

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3596 OF 2015

1 Executive Engineer,
 Maharashtra Industrial Development
 Corporation, MIDC, Nanded.

2 Deputy Engineer,
 Maharashtra Industrial Development
 Corporation, MIDC, Nanded.

...PETITIONERS

-VERSUS-

Laxman Ranoji Ambhore,
Age : Major, Occ : Nil,
R/o In front of Government Rest House,
Dhar Road, Parbhani.

...RESPONDENT

...

Advocate for Petitioners : Shri Dande Shrirang S.

Advocate for Respondent : Shri Ingole Patil R. K.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st January, 2016

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 I have considered the strenuous submissions of the learned

Advocates for the Petitioners and the Respondent/ Employee. Considering the fact that the Respondent admitted that he was appointed through a labour contractor and the Petitioner through its Written Statement divulged the details of the Labour Contractor, which aspect was not considered by the Labour Court while delivering the impugned award in favour of the Respondent/ Employee, I am not required to advert to all the submissions of the learned Advocates.

3 The Petitioners have challenged the judgment and award delivered by the Labour Court, Nanded dated 13.08.2014 by which Reference (IDA) No.1/2012 has been answered in the affirmative. The Labour Court has set aside the oral termination of the Respondent dated 30.06.1988 and has granted reinstatement with continuity of service. The back-wages have been denied.

4 Shri Dande, learned Advocate for the Petitioner, points out from the statement of claim that the Respondent has averred in paragraph 2 that he had joined duties as a Clerk-cum-Typist on 01.04.1984 deployed through a contractor with the Petitioner. The Petitioner also points out from paragraph 2 of its Written Statement that the Respondent was working for only 58 days in between April, 1984 to July, 1984, for 54 days between May, 1986 to July, 1986 and for 155 days between July, 1986 to

December, 1986. He was working through a labour contractor, namely, Shri Nilawar. Thereafter, he was deployed through Savitribai Phule Labour Cooperative Society, Nanded and he worked for 388 days in between June, 1987 to July, 1988.

5 Shri Dande, therefore, strenuously submits that this aspect was not looked into by the Labour Court though it has noted in the first paragraph of the impugned award that the Respondent was deployed through a contractor. He draws my attention to the issues to contend that there was no Employer-Employee relationship between the Petitioner and the Respondent/ Employee.

6 In contradiction, Shri Dande points out the conclusions of the Labour Court on Issue No.2 whereby, it is concluded that the Respondent was working through Savitribai Phule Labour Cooperative Society which was another contractor. He, therefore, submits that the answer to Issue No.1 vis-a-vis the answer to Issue No.2 are diagonally opposite and legally unsustainable.

7 Shri Ingole, learned Advocate for the Respondent/ Employee, has supported the impugned award. He, however, submits that he cannot argue against the averments set out in paragraph 2 of the Statement of

Claim. Nevertheless, he submits that as the Respondent has litigated for the past about 28 years, this Court should not interfere with the impugned award.

8 I have considered the submissions of the learned Advocates as have been recorded herein above.

9 The Respondent contends to have worked for about 04 years. The details of his working were placed on record before the Labour Court which were considered. It cannot be overlooked that the Respondent has raised an industrial dispute after about 23 years after his alleged oral termination dated 30.06.1988. In my view, it appears to be virtually impossible for any Employer to preserve the record of a Contract Labourer for a period of 23 years. Normally, the records are preserved for a period of five years in various Government Departments.

10 Notwithstanding the fact that the dispute appears to be stale, I am unable to accept the conclusions of the Labour Court in the light of the answers arrived at with regard to Issue Nos.1 and 2, which are apparently contradictory.

11 The issues cast by the Labour Court with it's answers/

findings are as under:-

Sr.No.	Issues	Findings
1	Does the Party No.2 prove that there is relationship of employee-employer in between him and the Party No.1.	Yes
2	Does the Party No.1 prove that the Party No.2 has worked under the Contractor from July, 1986 to December, 1986 and thereafter, he was working with Savitribai Phule Labour Cooperative Society, Nanded from 1987 to 1988?	Yes
3	Does the Party No.2 prove that he has worked for more than 240 days in a year continuously with the Party No.1?	Yes
4	Does the Party No.2 prove that the Party No.1 has not followed the provision of Section 25-F of the Industrial Disputes Act, 1947, prior to terminating his services w.e.f. 30.06.1988 and the termination order is illegal?	Yes
5	Does the Party No.2 prove that he is entitled for the relief of reinstatement in service with continuity and full back wages?	Partly Yes.
6	What award?	As per final award.

12 It is trite law that the factum of employment and duration of work has to be considered prior to the date of reference. The Respondent claims to be terminated w.e.f. 30.06.1988. Answer to Issue No.2 indicates that the Labour Court was convinced that the Respondent was working through a contractor from July, 1986 to December, 1986 and from June, 1987 to July, 1988.

13 As such, prior to the date of alleged termination, the Respondent was working with a contractor. The Labour Court could not have, therefore, granted any relief to the Respondent without framing an issue as to whether, the contractor was sham and bogus in the light of the ratio laid down by the Apex Court in paragraph 5 of its judgment in the case of *Vividh Kamgar Sabha vs Kalyani Steels Ltd.* reported in **2001(1) CLR 532** and in paragraphs 7 and 8 of the judgment of the Apex Court in the case of *Cipla Limited v/s Maharashtra General Kamgar Union* reported in **2001(1) CLR 754**.

14 It is primarily for the above reasons that the impugned award is unsustainable. Unless the contractor is a party to the proceedings and unless the Respondent/ Employee proves that the contractor is sham and bogus and is a mere camouflage, the Labour Court could not have answered the reference in the affirmative.

15 In the light of the above, this Writ Petition is allowed in the following terms:-

- (a) The impugned judgment and award of the Labour Court dated 13.08.2014 is quashed and set aside.
- (b) Since the Apex Court in the judgments in the cases of Kalyani

Steel and Cipla Limited (supra) has laid down the law that an issue as regards sham and bogus contractor can be decided only under the Industrial Disputes Act, 1947, I am, therefore, remitting the Reference (IDA) No.1/2012 to the Labour Court, Nanded for framing of an appropriate issue.

- (c) The litigating sides shall, therefore, appear before the Labour Court on 08.02.2016.
- (d) The Petitioner will be at liberty to move an application for addition of the contractor as First Party No.2 in the Reference in the light of the ratio laid down by the Division Bench of this Court in the case of *Digambar Madye and others Vs. Union of India and others*, **2015(II) CLR 540** and the judgment of this Court dated 11.08.2015 in the case of *The Manager, Maharashtra Krushi Udyog Vikas Mahamandal Ltd. vs. State of Maharashtra and others*, in **Writ Petition No.4261/2014** and other connected matters .
- (e) After the contractor is added as a party, the Reference order shall be sent to the Competent Authority for proper correction.
- (f) Notice of hearing will have to be issued to the added First Party No.2.

- (g) Proper issues shall be cast by the Labour Court with regard, whether, the contractor is sham and bogus and the Respondent/ Second Party Employee proves direct relationship with the Petitioner/ First Party.
- (h) All the litigating sides are at liberty to lead oral and documentary evidence in addition to the evidence already on record.
- (i) The Labour Court shall also consider the aspect of the industrial dispute having been raised after 23 years.
- (j) In the light of the request of the Respondent/ Employee, the Labour Court shall endeavour to decide the Reference as expeditiously as possible and preferably on or before 31.12.2016.
- (k) The amount of Rs.1 lac deposited by the Petitioner in this Court pursuant to the order of this Court shall be returned to the Petitioner with accrued interest.

16 Rule is made absolute in the above terms.