

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9648 OF 2015

NAMDEO DADARAO DHONDGE
VERSUS
M/S N.K.CONSTRUCTIONS GROUP, BEED

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Advocate for Petitioner : Shri Shahane Pradeep L.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 19, 2017

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PER COURT :-

1. Despite service of Court notice, none appeared for the respondent on 21.8.2017. Office remarks indicates that the service is complete.

2. The petitioner points out that though certain documents were filed on record and the details about the money due from the respondent was mentioned in Annexure "A" to the application, the Labour Court has rejected application IDA No. 7 of 2013.

3. I find from the record, that the respondent did not appear before the Labour Court in the said proceedings. The Labour Court considered the experience certificates at Exhibit

U/16, 17 and 21. One certificate does not bear a date. Two certificates bear the dates. Exhibit U/21 indicates that the petitioner was working as a Site Supervisor from 1.10.1994 till 10.9.1998. This aspect appears to have been over looked by the Labour Court.

4. In the last paragraph of the impugned order the Labour Court observes as under:-

" Apart from that I failed to understand how the person can work for 18 years on same salary of Rs.1,000/- per month ?. Thirdly, the applicant was removed from service in the year 2004 and he came to the Court in the year 2013 and claims huge amounts of arrears as mentioned in application and Annexure "A". Therefore, I am not inclined to put reliance on the evidence affidavit of the applicant. I would like to mention herein that the applicant has failed to establish relationship of employer - employee."

5. It is obvious that the Labour Court has misdirected itself. When a certificate, which is duly signed and exhibited at Exhibit 21 indicates employment of the petitioner with the respondent for four years and in the absence of any objection that there is no employer-employee relationship, the Labour

Court could not have presumed lack of such relationship. So also Section 33-C(2) does not prescribe a limitation, unlike a one year limitation prescribed under Section 33-C(1). So also, it is not the outlook of the Labour Court, as to why the petitioner worked on a paltry salary for a long duration. Rejecting a claim on these grounds cannot be sustained.

6. This petition is, therefore, allowed. The impugned order dated 9.2.2015 is quashed and set aside. Application IDA No.7 of 2013 is restored to the file of the Labour Court, Aurangabad.

7. The petitioner agrees to appear before the Labour Court on 3.10.2017. Request is accepted and appearance is permitted. The Labour Court shall issue a formal notice only to the respondent.

8. In the event the respondent appears and prays for filing of a Written Statement, the Labour Court may consider the said request and if it is accepted, it may consider imposition of costs. In that situation, the respondent may be permitted to lead evidence. However, if the respondent fails to appear, the

Labour Court shall hear the submissions of the petitioner / applicant on the basis of the oral and documentary evidence on record and decide the said proceedings afresh by considering the probative value of the evidence.

(RAVINDRA V. GHUGE, J.)

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