

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

Writ Petition No. 11018 of 2015

District : Ahmednagar

Sanjay Krishnaji Pawar,
Age : 35 years,
Occupation : Labour,
R/o. 4751, Pargalli,
Maliwada,
Taluka & District Ahmednagar.

.. Petitioner
(Second party)

versus

1. Indian Seamless Metal
Tubes Ltd.,
C-15, MIDC [PTD Division],
Ahmednagar,
Through its General Manager.

2. Mahendra Singh Sodhi,
Hotel Sagar, Behind Parag Colony,
Pipeline Road,
Vidyavardhini Bangla,
Ahmednagar.

.. Respondents
(First party)

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Mr. P.V. Barde, Advocate, for the petitioner.

Mr. V.N. Upadhye, Advocate, for respondent no.01.

Mr. N.V. Gaware, Advocate, for respondent no.02.

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 20TH FEBRUARY 2017

ORAL JUDGMENT :

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

02. This matter was heard extensively on 08th of February, 2017 and was adjourned to this date to enable respondent no.02 - contractor to take instructions whether he is willing to comply with the impugned award for bringing the litigation to an end.

03. Mr. Gaware, learned Advocate appearing for respondent no.02, makes a statement, on instructions, that as respondent no.02, which was first party no.02 before the Labour Court, in Reference (I.D.A.) No. 26/2007, had not participated in the said proceedings, he is praying for a remand.

04. Mr. Barde, learned Advocate for the petitioner submits, on instructions, that since his case throughout has been that he is the employee of the principal employer - respondent no.01 herein and since the Labour Court has arrived at an erroneous conclusion that he is an employee of the contractor, he is agreeable for a remand subject to heavy costs as a remand in the matter at the request of respondent no.02 would result in reversing the litigation by ten years.

05. Mr. Gaware contends that the petitioner was selected by respondent no.01 - principal employer and he was never the employee of the contractor.

06. Mr. Upadhye, learned Advocate appearing for the principal employer - respondent no.01 herein, submits that the petitioner was never the employee of

respondent no.01. He was selected and deployed by respondent no.02 - contractor on the premises of respondent no.01.

07. Considering the above, especially the statements made by the petitioner and respondent no.02, praying for a remand and keeping in view that respondent no.02 did not participate in the proceedings before the Labour Court and the impugned award is delivered ex parte to his extent, remanding the reference matter to the Labour Court would meet the ends of justice. However, I am imposing costs on respondent no.02 - contractor since the proceedings are being reversed by ten years.

08. In the light of the above, this petition is allowed by consent of the petitioner and respondent no.02. The impugned award dated 01.04.2015 is set aside. Reference (I.D.A.) No. 26/2007 is remitted to the first Labour Court at Ahmednagar, on the following conditions :-

(a) All the litigating sides who are present before this Court shall appear before the Labour Court on 10th March, 2017.

(b) Respondent no.02 - contractor, who is first party no.02 before the Labour Court, shall deposit an amount of Rs. 50,000/- [Rupees fifty thousand] before the Labour Court on or before 24th day of March, 2017.

(c) After the costs are deposited, the petitioner would be at liberty to withdraw the said amount without any conditions.

(d) Respondent no.02 - contractor shall enter his written statement before the Labour Court on or before 24.03.2017.

(e) The Labour Court shall specifically frame an issue as to whether the petitioner - second party workman is an employee of the principal employer - first party 01st or the contractor - first party 02nd.

(f) The oral and documentary evidence recorded earlier shall not be discarded by the Labour Court.

(g) In addition to the evidence recorded earlier, the litigating sides would be at liberty to lead further evidence.

(h) The contractor - first party 02nd shall not seek adjournments before the Labour Court on trivial and unreasonable grounds.

(i) The first Labour Court, Ahmednagar, shall endeavour to decide the reference proceedings as expeditiously as possible and preferably on or before 29th day of December, 2017.

09. This petition is, therefore, partly allowed and rule is made partly absolute in the above terms.

(Ravindra V. Ghuge)
JUDGE

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