

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9507 OF 2013
WITH
WRIT PETITION NO.9511 OF 2013

Shivaji S/o Dnyanoba Survase,
Age-60 years, Occu-Trade Unionist/Member,
Akhil Bhartiya Safai Mazdoor Congress
Indian Panchayat, Labour Colony, Latur, PETITIONER
Tq. and Dist. Latur

VERSUS

The Municipal Council Latur
Through its Chief Officer,
At present the Commissioner,
Municipal Corporation, Latur,
Tq. and Dist. Latur RESPONDENT

Mr.M.B.Kolpe h/f Mr.M.S.Patil, Advocate for the petitioner.
Mr.A.V.Hon h/f Mr.V.D.Hon (Sr.Advocate), Advocate for the
respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/08/2015

ORAL JUDGMENT :

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

2. The petitioners as well as the respondent/Corporation are
party to the two complaints and in these two petitions. Issue
involved is identical. I am, therefore, deciding these two petitions

together.

3. The petitioners in these two petitions have preferred Complaint (ULP) Nos. 45/2007 and 49/2007 before the Industrial Court on behalf of the workers mentioned in the list Annexure-A annexed to the complaints. The said complaints are stated to have been filed by the Akhil Bhartiya Safai Mazdoor Congress Union. Permanency has been sought in these two complaints. By the impugned judgments dated 30/10/2013, both the complaints have been dismissed.

4. The petitioners have contended before the Industrial Court that the workers mentioned in Annexure-A to the complaints have been working as "Safai Kamgar" from 1982 onwards and are in employment even on this date. They have alleged supervision and control at the hands of respondent/Corporation in their day to day working. It was claimed that they have put in 240 days in the continuous and uninterrupted service of the respondent / Corporation in each calendar year. They had therefore claimed permanency.

5. The respondent / Corporation has filed its written statement in both these complaints. 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.

6. 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.

7. By considering the submissions of the learned Advocates, I have gone through the petition paper book.

8. 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. Complaints are of the year 2007. 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.

9. The petitioners have produced on record certain documents at Exh.U-6, U-13, U-20, U-22, U-26 and U-40. 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.

10. 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.

11. When the respondent had prayed for 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.

12. 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.

13. 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.

14. In the light of the above, I find that the Industrial Court has dismissed the complaints merely on the oral 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 1982 onwards, which is practically about 33 years, could not have been disregarded by the Industrial Court.

15. As such, I find that the impugned judgments dated 30/10/2013 delivered by the Industrial Court in Complaint (ULP) Nos.45/2007 and 49/2007 are erroneous and deserve to be set aside.

16. In the light of the above, both these petitions are partly allowed. The impugned judgments dated 30/10/2013 are 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.

17. 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 complaints on its own merits, preferably on or before 29/02/2016.

18. The litigating sides shall appear before the Industrial Court on 29/08/2015. Formal notices are not required to be issued.

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

(RAVINDRA V. GHUGE, J.)