIONER

VERSUS

Pravara Medical Trust, Loni,
At Post, Taluka Rahata,
Dist.Ahmednagar,
Through its Secretary

RESPONDENT

Mr.P.V.Barde, Advocate for the petitioner.
Mr.A.V.Hon, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/08/2015

ORAL JUDGMENT :

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

2. The petitioner claims to have joined the services with the respondent at the age of 16 years as an "Attendant". He used to be provided with work interrupted by technical breaks. After completing the age of 18 years, he was appointed on the post of "Attendant". He completed 240 days in the uninterrupted service of the respondent

prior to the date of reference. His mother joined a Union and as a fall out of the same, the petitioner was terminated on 01/11/1996.

3. Mr.Barde submits that the petitioner raised an Industrial Dispute u/s 2-A in 2009, which is about 13 years post termination and the matter was referred to the Labour Court, which was registered as Ref.(IDA) No.11/2009.

4. Mr.Barde submits that the petitioner filed his statement of claim and thereafter moved an application Exh.U-4 seeking directions to the respondent to produce certain documents. He also produced a xerox copy of a recovery statement which indicated that a dress was allocated to the petitioner since he belonged to the Class-4 category.

5. He submits that the documents were deliberately withheld by the respondents and as such the Labour Court should have drawn an adverse inference thereby allowing the reference and directing reinstatement with continuity and full back wages.

6. Mr.Barde criticizes the impugned judgment on the ground that the respondent being the custodian of the records, should have

produced the documents set out in application Exh.U-4. The Labour Court lost sight of the fact that those documents were germane to the cause of action and as such their production was vital and decisive to the outcome of the reference proceedings.

7. He further criticizes the judgment on the ground that the reference has been rejected as there was a delay of 13 years in raising an industrial dispute despite the fact that the I.D.Act does not prescribe any limitation for raising such dispute. He, therefore, prays for allowing this petition.

8. Mr.A.V.Hon, learned Advocate on behalf of the respondent has strenuously supported the impugned judgment and award. He contends that the documents pertaining to any employee cannot be preserved in perpetuity. The petitioner was never appointed by the respondent. Factum of employment was not proved by him. A zerox copy of some document was produced, which was not proved before the Labour Court since a zerox document cannot be proved under the Evidence Act, unless it is used as a secondary evidence.

9. He further submits that the burden lies on the petitioner to prove the factum of employment. He has to establish completion of

240 days in the continuous service with the respondent. His case must stand or fall on its own feet. He, therefore, submits that this petition be dismissed with costs.

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

11. It is trite law that the onus and burden of proving 240 days in the uninterrupted service of an employer in the calendar year preceding the date of reference lies on the workman. The petitioner, therefore, was required to prove the same.

12. It does appear that the petitioner moved an application Exh.U-4 seeking production of certain documents, which according to the petitioner were in the exclusive custody of the employer. The respondent had taken a stand that the petitioner was never appointed by them, much less as a child employee. The respondents refuted the contentions that the petitioner was inducted in employment at the age of about 15 or 16 years. The respondent also took a stand that there are no records indicating the engagement of the petitioner, in as much as, the records could not be preserved for 13 or more years.

13. In the light of the above, it appears from the proceedings before the Labour Court that the petitioner failed to establish employer-employee relationship with the respondent. The petitioner could not prove his employment even for a single day. Moreover, an industrial dispute was raised after 13 years, notwithstanding the fact that there is no limitation prescribed under the I.D.Act. It was thus established before the Labour Court that there was no industrial dispute existing between the petitioner and the respondent.

14. In the light of the above, I do not find any error in the judgment of the 2nd Labour Court, Ahmednagar. The petition is devoid of merit, and is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)