

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 1101 OF 1999

Messrs Rama Petro Chemicals Limited
Vailshali Village, Pathal Ganga,
Savaroli, Khurpad Road, Taluka Kolhapur. ... Petitioner.

V/s.

1. Prakash Surve,
C/o. Anant Yeshwant Surve,
Sahyadri Nagar, Chawl No.3,
Room No.16, Jungal Mungal Road,
Bhandup (West),
Mumbai – 400 078.
2. Smt. S.V. Suvrna,
Presiding Officer, 4th Labour Court,
Thane. ... Respondents.

Mr. P.M. Palshikar for the Petitioner.
Mr. Nitesh Nevshe for the Respondent appointed by the Legal Aid.

CORAM : N.M. JAMDAR, J.

DATE : 15 DECEMBER, 2015.

ORAL JUDGMENT :-

By this Petition the Petitioner challenges an Award of the Labour Court, Thane dated 12 May 1998 wherein the Labour Court directed the Petitioner to reinstate the Respondent No.1 in

service with full back wages and continuity of service with effect from 30.01.1995.

2. A Reference was made by the Additional Commissioner of Labour on 12.02.1996 to the Labour Court, Thane for adjudication in respect of the claim of the Respondent No.1 for reinstatement with full back wages. The Respondent No.1 filed his statement of claim. According to the Respondent No.1 (referred to as the Respondent) he was working as a driver with the Petitioner – Company for nine years with last drawn wages of Rs.1,850/- and he was driving the vehicle of the company whose details were given in the statement. According to him, he was terminated from service on 20 March 1995 without following due process. The Petitioner contested the claim of the Respondent contending that the Respondent was engaged by one A.P. Deshmukh, Executive working with the Petitioner – Company and he was not the employee of the Petitioner – Company and there was no employer – employee relationship. The Respondent examined himself who was cross-examined. The Petitioner examined two witnesses who were cross-examined.

3. The Labour Court after assessment of evidence came to the conclusion that there was employer – employee relationship with the Petitioner and the Respondent and the Respondent was terminated without following the procedure established by law and he was entitled to reinstatement with back wages with effect

from his date of termination i.e. 30.1.1995. Accordingly, the Labour Court declared the Award on 15 May 1998.

4. The Rule was issued in this Petition on 10 March 1999 and the interim relief was granted and it was directed that the Petitioner would pay the Respondent wages last drawn by him during the pendency of the Petition. It is informed that the Petitioner have been paying said wages regularly. It is placed on record by the Petitioner by way of an affidavit dated 2 July 2012 that as per the date of retirement applicable to the employees of the Petitioner i.e. 60 years, the Respondent would reach the same on 18 September 2013. As on today the Respondent has crossed the age of superannuation. It is also placed on record that the Respondent has suffered paralytic attack and is unable to drive any vehicle. In the affidavit dated 2 July 2012, the Petitioner has stated that operation of the Petitioner – Company have ceased and the Petitioner – Company is declared as a Sick Company under the Provisions of Sick Industrial Companies (Special Provisions) Act, 1985 and the Company is under the control of BIFR. The question in this Petition therefore is limited to claim of the Respondent for back wages from 30 January 1995 till 10 March 1999. The learned Counsel for the Respondent states that if the Respondent succeeds in the Petition, the Respondent will lodge his claim before the BIFR for these wages. This is the position as on today of the matter.

5. Turning now to the merits of the challenge.

5. The learned Counsel for the Petitioner submitted that there is no documentary evidence to show that the Respondent No.1 was in services of the Petitioner – Company. He submitted that the Respondent worked with three Executives of the Petitioner – Company who were entitled to appoint their personal drivers and pay wages to the personal driver from their own pocket. He submitted that there is no evidence to show that the wages were paid by the Petitioner to the Respondent. The learned Counsel submitted that in the impugned Award the learned Judge has attributed certain admissions to the witness of the Petitioner which do not exist. He also submitted that merely because the three Executives had appointed the Respondent as their personal driver, it cannot be said that the Respondent was the employee of the Petitioner. The learned Counsel submitted that cogent explanation was given regarding the bus pass and the employer – employee relationship could not be based on the said bus pass. It was also contended that attempts were made to call the employer of the Respondent i.e. the Executives but they could not be located and the learned Judge was not right in drawing an adverse inference.

7. The submissions cannot be accepted. Firstly, parameters of writ jurisdiction in the respect of interference in the findings of fact must be kept in mind. The existence of employer – employee relationship is primarily an adjudication of a factual

position. It is not possible to re-appreciate the entire evidence. It is also not permissible to take a contrary view merely because on assessment of evidence again such contrary view is possible. If it is shown that the view taken by the Labour Court and the inference is drawn by the Labour Court are perverse or not reasonably possible to reach such a conclusion that an interference in writ jurisdiction may be permissible.

8. In the present case the Respondent worked consecutively with different Executives of the Petitioner – Company. He was driving the official cars of the said Executives and was taking them from their residence to the factory and other work of personal nature. That the cars belonged to the company and that the Respondent was working there with the Managers is an established position. Merely because his name did not appear in the record is not a conclusive factor, as that could be the fault or design of the Petitioner, therefore, it cannot be held against the Respondent. Once an official car was given to the senior level Managers and one driver continued to work with different executives on official duty, presumption would generally follow that such driver was doing an official work for the Petitioner. It is the case of the Petitioner that in terms of the employment of the senior level Managers, they were entitled to appoint their own drivers on the official car. Even if the argument of the Counsel for the Petitioner that these Managers, who are no longer in service

could not be called as witness is accepted, nothing prevented the Petitioner from placing on record the terms and conditions of there Managers to demonstrate that they were entitled/required to appoint their own driver. There is absolutely no explanation for this lapse. As regard the bus pass is concerned, even if the said bus pass is kept aside, the above mentioned aspect of the matter is sufficient enough to hold that the view taken by the Labour Court is not an impossible one. Without going into any other aspects, in view of the admitted position as stated above and lack of any material produced by the Petitioner either in the form of evidence of the so called employers or their appointment letters, the Award of the Labour Court cannot be set aside on the ground that it is perverse. The view taken by the Labour Court is a possible view of the matter and does not suffer from any gross perversity to interfere with the same.

8. In the circumstances, the Writ Petition fails and is dismissed. Rule discharged. It will be open to the Respondent No.1 to lodge his claim before the BIFR which claim will be processed as per law, if possible expeditiously.

(N.M. JAMDAR, J.)