

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11758 OF 2016

Auto Cars
14 Km Stone, Aurangabad-Paithan Road,
Near Videocon Industries, Chitegaon,
Aurangabad,
Through Senior Manager -HR -- PETITIONER

VERSUS

Auto Cars Employees Union,
N-4, CIDCO, Aurangabad,
Through its President -- RESPONDENT

WITH
WRIT PETITION NO.11759 OF 2016

Auto Cars
14 Km Stone, Aurangabad-Paithan Road,
Near Videocon Industries, Chitegaon,
Aurangabad,
Through Senior Manager -HR -- PETITIONER

VERSUS

Auto Cars Employees Union,
N-4, CIDCO, Aurangabad,
Through its President -- RESPONDENT

Mr.V.P.Golewar h/f Mr.Ashok V.Patil and Mr.A.R.Joshi, Advocate for
the petitioner.
Mr.T.K.Prabhakaran, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 29/11/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2. In both these matters, the petitioner/Management is aggrieved by the order dated 14/10/2016 by which application Exhibit C-19 and C-21 in Complaint (ULP) Nos. 49/2014 and 160/2013 have been rejected by the Industrial Court.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the petition paper book with their assistance.

4. Both the complaints are to be decided within a time frame pursuant to an earlier direction issued by this Court dated 18/03/2016 in WP Nos. 11360/2014 and 10738/2015. The respondent / Union, which is the original complainant in both these complaints, has already commenced the recording of its oral evidence by filing affidavits in lieu of evidence before the Industrial Court.

5. At this juncture, two applications Exh.C-19 and C-21 have been filed by the petitioner praying for framing of the following two issues :-

“1. Does the complainant Union prove that, the employees listed in Annexure “A” are the “Workman” within the meaning of

Sec.2(s) of Industrial Disputes Act, 1947 ?”

2. Does the complainant Union prove employer-employee relationship between respondent and container drivers listed in Annexure “A” ?”

6. There is no dispute that the issue as regards whether the complaint is maintainable, has already been framed by the Industrial Court. It is equally undisputed that the petitioner has averred in the written statement that some of the workers mentioned in the annexure to the complaints are free lancers and that they are independent contractors. Grievance is that the above mentioned two issues are not cast.

7. Considering the pleadings of the litigating sides and the issues cast, I do not find that the Industrial Court has erred in rejecting application Exhibit C-19 and C-21.

8. It appears from these two petitions that the petitioner/Management is under an apprehension that the issue as to whether the complainants are free lancers, whether they are independent contractors, whether they are workmen u/s 2(s) of the I.D.Act r/w Section 3(5) of the 1971 Act, and whether there is employer-employee relationship, would not be gone into by the

Industrial Court.

9. It is apparent that the above said aspects have not been specifically mentioned in the issue “Whether the complaint is maintainable?”. However, I find that the apprehension of the petitioner/Management is misplaced for the reason that the Industrial Court, upon framing the issue, “Whether the complaint is maintainable?” would certainly look into the pleadings of the litigating sides and then conclude on the basis of the answers to the said pleadings as to whether the complaint is maintainable.

10. Suffice it to say, the contention of the petitioner that the workers are free lancers, they are independent contractors, they are not workmen and there is no employer-employee relationship, will have to be proved by the petitioner/Management and the Industrial Court would consider the said pleadings and the evidence, if adduced, while deciding whether the complaints are maintainable.

11. With the above observations, both these petitions are disposed of. Rule is discharged.

(RAVINDRA V. GHUGE, J.)