

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2022 OF 2016

1. Gram Panchayat Karlaya
Chinchgavan, Through its
Sarpanch Smt. Sunita w/o
Shivaji Barge, Age 32 years,
Occ. Sarpanch and household
R/o Chinchgavan, Tq. Hadgaon
District Nanded.

2. Gramsevak,
Grampanchayat Karyala
Chinchgavan, Tq. Hadgaon
District Nanded.

..Petitioners

Versus

Shaikh Amir Khajamiya
age 45 years, Occ. Nil,
R/o Chinchgavan, Tq. Hadgaon
District Nanded.

..Respondent

...
Advocate for Petitioners : Shri Shinde Dhananjay M.
Advocate for Respondent : Shri Panchal Shrinivas H.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: February 13, 2017

...

ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition

is taken up for final disposal.

4. This matter has been heard for sometime on several dates.

5. Though the respondent No.1 / employee has been granted reinstatement in service with continuity and without backwages, it appears that after his termination dated 11.12.2006, he raised an industrial dispute in 2010.

6. Both the parties have led evidence before the Labour Court. It was admitted by the respondent / workman before the Labour Court that he was working at two places as Recovery Clerk with the petitioner and as an Accountant with the Vividh Karyakari Seva Society. It is further recorded that after completing the work of a Recovery Clerk with the petitioner, he used to report to Vividh Karyakari Seva Society and used to perform the work of Accountant. The Labour Court has concluded that as the respondent was not a permanent employee with the petitioner, he was free to take up employment elsewhere and there is no prohibition for him to work at any other place.

7. While issuing notice on 24.2.2016, this Court has stayed the impugned award.

8. I find in the light of the pleadings of the parties that it is an admitted position that the respondent / employee was working on honorarium with the petitioner. Issues as to, whether such an employee would be a “workman” under Section 2(s) of the Industrial Disputes Act, 1947 and whether working on honorarium would amount to creation of an employer - employee relationship between the petitioner and the respondent were neither framed by the Labour Court, much less decided.

9. Considering the above, I find that the following issues were required to be adjudicated upon by the Labour Court:-

(A) Whether Rule 12 of the Bombay Village Panchayats Servants (Recruitment and Conditions of Service) Rules, 1960, keeping in view that even a temporary cannot indulge in double employment as it amounts to a mis-conduct, prohibits the employee from taking up double employment?

(B) Whether a person working on honorarium would be a workman under Section 2(s) of the ID Act and whether in such circumstances there would be any employer-employee relationship between the parties?

10. Hence, I find that the impugned award suffers from infirmities and the Labour Court has failed to consider the abovesaid issues.

11. Learned Advocate for the petitioner submits that instead of admitting this matter, which may come up for final hearing after 10-15 years, directions could be issued to the Labour Court to decide the above issues by remanding the Reference.

12. Since I have concluded that the above mentioned issues have not been dealt with by the Labour Court, I find that the ends of justice would be met by directing the Labour Court to decide the said issues and the earlier issues, together.

13. In the light of the above, this petition is partly allowed. The impugned award dated 2.11.2015 is quashed and set aside and Reference (IDA) No. 1 of 2010 is remitted to the Labour Court, Nanded on the following conditions:-

(A) The litigating sides shall appear before the Labour Court on 4.3.2017.

(B) Formal notices need not be issued by the Labour Court.

(C) The Labour Court shall frame appropriate issues in the light of the above observations in order to ensure that the said issues are properly dealt with.

(D) The litigating sides are at liberty to lead fresh oral and documentary evidence in addition to the evidence

already recorded.

(E) All the contentions of the litigating sides discussed above, inclusive of those which they may intend to raise before the Labour Court are kept open and the Labour Court shall decide the Reference on its own merits.

(F) Considering that the proceedings are of 2010, the Labour Court shall endeavour to decide this reference on or before 30.12.2017.

14. Rule is made partly absolute in above terms.

(RAVINDRA V. GHUGE, J.)

...

akl/d