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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2519 OF 2013
WITH
CIVIL APPLICATION NO.2894 OF 2014
AND
CIVIL APPLICATION NO. 2297 OF 2014

Padmavati High School and others .. Petitioners

Vs.

Shri Sauran Jagsharan Bhagwane .. Respondent

Mr.Mayuresh Modgi, Advocate for Petitioners.

Mr. L.D.Thorat a/w Mr.Sachin S.Todge, Advocate for Respondent.

CORAM : R. G. KETKAR, J.

DATE : 05th March 2015

P.C. :

. Heard Mr.Mayuresh Modgi, learned Counsel for the petitioners and Mr.L.D.Thorat, learned Counsel for the respondent at length.

2. By this petition under Articles 226 & 227 of the Constitution of India, the petitioner has challenged the judgment and award dated 25/05/2012 passed by the learned Presiding Officer, First Labour Court, Thane in Reference (IDA) No. 295 of 2003. By that order, the Labour Court partly answered reference in the affirmative and directed the petitioners herein to reinstate the respondent, hereinafter referred to as 2nd Party, in the services and to

pay 30% of last remuneration i.e. Rs.2,250/- with effect from 24/12/2002 till his reinstatement within 2 months from the date of the publication of the award.

3. In support of this petition, Mr.Modgi submitted that the 2nd Party claimed that he was appointed as a peon-cum-sweeper from July 1995. He invited my attention to cross examination of Ms.Vina Ramesh Patil, Head Mistress of the school. Ms.Patil deposed that the 2nd Party claims that he was appointed in July 1995. One Ms.Nanda Gaikwad was appointed as a peon on 12/06/1995. Accordingly, information was supplied to the Education Department of the Zilla Parishad. In short, he submitted that Ms. Nanda Gaikwad was already working on the post of peon and therefore, there was no question of appointing the 2nd Party on that post. He also invited my attention to the examination-in-chief of the 2nd Party Mr.Bharat Arjun Yadav wherein he was confronted with 2 photographs along with list Exhibit 11. 2nd Party was shown wearing uniform in the first photograph. In short, Mr.Modgi submitted that the 2nd Party was never employed by the petitioner and, therefore, there was no employer and employee relationship between the parties. The Labour Court committed serious error in passing the impugned award.

4. On the other hand, Mr.Thorat supported the impugned award. He submitted that in the written statement as also in the

evidence, the petitioner did not come out with a case that Nanda Gaikwad was appointed as a peon-cum-sweeper (Safai Kamgar). 2nd Party was appointed as peon-cum-sweeper . He further submitted that after considering the material on record, the Labour Court has partly allowed the reference and therefore, no case is made out for invocation of powers under Articles 226 & 227 of the Constitution of India.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of paragraph 10 of the impugned order shows that the Labour Court has considered (a) the evidence of the 2nd Party, (b) experience certificate dated 15/05/2000, (c) photograph of Annual Sports Meeting 1999 and 2 coloured photographs below list of documents Exhibit 11- A. It was observed that experience certificate shows that the 2nd Party was in the employment of the petitioner as a peon-cum-sweeper since July 1995 till the date of issuing of that certificate. In paragraph 11, the Labour Court observed that if at all, Nanda Gaikwad was employed as a peon, the petitioner ought to have examined her as a witness. The 2nd Party called upon the petitioner to produce the documents. However, the petitioner refused to supply the documents on the ground that those documents were destroyed in the flood on July 2005. This aspect was considered in paragraph 12 and the Labour

Court observed that if at all, the documents were destroyed in flood of July 2005 how could petitioner produce attendance register for the period of June 1995 to May 2004. How documents sought by the 2nd Party were only destroyed in the flood of July 2005. It created doubt about the conduct of the petitioner. After considering the material on record, the Labour Court came to the conclusion that the 2nd Party was employed as a peon-cum-sweeper and accordingly, directed the petitioner to reinstate him and pay 30% back wages. The order passed by the Labour Court cannot be said to be perverse being based upon no evidence or that it is contrary to the evidence on record. I, therefore, do not find any merit in the submissions of Mr.Modgi. No case is made out for invocation of powers under Articles 226 & 227 of the Constitution of India. Hence, petition fails and the same is dismissed.

6. In view of dismissal of the petition, Civil Application No. 2894 of 2014 filed by the 2nd Party for directing the petitioner to pay the salary and similarly, Civil Application No. 297 of 2014 for effecting service on the 2nd Party do not survive and the same are disposed of.

(R. G. KETKAR, J.)