

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

WRIT PETITION NO.8921 OF 2013

1. Bhavarlal Jain
Age adult, occ. Business.
238, Kahoti Compound
Kalyan Road, Bhiwandi.
District. Thane
 2. Biyalane Textile
Gala No.1, Opp. Ashok Hotel
Lahoti Compound, Bhiwandi
District. Thane
- .. Petitioners.

V/s

1. Shri Loknath B. Pandey
Age ... years, Occ...
Bhiwandi Kamgar Ekta (Union)
771, G.N. Shopping Centre,
Dhamnkar Naka, Bhiwandi, Thane
 2. Shri Ramanlal Jain
Gala No.1, Opp. Ashok Hotel
Lahoti Compound, Bhiwandi
District. Thane
- .. Respondents.

Mr. Jitendra Mulik i/b Ms Pooja V. Thorat, for petitioners.
Mr. Shailesh V. Shukla, for Respondent No.1.

Coram : Smt. R.P. SondurBaldota, J.
Date : 06th May, 2015

P.C.

1. The petitioner challenges the Award dated 30th November, 2012 by which the Labour Court Thane partly allowed the reference at the instance of the respondents for his reinstatement in service. The respondent is claiming to be working as Mukadam with the petitioner at the monthly wages of Rs.6,000/-. He claims to be a permanent employee. According to him, the petitioner having 48 looms of Four Kandi machines and 3 Warping machines and is manufacturing cloth in the powerloom. On 25th December, 2004, when the respondent reported to the work, he was called by the office of the respondent and asked to sign some blank papers. The respondent claimed to have signed the papers in good faith which later turned out to be a voucher for payment. He, therefore, lodged the complaint with the Police.

2. It is complaint of the respondent that the petitioner illegally terminated his service by not giving him retrenchment

compensation and pay for the notice period.

3. The petitioner had contested the reference by claiming that the respondent is not the employee of the petitioner and that the respondent was doing the work of repairs of the machines of the petitioner on contract basis and that he was paid charges for the job of repairing done by him.

4. The parties led their evidence and on the basis of evidence, the Labour Court has held that the respondent has succeeded in establishing that he is employee of the petitioner and that he had been illegally terminated from service. Perusal of the record show that the petitioner has failed to establish that the respondent was an independent contractor, who was taking contracts of repairing powerlooms with different persons and was paid for repairing the powerlooms as and when required. Consequently, the Labour Court rightly rejected the contention of the petitioner that the respondent was not its

employee. In that case termination of the respondent had to be in accordance with law i.e. by complying with Section 25F of the Industrial Disputes Act and non compliance rendered the termination illegal. The Labour Court, however, did not grant reinstatement in service to the respondent, on the ground that the respondent was not in the employment of the petitioner since 25th December, 2004. The Labour Court awarded the compensation of Rs.2,00,000/- to the respondent. There is no challenge by the respondent to this order.

5. Perusal of the impugned judgment and order shows that the Labour Court has correctly appreciated the evidence of the parties and held that the respondent was successful in establishing that he was the employee of the petitioner and services of the respondent had been illegally terminated. There is no infirmity in the impugned order. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)