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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 9074 OF 2014**

Mr.Prakash Vitthal Thanekar and others

.. Petitioners

Vs.

Thane Municipal Transport Undertaking and others .. Respondents

Mr.A.K.Jalisatgi a/w Mr.T.R.Yadav, Advocate for the Petitioners.

Mr.Mandar Limaye, Advocate for Respondents.

**CORAM : R.G.KETKAR, J.**

**DATE : 28<sup>th</sup> JANUARY, 2015**

**P.C. :**

. Heard Mr.A.K.Jalisatgi, learned Counsel for the petitioners and Mr.Mandar Limaye, learned Counsel for the respondents at length.

2. By this petition under Articles 226 & 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 19/04/2014 passed by the learned Judge, Industrial Court, Thane below Exhibits U-2 & U-11 in Complaint (ULP) No. 393 of 2013. By that order, the Industrial Court partly allowed the applications and directed the respondents herein to pay unpaid earned wages for the months of September 2010 and January 2014 to the employees involved in the complaint within a period of one month

from the date of the order and continue them in service as per the previous practice till disposal of the complaint on merits. The application Exhibit U-2 was filed by the petitioners for interim relief under section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act') for direction to the respondents to pay them the wages at par with other sweepers and not to terminate their services. By application Exhibit U-11, the petitioners prayed for further direction to the respondents to release the wages of the employees for the months of September 2010 & January 2014 and to pay them regularly on every 7<sup>th</sup> day of the month and continue to engage them on the muster of the respondents with equitable reliefs.

3. In support of this petition, Mr.Jalisatgi submitted that the petitioners filed complaint under section 28 read with Items 5, 6 & 9 of Schedule IV of the Act alleging commission of the unfair labour practices by the respondents. He submitted that the petitioners are the employees of the respondents. In support of this submission, he relied upon i) Resolution No. 115 dated 02/08/2004 passed by the Transport Committee of respondent No.1 ii) payments made to the complainants through cheques directly by the first respondent iii) attendance card and iv) letter dated 06/02/2014 addressed by the Transport Manager to the workshop Manager of the first respondent. He submitted that perusal of these documents clearly shows that the

petitioners are working under the control and supervision of the first respondent and therefore, they are the employees of the first respondent. In other words, the petitioners have established the employer-employee relationship between them and first respondent. He submitted that before the Industrial Court, the petitioners relied upon following decisions.

- i) Hindalco Industries Ltd Vs. Association of Engineering Workers, 2008 I CLR 1023.
- ii) I.P.C.Ltd and Anr. Vs. Shramik Sena & Ors. 1999 II CLR 634.
- iii) Hindustan Coca Cola Bottling S/W Pvt.Ltd. Vs. Bhartiya Kamgar Sena & Ors., 2001 III CLR 1025.

4. He submitted that the Industrial Court did not discuss these judgments among the other judgments and held that the petitioners did not establish employer-employee relationship as also the complaint is not maintainable in respect of certain claims namely, Items 6 & 9 of Schedule IV of the Act.

5. On the other hand, Mr.Limaye supported the impugned order. He submitted that the Industrial Court has, prima facie, recorded a finding that the petitioners are employees of Contractor and they are not the direct employees of the first respondent. The Industrial Court further, prima facie, held that reliefs against the respondents such as permanency & equal pay for equal work are not tenable under the law. In other words, he submitted that the Industrial Court did not record conclusive findings on these aspects

and while considering the applications for interim reliefs have merely recorded prima facie findings. He, therefore, submitted that no case is made out for invoking powers under Article 226 & 227 of the Constitution of India.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 10, the Industrial Court has referred to letter dated 30/09/2010 addressed by the Municipal Labour Union to the Transport Manager. In paragraph 11, the Industrial Court dealt with that letter and observed that the petitioners are working under the control and supervision of the Contractor and as per the instructions of Secretary, Labour Department and Maharashtra Contract Labour Advisory Board. The letter sets out that if the Contractor is changed, the employees have to be continued in the services with another Contractor and in between the period of contract, they should be continued in services. It is in these circumstances, the Industrial Court, prima facie, held that the petitioners are employees of the Contractor and are not the direct employees of the first respondent. It was further prima facie held that the reliefs such as permanency & equal pay for equal work appeared to be not tenable under the law. In short, the Industrial Court did not record conclusive findings as regards relationship between the parties as also entitlement of reliefs of permanency and equal pay for equal

work. In view thereof, I do not find that any case is made out by the petitioners for invocation of powers under Articles 226 & 227 of the Constitution of India. The petition fails and the same is dismissed.

7. It is needless to observe that while deciding the main complaint, the Industrial Court will decide the same on the basis of the evidence on record and in accordance with law and decide all the issues including issue of relationship of employer-employee as also entitlement of the petitioners on the issues of permanency and equal pay for equal work. All the contentions of the parties on merits are expressly kept open.

**(R.G.KETKAR, J.)**