

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7647 of 2016

Ratnam Kandaswami,
Age 62 years, Occ. Retired
R/o Banglow No.8,
KBKS Irani Road,
Sadar Bazar Camp,
Dist. Ahmednagar.

..Petitioner

Versus

Atri Sales Corporation
M.G.Road, Ahmednagar
Through Kamalkumar
Habansraj Atri, since
deceased through L.Rs.

A) Pramila Kamalkumar Atri,
Age major, occ. Business,

B) Amit Kamalkumar Atri,
Age major, occ. Business,

C) Nitin Kamalkumar Atri,
Age major, occ. Business,

All r/o 8, Govindpura,
Ahmednagar.

..Respondents

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Advocate for Petitioner : Shri Barde P.V.
Advocate for Respondents : Shri Gawali Amol K.
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WITH
WRIT PETITION NO. 7931 OF 2016

Kamalkumar Harbansraj Attri,
since deceased through L.Rs.
Attri Sales Corporation
M.G.Road, Ahmednagar.

A) Pramila Kamalkumar Atri,

Age 54 years, occ. Business,

B) Amit Kamalkumar Atri,
Age 38 years, occ. Business,

C) Nitin Kamalkumar Atri,
Age 36 years, occ. Business,

All r/o 8, Govindpura,
Ahmednagar.

..Petitioners

Versus

Ratnam Kandaswami,
R/o Banglow No.8,
KBKS Irani Road,
Camp Bhingar,
Dist. Ahmednagar.

..Respondent

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Advocate for Petitioners : Shri Gawali Amol K.
Advocate for Respondent : Shri Barde P.V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 02, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. The petitioner in the first petition is the respondent in the second petition. He claims to be the employee of the respondent in the first petition, who is the petitioner in the second petition. For the sake of brevity, the litigating sides are being referred to as the “employee” and the “management”.

3. Rule.

4. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

5. Both the litigating sides are challenging the same award dated 15.10.2015, by which, the Labour Court has partly answered the Reference in the affirmative and has granted compensation of Rs.75,000/- in lieu of reinstatement, continuity and backwages.

6. The employee claims to have joined the management in 1971. His date of birth is 5.11.1949. He claims to have discharged duties as a Salesman till he was orally terminated on 29.12.1998. He raised an industrial dispute by submitting a demand notice on 15.6.2006 and the matter was referred to the Labour Court in Reference (IDA) No.33 of 2007.

7. It is submitted by the employee that he was working continuously with the management. He was drawing Rs.2,000/- per month as in 1998. The management has a shop license under the then Bombay Shops and Establishments Act. His termination is not preceded by a notice, notice pay and retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947.

8. Per contra, it is submitted by the management that the employee was never appointed as a “workman” in the shop operated by the management. Though there are a few documents, which may indicate the signatures of the Proprietor of the shop, namely, Shri K.H.Attri (now deceased), it does not indicate employer - employee relationship. The skeletal documents produced by the employee before the Labour Court are such which do not clearly establish continued employer - employee relationship. There is no material before the Labour Court, which would indicate that the employee was appointed as a regular workman in the service of the management.

9. It is further submitted that the employee has admitted in his cross-examination that he has not produced any appointment order, attendance sheet, wage register etc. so as to prove continued service with the management. He has admitted in cross-examination that a shop was taken on lease basis in the Cantonment Area and his wife was operating the shop. The lease contract was for 30 years, which was admitted. The shop was being operated for selling of such goods, which was the business of the management. Though it is stated that his wife was conducting the business in the shop, the employee himself was operating the same. It is also admitted that the employee was earning from the

said shop, though he has tried to cover up by stating that his wife was paying him monthly wages at the rate of Rs.3,000/-.

10. The employee is before this Court seeking enhancement in compensation for an amount of Rs.10,00,000/-. The management is before this Court seeking quashing of the impugned award.

11. I have considered the submissions of the learned Advocates for the respective sides, who have taken me through the petition paper book.

12. It is apparent that the employee had sought production of some documents and the management had not produced them. It is admitted that the employee had kept silent for a period of about 8 years. It is also admitted that the Labour Court has drawn adverse inference against the management and had concluded that because the documents are not placed on record, it has to be assumed that the employee was in the continuous service of the management.

13. The cross-examination of the employee reveals that he did not raise any dispute or issue about his purported dis-engagement on 29.12.1998, for a period of about 8 years. Documents are normally preserved for a period of 5 years. An industrial dispute is

raised after about 8 years.

14. It is also revealed that the employee had acquired his graduation degree in law and had commenced his law practice. It is stated that subsequently he has stopped practicing.

15. The shop started by the wife of the employee in the Bhingar Cantonment Board is said to be in competition with the management. With the passing away of the Proprietor Shri K.H.Attri on 1.12.2012, the legal heirs of deceased Attri submit that the said shop is now not in operation, though the registration is still maintained in the name of the said shop.

16. There is no dispute that the employee has attained the age of retirement on 4.11.2009, when he completed 60 years of age. There is no evidence to indicate that his wife was competent to operate the shop, so as to negate the contention of the management that the employee himself was operating the shop.

17. I find that this case brings up peculiar facts. There is hardly any evidence on record, except the documents at Exhibit U-7/ 2 to 15, which are delivery challans, which bear the signature of the employee. It is on the basis of these handful of documents that the employee claims to be continuously working over the period of

27 years with the management.

18. Though I am unable to sustain the conclusion of the Labour Court that by these handful of delivery challans and the adverse inference drawn, the employee has proved 27 years of continuous service, yet there are bits and pieces of evidence before the Labour Court so as to indicate some relationship between the employee and the management. I find it appropriate to observe that on the one hand, there was a little evidence to establish continuous service of 27 years, and on the other hand, the documents that were available would indicate some duration of employment since the majority of the documents are with regard to the years 1987 to 1989.

19. I find this to be a peculiar case, because, though some relationship between the parties is established, the evidence is not sufficient to conclude that the employee was continuously working with the management for 27 years. The delay caused by the employee in raising an industrial dispute has further led to there being little evidence on record.

20. In the peculiar fact situation, I find it appropriate to sustain the conclusion of the Labour Court, whereby, equities have been balanced by awarding compensation to the employee.

21. As such, both these petitions are dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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