

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

WRIT PETITION NO. 8565 OF 2015

ATMARAM SALBA BHOSALE
VERSUS
BHIMASHANKAR TRIMBAKAPPA UTAGE AND ANOTHER

...
Advocate for Petitioner : Shri Ashtekar R.K.

...
CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th January, 2016

Per Court:

1 The Petitioner is aggrieved by the judgment and order dated 20.02.2015 delivered by the Labour Court, Latur by which Application (IDA) No.1/2009 filed by the Petitioner invoking Section 33-C(2) of the Industrial Disputes Act, 1947 has been dismissed.

2 The grievance of the Petitioner is that though he worked for a period of about 09 months with the Respondent/ Adat Shop, which is trading business of grocery, he has not been paid his wages. The said Adat Shop was operated by the Respondent after obtaining a licence from the Agriculture Produce Market Committee (APMC). It was orally agreed that annual wages of the Petitioner would be at the rate of Rs.61,000/.

3 Shri Ashtekar, learned Advocate for the Petitioner, strenuously criticized the impugned judgment. The contention is that though he had no documentary evidence either of employment or with regard to his wages, he has examined one Mr.Pandurang Jadhav along with Mr.Babasaheb Suryawanshi, who are stated to be co-workers. Their evidence has not been properly appreciated by the Labour Court. The Labour Court has erroneously concluded that there is no evidence as regards the Petitioner having been appointed as a Munim with the Respondent. Hence, the impugned judgment is rendered perverse and untenable.

4 He has taken this Court threadbare through the impugned judgment.

5 It is trite law that an employee has to prove the factum of employment. I find from the submissions of the Petitioner and the record that neither does the Petitioner have any documentary evidence with regard to being appointed as a Munim, nor does he have any evidence to indicate that the wage package of Rs.61,000/- per annum was settled between him and the Respondent.

6 Section 33-C(2) of the Industrial Disputes Act, 1947 is a

provision which is to be invoked for recovery of money due from the Employer. It reads thus:-

“33-C. *Recovery of money due from an employer:-*

(1)

(2) *Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:*

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.”

7 It appears from the instant proceedings that the very factum of employment was at issue. The witness Mr.Pandurang Jadhav has deposed that he was working as a Munim from 07.11.2007 till 07.02.2008. The Petitioner also claims that he was working from 25.10.2007 till 05.08.2008. Both, therefore, claim to be working from November, 2007 to February, 2008 as a Munim. I find that the Labour Court has, therefore, rightly concluded that such piece of evidence would be of no assistance to support the case of the Petitioner.

8 It was admitted before the Labour Court that there is no

written document existing between the Petitioner and the Respondent with regard to his service and payment of wages. As such, I do not find that the impugned judgment could be termed as being perverse or erroneous.

9 This Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)