

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

WRIT PETITION NO. 86 OF 2016

Nandkishor s/o Shrikrishna Jaiswal,
Age : 49 years, Occupation Nil,
R/o Main Road Shriram Nagar,
N-2, CIDCO, Aurangabad.
Taluka and District Aurangabad.

...PETITIONER

-VERSUS-

Smt.Sheelabai w/o Madhukar Dakhane,
Prop.Country Liquor Shop,
bearing Licence No.CL-III-68,
situated at village Shahagad,
Near Godawari Way Bridge,
Tq.Ambad, District Jalna.

...RESPONDENT

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Advocate for Petitioner : Shri Khandelwal Rajesh K.

Advocate for Respondent : Shri Kedar Balbhim R..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th December, 2016

Oral Judgment :

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

2 The Petitioner is aggrieved by the judgment dated 07.05.2014

delivered by the Labour Court, Jalna by which Complaint (ULP) No.1/2013 filed by the Petitioner has been dismissed solely on the ground that though the Petitioner was in employment of the Respondent for three years, the Nokarnama was not placed on record for the year 2013-2014 and therefore, there is no employer-employee relationship between the parties.

3 The Petitioner is also aggrieved by the judgment and order dated 31.10.2015 delivered by the Industrial Court by which his Revision (ULP) No.51/2014 has been dismissed.

4 I have considered the strenuous submissions of the learned Advocates for the respective sides. I have also gone through the affidavit in reply filed by the Respondent and the judgment of the learned Division Bench of this Court in the matter of *Nagpur District Central Cooperative Bank Ltd. vs. Prashant Ashokrrao Salunke*, **2016 (1) Mh.L.J. 706**.

5 There is no dispute that the Petitioner had approached the Labour Court contending that the owner of the Country Liquor Shop bearing Licence No.CL-III-68 was an old lady. She had appointed the Petitioner to work in the shop as a Caretaker and also perform the duties of selling the product. The Petitioner alleged termination w.e.f. 01.04.2012

and submitted the Nokarnama issued by the Excise Department for the years 2009 till 2012.

6 The Petitioner has also stated that the Country Liquor Shop licence which earlier stood in the name of Mr.Madhukar Dakhane was transferred to the old lady Smt.Sheelabai Dakhane in 2001. He, therefore, alleged illegal retrenchment.

7 Without framing any issue, the Labour Court concluded in paragraphs 8 and 9 that after 2012, as the Nokarnama was not placed on record, the relationship of employer-employee does not exist between the original Complainant and the Respondent and therefore, the Petitioner failed to prove his relationship with the Respondent. In my view, such conclusions are apparently perverse and erroneous and cannot be sustained even for a minute.

8 It is an altogether different issue as to whether, the Petitioner proves illegal retrenchment in the light of Section 25-B, 25-F and 25-G of the Industrial Disputes Act, 1947, than the issue that there is no employer-employee relationship between the parties. The Labour Court was obliged to consider the complaint with reference to the alleged cause of action of illegal retrenchment. It was nobody's case that the employer-employee

relationship between the parties is disputed. In fact the proceedings were ex-parte. It is also trite law that after termination, the employer-employee relationship is severed and that gives rise to the cause of action of termination.

9 Patent error committed by the Labour Court has also been committed by the Industrial Court which failed to see this aspect of the matter. Without the complaint being tried on its merits, the Industrial Court referred to Section 2(o)(bb) of the Industrial Disputes Act, 1947. A limited jurisdiction of the Industrial Court with regard to its revisional powers under Section 44 cannot be equated with its powers of appeal under Section 42 of the MRTU & PULP Act, 1971 and under the Bombay Industrial Relations Act, 1946. The revisional jurisdiction being narrow would have entitled the Industrial Court only to find out whether, the impugned order was perverse or not.

10 In the light of the above, this Writ Petition is partly allowed. The impugned judgments of the Labour Court dated 07.05.2014 and the Industrial Court dated 31.10.2015 are quashed and set aside. Revision (ULP) No.51/2014 stands disposed of since I am remitting Complaint (ULP) No.1/2013 to the Labour Court for framing of proper issues and for considering the complaint on its merits.

11 The litigating sides (i.e. the original Complainant and the original Respondent before the Labour Court) submit that they would appear before the Labour Court on 09.01.2017. Formal notices need not be issued by the Labour Court. The Respondent is granted liberty to file it's Written Statement along with all documents, if any, within a period of four weeks from the date of appearance, failing which the said liberty shall stand withdrawn. After the Written Statement is filed, the Labour Court shall frame proper issues, including the issue as to whether, the Complainant is a workman and decide the complaint on it's own merits.

12 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)