

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.229 OF 2014

THE DISTRICT WOMEN AND CHILD
WELFARE OFFICER, BEED

PETITIONER

VERSUS

SUNITA ARUN BARBADE,
SHRAMIK TRADE UNION CENTRE,
BASHIRGANJ, BEED, DIST.BEED

RESPONDENT

Mrs.Y.M.Kshirsagar, AGP for State.

Mr.Pradeep L.Shahane, Advocate for respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/06/2015

ORAL JUDGMENT :

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

2. The petitioner has challenged the judgment and order dated 08/11/2012 delivered by the Labour Court, Aurangabad in Ref.(IDA) No.9/2004, by which the oral termination of the respondent dated 07/01/2003 has been quashed and set aside and the petitioner is directed to reinstate the second party employee on the same post on which she was working as a 'daily wager cook'. The respondent/ second party workman has been deprived of continuity of service and

back wages.

3. The learned AGP on behalf of the petitioner points out from the observations of the Labour Court in paragraph No.2 that the petitioner had taken a stand in its written statement at Exhibit C-5 that though it had a permanent post of a Cook, the respondent was engaged on daily wages on account of the absence of the permanent Cook. It was also contended that the respondent had worked only for 52 days in between 30/07/2000 to 26/03/2001. It was denied that she was working from 01/07/2000 till 07/01/2003.

4. It is further pointed out from the observations of the Labour Court in paragraph No.4 that the respondent had solely relied upon the oral evidence to prove her continuity in service by filing an affidavit in lieu of examination in chief. Besides the said statement on oath, there was no corroborative evidence especially in the form of documentary evidence to establish the case of the respondent.

5. It is further submitted that the Labour Court should not have relied upon the mere statement of the respondent only on the ground that the petitioner did not cross examine the respondent and her affidavit went unchallenged. She, therefore, submits that the

impugned award deserves to be quashed and set aside and the petition deserves to be allowed.

6. Mr.Shahane, learned Advocate has strenuously defended the impugned award. Contention is that the petitioner was not precluded from cross-examining the respondent and was equally at liberty to lead oral and documentary evidence. A notice for production of documents was also filed by the respondent which evoked no response from the petitioner. The Labour Court was left with no option but to accept the statement of the respondent as it was unchallenged.

7. Mr.Shahane further submits that any workman like the respondent does not have the resources to produce the record maintained by the petitioner unless the petitioner participates in the proceedings. There was little participation only to the extent of filing the written statement and thereafter the petitioner did not lead any evidence to contradict the contentions of the respondent and did not produce relevant documents.

8. He further submits that the respondent will have to suffer the rigors of litigation and would be tired out due to the laxity of the

petitioner. He, therefore, prays that the petition be dismissed with costs.

9. This Court has concluded in the matter of Abbott Laboratories (India) Ltd., Vs. J.D. Jamdar and another 1995(2) Mh.L.J. 122 that a mere statement made in an affidavit cannot be a substitute for the documentary evidence to establish the right of the litigant and matters cannot be decided only on the affidavits. In my view, beyond an affidavit, the documentary evidence assumes importance since “documents will speak louder than words”. I find that except the affidavit filed by the respondent, there was no evidence before the Labour Court to conclude that the respondent had established continuance in employment as required u/s 25(B) of the Industrial Disputes Act, 1947 as required u/s 25(B) of the I.D. Act, 1947.

10. Paragraph No.9 of the judgment in the case of Abbott Laboratories (India) Ltd., (supra) reads as under :-

“9. In my opinion, the Industrial Court was clearly wrong in disposing of the complaints on the basis of affidavits. The learned Judge was not right in rejecting the Company’s request for leading oral evidence and in proceeding with the complaints on the basis of affidavits. In view of the foregoing discussion, the impugned orders dated October 18, 1991 passed by the

learned Judge of the Industrial Court, Bombay, are set aside. The matter is remanded to the Industrial Court for disposing of the complaints in accordance with law after giving an opportunity to the parties to lead evidence.”

11. As such, the impugned judgment dated 08/11/2012 is quashed and set aside. The reference proceedings are remitted back to the Labour Court so as to enable the petitioner to cross examine the respondent. The respondent may choose to adduce further evidence. Thereafter the petitioner shall lead its evidence and the Labour Court shall decide Ref.(IDA) No. 2/2004 on its own merits.

12. Considering the conduct of the petitioner in relation to its participation in the proceedings before the Labour Court, I deem it fit and proper to direct the petitioner to pay Rs.5,000/- (Rs.Five thousand only) per month to the respondent during the pendency of the reference proceedings before the Labour Court. The said amount shall be paid directly by the petitioner to the respondent through an account payee cheque on or before the 10th day of each month beginning from the month of July 2015 and the respondent shall issue a receipt as may be prepared by the petitioner to indicate the same.

13. The Labour Court shall endeavour to decide Ref.(IDA) No.9/2004, as expeditiously as possible, and preferably on or before 31/12/2015. Both the sides shall extend their co-operation to the Labour Court and shall refrain from seeking adjournments on frivolous and unreasonable grounds.

14. Rule is thus made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)