

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5096 OF 2016 AND
REVIEW APPLICATION (ST) NO. 11149 OF 2016
WITH CA/5162/2016 AND RA(ST)/11154/2016
WITH CA/5163/2016 AND RA(ST)/11160/2016
WITH CA/5166/2016 AND RA(ST)/11147/2016
WITH CA/5167/2016 AND RA(ST)/11143/2016
WITH CA/5168/2016 AND RA(ST)/11156/2016
WITH CA/5169/2016 AND RA(ST)/11158/2016

THE DIVISIONAL FOREST OFFICER, NAGAR ROAD, BEED
VERSUS
DATTATRAYA RAMBHAU YEWALE

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Advocate for Applicants : Smt. (Dr.) Bharaswadkar Patil Kalpalata
AGP for Respondents / State : Smt. Raut S.S.
Advocates for Respondents : S/Shri Shelke A.S. & Khandelwal R.K.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 04, 2016
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PER COURT :-

1. I have heard Dr. Bharaswadkar, learned Advocate for the applicants and review petitioners and Shri Shelke and Shri Khandelwal, learned Advocates for the employees, at length.

2. For the reasons set out in the Civil Applications and since both the learned Advocates have graciously agreed to address the Court on the review petitions, the Civil Applications are allowed and delay of 183 days is condoned.

akl/d

3. Dr. Bharaswadkar, learned Advocate for the review petitioners has strenuously criticized the judgment of the Labour Court, by which, the reference cases of these employees have been partly answered in the affirmative. She has taken me through the oral and documentary evidence as considered by the Labour Court as well as by this Court in the Writ Petitions, threadbare.

4. She submits that though the review petitioners failed to produce certain documents before the Labour Court, the documents to the extent to which they have been produced indicate that these employees were working on Employment Guarantee Scheme (EGS). This aspect has been lost sight of by this Court and hence these review petitions praying for reviewing the judgment dated 2.9.2015, delivered by this Court in the group of petitions in between these parties.

5. She has further stated that merely because some documents were not produced, would not mean that an adverse inference needs to be drawn straight away. She submits that when the employees failed to produce any documentary evidence and canvass their cases, merely on the basis of oral evidence, the award has been delivered by the Labour Court which is rendered unsustainable since oral evidence in the absence of documentary evidence has no probative value.

6. She, therefore, submits that this Court has committed an error apparent on the face of the order, in not considering this aspect. She, therefore, prays for allowing the review petition, for setting aside the judgment under review and for restoration of the writ petitions for a hearing afresh.

7. In the alternative, she also submits that the matter could be remanded back to the Labour Court.

8. Shri Shelke and Shri Khandelwal, learned Advocates have opposed the review petitions. They submit that the review petitioners have not pointed out any error, on the basis of which, the judgment under review could be set aside.

9. I have considered the submissions.

10. It is apparent that the entire thrust of the review petitioners is on the documents produced and its evidentiary value. I have considered the strenuous submissions of Dr. Bharaswadkar on this count. Amongst these seven cases, in five cases, the review petitioners had led evidence through one of their officers, namely, Shivaji Kale. In the remainder two petitions, the review petitioners had examined Shri Mukund Mundhe, Range Forest Officer.

11. In the first lot of five cases, in which, Shri Kale has deposed on behalf of the management, the Labour Court has considered in paragraph Nos.31 to 33 of its judgment that Shri Kale admitted that it has the custody of the muster rolls and the cashbook for the period 1.10.1993 to 31.10.2002. He admitted that form No.32 has not been produced. Those employees, who are paid daily wages on working in the normal scheme of the management, would find their names entered in the cash book in form No.32. The Labour Court, therefore, concluded that the review petitioner has held back form No.32, despite orders of the Court to produce it.

12. The Labour Court, then considered the seniority list selectively filed by the management and concluded that the name of the employees finds place in one list of EGS workers. However, the complete list till the date the employees were working was not produced. Shri Kale has admitted that muster rolls have been maintained for the employees working in the normal scheme and the said muster rolls were selectively not produced before the Labour Court.

13. In the other group of two cases, Shri Mundhe admitted in cross-examination that the Government provides subsidy to run the nursery. The plants prepared at the nursery have been planted at various

plantations. Some of the muster rolls for the duration of employment of the employees were produced and some of the muster rolls have not been produced. In the light of the said statement, the Labour Court considered the muster rolls and the record produced by the review petitioners and concluded that the employees had not been working on the EGS throughout. It concluded that the muster rolls at C/8 to C/28 support the case of the employees.

14. The review petitioners submit that the cash books are now available and if the matter is remanded to the Labour Court, the said documents could be produced. It cannot be ignored that neither were these documents produced before the Labour Court nor before this Court when the writ petitions were considered.

15. Reliance placed on the judgment of the Honourable Supreme Court in the case of Kamlesh Verma Vs. Mayawati and others, dated 8.8.2013, is mis-placed. The Honourable Apex Court concluded that if documents are subsequently traced out, they could be pointed out through a review petition. In the matter before the Honourable Apex Court, the review petition was filed in Writ Petition (Cr) No. 135 of 2008 and hence the Honourable Court concluded that such documents can be considered. In the instant case, there was a complete trial before the Labour Court from September, 2007 till July, 2014. Despite orders of the

Labour Court, the said documents were not produced. They were also not produced along with the Writ Petitions.

16. Considering the submissions of the review petitioners in the light of the above, I do not find that the review petitioners have succeeded in pointing out any error apparent on the face of the record.

17. The Apex Court in the case of Lily Thomas Vs. Union of India [AIR 2000 SC 1650], has concluded that a review petition cannot be argued in the nature of an appeal inasmuch as the original proceedings cannot be re-argued through a review petition.

18. In the light of the above, these review petitions sans merit and are, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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