

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12330 OF 2015
(Shivanand Baburao Sanap Vs. Garware Polyesters Ltd. and another)

Mr.P.V.Barde, Advocate for the petitioner.
Mr.T.K.Prabhakaran, Advocate for respondent No.1.
Mr.A.S.Kulkarni, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/10/2016

PER COURT :

1. The petitioner is aggrieved by the judgment and order dated 18/08/2015 by which his Complaint (ULP) No.57/2009 has been dismissed.

2. I have heard the learned Advocates for the respective sides at length. The petitioner has admitted throughout, in his written statement, his oral evidence and in his submissions that respondent No.2 / Labour Contractor had appointed him as a 'Supervisor' on 01/01/1996. Respondent No.2 is the actual employer of the petitioner. He had raised the issue of transfer at the hands of respondent No.2 by which he was shifted from respondent No.1/factory at Chikalthana to respondent No.1/Factory in the Walunj Industrial Area.

3. While dealing with the issue of transfer and the clear admission by the petitioner that respondent No.2 is his real employer, the Industrial Court has dismissed the complaint by the impugned judgment.

4. Considering the law laid down in the matter of Vividh Kamgar Sabha Vs. Kalyani Steels Limited, reported in 2001[1] CLR, 532, Cipla Limited Vs. Maharashtra General Kamgar Union, reported in 2001 LLR page 305 =2001(2) Bom.C.R. (S.C.) 822 : (2001) 2 SCC 381, and the 5 Judges Bench Judgment in the matter of Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others, [2001III CLR 349], the complaint was rightly held to be untenable by the Industrial Court through the impugned judgment.

5. Respondent No.2 / Contractor has taken a stand through its written statement before the Industrial Court that the petitioner has been terminated w.e.f. 14/04/2009. It is conceded by the petitioner that he has not challenged his termination.

6. Mr.Barde submits on instructions from the petitioner present in the Court that he would raise a challenge to his termination dated

14/04/2009 either under the MRTU and PULP Act, 1971 or under the Industrial Disputes Act, 1947.

7. Considering the above, this petition sans merit and is, therefore, dismissed. Nevertheless, since the termination of the petitioner dated 14/04/2009 has not been called in question by him, the impugned judgment shall not be an impediment for the petitioner to assail his termination before an appropriate Court.

(RAVINDRA V. GHUGE, J.)