

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9087 OF 2010

Ushabai Sahebrao Salve,
Age-40 years, Occu-Sweeper,
R/o Gurunanak Nagar, Jalgaon,
Tq. and Dist. Jalgaon

PETITIONER

VERSUS

1. The Commissioner,
Jalgaon Shahar Mahanagarpalika,
Jalgaon,

2. Vishwanath Rameshwar Pawar,
Age-55 years, Occu-Contractor,
R/o Kalabhavan, Nawal Colony,
Sindhi Colony Road, Jalgaon,
Tq. and Dist. Jalgaon

RESPONDENTS

Mr.A.S.Shelke, Advocate for the petitioner.
Mr.P.R.Patil, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/07/2016

ORAL JUDGMENT :

1. The petitioner/employee is aggrieved by the judgment and order dated 12/08/2010 delivered by the Labour Court, Jalgaon by which Appl.(IDA) No.360/2005, filed by the petitioner claiming unpaid wages u/s 33(C)(2) of the I.D.Act, has been rejected only on the ground that there is no employer-employee relationship between the applicant and the respondents.

2. This petition was admitted vide order dated 18/04/2011. I have considered the submissions of the learned Advocates at length.

3. Mr.Patil, learned Advocate for the Corporation has strenuously supported the impugned order. He submits that Section 33(C)(2) mandatorily requires the claim to be lodged against the employer. It also mandates that a pre-existing right must flow from the terms and conditions of the employment and the applicant has to establish unpaid amounts by the employer.

4. Mr.Patil has submitted that the Corporation was respondent No.1 before the Labour Court and was impleaded, though not being the direct employer of the petitioner/applicant. The applicant has admitted in evidence that she was never appointed by the Corporation and she had never worked under the orders of the Corporation. She was engaged by respondent No.2 / Labour Contractor and he was responsible to pay the wages.

5. Mr.Patil further submits that the Labour Court has rightly concluded that the application is not maintainable. No claim could have been entertained by the Labour Court as against the

Corporation. Her admission in cross examination that she worked only when respondent No.2 allotted work to her, has therefore rendered the application untenable before the Labour Court.

6. Having considered the submissions of the learned Advocates and upon considering the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (For short, the Act of 1970), I am remitting the application filed by the applicant to the Labour Court and hence I am not dealing with the extensive submissions of Mr.Patil and Mr.Shelke since any verdict on the said submissions would amount to pre-judging the matter.

7. It is trite law that an application for seeking recovery of dues u/s 33(C)(2) is not bound by limitation. It is equally settled that the claim has to be made against an employer. Right to the unpaid amounts has to flow from the service conditions and non-payment of dues has to be established by the applicant who has staked the claim.

8. The Corporation has admitted before the Labour Court that respondent No.2 was it's contractor and the applicant may have been engaged through the said Contractor. The application filed by the

petitioner, therefore, was maintainable as against the Contractor. The Labour Court has erred in concluding that the application was not maintainable at all.

9. The provisions of the Act of 1970 indicate that if the Contractor does not pay the legal dues of the employees, the principle employer is required to pay and the said amount can be recovered by the principle employer from the Contractor. In my view, neither of the parties have pointed out to the Labour Court the entire scheme flowing from the Act of 1970 and the Rules framed thereunder.

10. As such, this petition is partly allowed. The impugned order dated 12/08/2010 is quashed and set aside as being perverse and erroneous. The Labour Court shall, therefore, reconsider the application afresh by noting that the applicant claims to be the employee of the Contractor and the Corporation is the principle employer.

11. In order to ensure that sufficient evidence is brought before the Labour Court, the litigating sides are at liberty to adduce fresh oral and documentary evidence, in addition to the evidence already recorded. It is expected that the Labour Court shall decide

Application (IDA) No.360/2005 afresh on its own merits and without taking note of any observations made in the impugned judgment, which is set aside.

12. It be noted that this Court has avoided dealing with the actual claim of the petitioner since the matter is being remitted and hence any observations appearing in this order shall not be construed to mean that this Court has decided any issue framed by the Labour Court.

13. Rule is made partly absolute in the above terms. Needless to state, all contentions of the litigating sides are kept open.

14. Pending civil applications do not survive and hence are disposed of.

(RAVINDRA V. GHUGE, J.)