

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 1655 OF 2015

SubhankarAnand J. Jha,
Kandivali (E), Mumbai – 97.

... Petitioner

v/s

1. M/s.Jindal Drilling and Industries Ltd.,
Keshwa Bldg., 3rd floor,
Bandra Kurla Commercial Complex,
Bandra (E), Mumbai – 400 051.

2. Prompt Personnel Consultancy Services
Pvt. Ltd., 612-613, Plam Spring Centre,
Mind Space, New Link Road,
Malad (W), Mumbai – 400 064.

... Respondents

Mr.N.M.Ganguli along with Karuna Yadav for the petitioner.

CORAM: N.M. JAMDAR, J.

DATED : 1 DECEMBER 2015

ORAL ORDER:

The petition challenges the order passed by the Labour Court, Mumbai, dated 29 September 2014 answering the Reference in negative. Reference (IDA) No.331 of 2010 was made to the Labour Court, Mumbai, in respect of termination of the Petitioner. In Reference, only Respondent No.1 was made a party. The Petitioner filed statement of claim in this Reference.

2. According to the Petitioner, he was working with the Respondent No.1 for almost 15 years when his services were terminated by the Respondent illegally on 18 May 2009. The Petitioner contended that his termination of service was bad in law and accordingly sought reinstatement with full back wages. The written statement was filed by the Respondent No.1 opposing the claim made by the Petitioner. Stand was taken by the Respondent No.1 that the Petitioner was employed with Prompt Personnel Consultancy Services Pvt. Ltd., with whom the Respondent No.1 had contract for outsourcing drivers. Both the Petitioner as well as the Respondent No.1 led oral and documentary evidence. The Labour Court came to the conclusion that the Petitioner was not an employee of the Respondent No.1 and, therefore, no relief can be granted against the Respondent No.1.

3. Learned counsel for the Petitioner submitted that the Petitioner was working with Respondent No.1 and merely because the Provident Fund contribution is made, it cannot be said that the said Prompt Personnel Consultancy Services Pvt. Ltd. is the employer of the Petitioner. He contended that these facts will not be in the knowledge of the Petitioner who was working as a driver. Learned counsel also submitted that, in the circumstances, in the Reference the said Prompt Personnel Consultancy Services Pvt. Ltd. should have been made a party.

4. In the conciliation proceedings as well as before the Labour Court, the stand is taken by the Respondent No.1 that the Petitioner was an employee of Prompt Personnel Consultancy Services Pvt. Ltd. In the cross-examination, a suggestion has been put to the Petitioner that the bank account in H.D.F.C. Bank has been opened by the said Prompt Personnel Consultancy Services Pvt. Ltd., to which he has simply stated that he does not know. He has also denied that he does not know whether he is a member of E.S.I.C. and Provident Fund, however, it has come on record that the Provident Fund of the Petitioner has been paid by Prompt Personnel Consultancy Services Pvt. Ltd. so also E.S.I.C. Contribution, which fact has been admitted by the Petitioner. He has also admitted that, he was aware of the position that the E.S.I.C. had filed their reply in the conciliation proceedings. He has also admitted that he had attended the conciliation proceedings. Nothing stopped the Petitioner from making an appropriate request to include the said Prompt Personnel Consultancy Services Pvt. Ltd. as a party and it is not open to the Petitioner to make a grievance at this stage in that regard.

5. All that the Petitioner urging is that the document showing that the Petitioner was employed through Prompt Personnel Consultancy Services Pvt. Ltd., are not sufficient enough but no cogent material is placed on record to show that he was employee of the Respondent No.1, except stating that his appointment was

oral and some certificate was issued to him. In absence of any material showing that the Petitioner was employed by Respondent No.1 and in presence of material showing that he was employed through Prompt Personnel Consultancy Services Pvt. Ltd., the conclusion reached by the Labour Court upon appreciation of evidence before it, cannot be presumed as perverse and is a possible view to be taken.

6. In the circumstances, no interference is warranted. The writ petition is accordingly rejected.

(N. M. JAMDAR, J.)