

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7846 OF 2016

Shivaji Karbhari Talekar,
Age 52 years, Occ. Nil
R/o Dhakalgaon,
Tq. Ambad, Dist. Jalna.

..Petitioner

Versus

Sushilkumar Kavalsingh Jain
The Proprietor,
Vivek Automobiles Petrol Pump,
Vadigodri, Tq. Ambad,
District Jalna.

..Respondent

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Advocate for Petitioner : Shri Shinde Prakash M.
Advocate for Respondent : Shri Joshi Prabhakar K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 25, 2016
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner has challenged the judgment and order dated 11.12.2015, delivered by the Labour Court, Jalna, by which, his

Application (IDA) No.2 of 2013, filed under Section 33-C(2) of the Industrial Disputes Act, 1947 ("ID Act") was dismissed.

5. Shri Shinde has strenuously criticized the impugned judgment. Contention is that he was working as a Manager of the Petrol Pump, operated by the respondent from 1984 till 1986. He was not paid a single penny towards his monthly wages. He was a workman under Section 2(s) of the ID Act, until 2013. Because the respondent did not pay him his wages, he has approached the Labour Court under Section 33-C(2) of the ID Act. There is no limitation prescribed and hence his application was maintainable.

6. He has further submitted that he had good relations with the respondent and as a consequence, he had loaned Rs.1,40,000/- to the respondent. That issue is a subject matter of another proceeding. The Labour Court has erroneously concluded that the petitioner has failed to prove his case. He had examined two witnesses, namely, Shri Ramrao Gadekar and Shri Harish Kakade, who have supported the case of the petitioner. The impugned judgment of the Labour Court is a result of non-application of mind.

7. Shri Joshi has supported the impugned judgment by contending that the petitioner was required under law to prove the necessary ingredients of Section 33-C(2) of the ID Act. Having failed in proving

any relationship with the respondent, the Labour Court has rightly dismissed the application.

8. Having considered the submissions of the learned Advocates, I find that the Labour Court has not failed in considering the material before it. It is trite law that in matters of Section 33-C(2), there must be a pre-existing right which is to be enforced. The claimant has to first prove employer / employee relationship. Thereafter, he has to prove that he was entitled for certain amounts flowing from the terms and conditions of employment and, thereafter has to prove the failure on the part of the employer in paying the dues to the employee.

9. Considering the material before this Court, it is apparent that the petitioner had admitted in cross-examination before the Labour Court that he has no evidence to show that he was working as a Manager of the respondent at the Petrol Pump. Had he been a Manager, the issue of whether he was a workman under Section 2(s) would have then been required to be decided by the Labour Court. Employer / Employee relationship has not been established on the basis of documentary evidence.

10. Having admitted that there was no appointment order and that there were no terms and conditions of employment, the issue of

calculating the dues to be paid was not required to be gone into by the Labour Court. In the absence of any evidence, the Labour Court rightly discarded the oral statement of the said two witnesses, namely, Shri Gadekar and Shri Kakade.

11. In the light of the above, I do not find that the impugned judgment can be termed as perverse or erroneous. This petition is devoid of merits and is dismissed. Rule stands discharged.

(RAVINDRA V. GHUGE, J.)

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akl/d