

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7803 OF 2016**

Barnee Trading Co. Pvt Ltd.

..Petitioner

Vs.

Mr. Peter Gabriel

..Respondent

Mr. P. V. Damodaran for the Petitioner

Mr. Yogendra Pendse for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 17th OCTOBER, 2016

P.C.

1 The Writ Jurisdiction is invoked against the order dated 10-8-2016 passed by the Learned Presiding Officer 3rd Labour Court, Thane by which order the Reference in question being Reference IDA No.50 of 2011 came to be answered in the affirmative in favour of the Respondent herein and the Respondent was directed to be reinstated with 50% back wages and with continuity of services w.e.f. 19-6-2008.

2 The industrial dispute which had arisen on account of the termination of the services of the Respondent herein w.e.f. 19-6-2008 has given rise to the Reference in question. In terms of the statement of claim, it was the case of the Respondent that he was working with the Petitioner Company since last 15 years as Winder cum Machine Operator and Driver. It was his case that his services came to be terminated by the Petitioner without

following the due process of law. The Petitioner herein in its Written Statement denied the employer-employee relationship between the parties and defended the said reference on the said ground. The parties led evidence in respect of their respective assertions. The Petitioner led evidence of one Mr. Arunachalam and the Respondent led his own evidence. To buttress his case that he was in employment of the Petitioner, the Respondent produce his appointment letter Exhibit U-18 which shows that he was appointed in the year 2000. The Respondent also produced the form -16 issued by Mr. Hur who was the Managing Director of the Petitioner Company which document was marked as Exhibit 19. In contradistinction the Petitioner did not produce any evidence to buttress his case that there was no employer-employee relationship between the parties.

3 It is required to be noted that the Respondent herein is educated up to the 5th standard and was working as Winder cum Machine Operator and Driver. In so far as the evidence which has come on record on behalf of the Petitioner is concerned, the Petitioner's witness Mr. Arunachalam has admitted the signature of Mr. Mahesh Rathod Executive of the Petitioner company on the appointment letter Exhibit U-18. In so far as the document Exhibit 19 i.e. form- 16 is concerned, it has come in the evidence of Mr. Arunachalam that the said document might have been issued on account of the fact that the Respondent was working with Mr. Hur and therefore on account of the

relations which had developed between the parties that the said form-16 was issued. The Labour Court on the basis of the said document Exhibit U-18 and Exhibit U-19 held that the fact that the Respondent was working with the Petitioner Company was proved. The Learned Presiding Officer of the Labour Court did not countenance the minor contradictions in the evidence of the Respondent in the light of the fact that the Petitioner itself has not clarified as regards the exact status of the Petitioner as to whether it was an ownership concern or a partnership or a private limited company. As indicated above, the Learned Presiding Officer of the Labour Court by the impugned judgment and order dated 10-2-2016 has answered the Reference in the affirmative which is taken exception to by way of the above Petition.

4 The Learned Counsel Mr. Damodaran appearing for the Petitioner would contend that there are contradictions in the case as set out in the statement of claim and as recorded in the evidence of the Respondent. The said contradiction was in respect of the number of years of service which the Respondent is alleged to have been working with the Petitioner, as also the nature of the job that he was carrying out with the Petitioner.

5 In my view, assuming that there are contradictions in the case as sought to be put up in the statement of claim and the evidence recorded on behalf of the Respondent, the same would have no effect on the final order

that the Learned Presiding Officer of the 3rd Labour Court has passed in the instant Reference. It would have to be borne in mind that the Respondent is educated only up to 5th standard and minor contradictions are therefore bound to be in his evidence as he may not in a position to understand the implications of the statements made by him. As indicated above it is on the basis of the Exhibit U-18 and Exhibit U-19 that a finding of fact has been recorded by the Learned Presiding Officer, 3rd Labour Court as regards the employer-employee relationship between the parties. The contradiction if any is only in respect of the number of years of service put in by the Respondent. Having regard to Exhibit U-18 it can be said that the Respondent was in employment with the Petitioner at least from the year 2000 if not earlier. The view taken by the Learned Presiding Officer therefore cannot be said to be a view which could not have been taken in the facts and circumstances of the case.

6 In that view of the matter, no case for interference in the Writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]