

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3331 OF 1995

- 1) Mrs. Shashikala w/o Sudhakar Bankar
Age: Major, occu. Labour,
R/o Mukundwadi, Ashoknagar,
Aurangabad.
- 2) Mrs.Muktabai w/o Trimbakrao Mahindra
Age: Major, occu. Labour,
R/o Brijwadi, Near Naregaon,
Chikalthana, Aurangabad 431 210.= **PETITIONERS**

VERSUS

- 1) M/s Hindustan Machines Tools Ltd.
Through its General Manager,
H-2, M.I.D.C., Industrial Area,
Chikalthana, Aurangabad.
- 2) The Member,
Industrial Court, Aurangabad. = **RESPONDENTS**

Mr.Prakash B.Patil, Advocate for Petitioner;

CORAM : P.R.BORA, J.

DATE : 16th June, 2016.

ORAL JUDGMENT:

- 1) Heard. Order dated 14th December, 1994
passed by the Member, Industrial Court,
Aurangabad in Revision (ULP) No.22/1991 is
questioned in the present petition by the
original complainants.

2) Vide the aforesaid order, the Industrial Court had set aside the order passed by the Labour court at Aurangabad in Complaint (ULP) No. 70/1986 on 15.4.1991. The present petitioners, who are herein after referred to as the original complainants, had filed the aforesaid Complaint before the Labour court at Aurangabad under Section 28(1) of The M.R.T.U. and P.U.L.P. Act (for short the said Act), alleging unfair labour practice under item 1 of Schedule IV of the said Act, against the present respondents.

3) It was the contention of the original complainants that though they had continuously worked with the respondents, without following due process of law their services were terminated. According to the original complainants, the said termination was, therefore, illegal and they were entitled for the relief of reinstatement with all consequential benefits.

4) The Complaint so filed before the Labour court was resisted by the respondents. It was the contention of the respondents that the complainants had worked with the respondents for a temporary period i.e. from 1.4.1985 to 30.4.1985 and 1.8.1985 to 17.9.1985 as the casual employees for attending the gardening work at the factory. It was the further contention of the respondents that subsequently, the gardening work was outsourced and the said gardening contractor had availed the services of the complainants. It was further contended that the complainants were never regular employees of the respondents and had never worked continuously with the respondents much less for the continuous period of 240 days in one calendar year so as to make them entitled for the benefits provided under the provisions of the Industrial Disputes Act.

5) The learned Labour court, after having assessed the oral and documentary evidence brought before it, allowed the Complaint and

directed reinstatement of the complainants with continuity of service and with back wages. The aforesaid order passed by the Labour court was challenged by the respondents before the Industrial court by filing Revision (ULP) No. 22/1991. The learned Industrial Court, vide the impugned order, set aside the Judgment and order of the Labour court and consequently dismissed the Complaint (ULP) No.70/1986. Aggrieved by the said order, the original complainants have preferred the present writ petition.

6) Shri Prakash B.Patil, learned Counsel appearing for the petitioners, submitted that the Industrial court has grossly erred in interfering with the judgment of the Labour court when there was enough evidence showing that the complainants were the employees of the respondents. The learned counsel submitted that the issuance of ESI Cards in favour of the complainants was the positive proof with the complainants to show that they were the employees

of the respondent factory. The learned Counsel further submitted that sufficient material was also produced before the Labour court evidencing that both the complainants had worked for the continuous period of more than 240 days. In the circumstances, according to the learned Counsel, the finding recorded by the Industrial Court that the complainants were the casual employees and had not worked continuously with the respondent, is erroneous and deserves to be set aside.

7) On perusal of the judgment passed by the Labour court as well as by the Industrial Court, it is revealed that the complainants had failed in proving that they were employed by the respondents and further that they had worked with the respondents for the continuous period of more than 240 days during the period of one year. On the contrary, the documents which were produced on record indicate that the complainants were employed by the gardening contractor viz. M/s Poonam Garden Services. Though it is true that

the entry Cards were issued in favour of the complainants and they were also holding ESI Cards, the learned Industrial Court has rightly observed that in the Entry pass, it was specifically mentioned that they were the representatives of Mr.Melwani, i.e. the Proprietor of M/s Poonam Garden Services. It has also been rightly held by the learned Industrial court that the issuance of ESI Cards cannot be said to be a positive proof to prove that the complainants were the regular employees of the respondent factory and further that they had continuously worked for the respondent so as to make them entitled for the benefits under the provisions of the Industrial Disputes Act. From the evidence on record, the conclusion which has been recorded by the Industrial Court that the complainants have failed in establishing that they worked continuously as employees of the respondent factory, appears to be sound. Even in the petition, no such material has been placed on record so as to arrive at a different conclusion.

8) After having carefully perused the judgments of the courts below, it does not appear to me that the learned Industrial Court has committed any error in allowing the revision application filed by the present petitioners. The writ petition is devoid of any substance and deserves to be dismissed. It is accordingly dismissed, however, without any order as to costs. Rule discharged.

sd/-
(P.R.BORA, J.)

bdv/
fldr 15.6.2016