

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

WRIT PETITION NO.11054 OF 2015

Baban Bhimaji Pacharne,
Age : 57 years, Occupation : Labour,
R/o Sidharth Nagar,
In front of Laxmimata Temple,
Ahmednagar,
Taluka and District Ahmednagar.

...PETITIONER

-VERSUS-

Indian Seamless Metal Tubes Limited,
Tube Division, C-1, MIDC,
Ahmednagar.
Through its General Manager.

...RESPONDENT

**WITH
WRIT PETITION NO.12513 OF 2015**

Meera Baban Pacharne,
Age : 54 years, Occupation : Labour,
R/o Sidharth Nagar,
In front of Laxmimata Temple,
Ahmednagar,
Taluka and District Ahmednagar.

...PETITIONER

-VERSUS-

Indian Seamless Metal Tubes Limited,
Tube Division, C-1, MIDC,
Ahmednagar.
Through its General Manager.

...RESPONDENT

...

Advocate for Petitioners : Shri Barde Parag Vijay.

Advocate for the Respondent : Shri V.N.Upadhye.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th January, 2017

Oral Judgment :

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

2 Both these Petitioners are husband and wife. Both are aggrieved by the Awards of the Labour Court dated 21.01.2015 thereby, answering Reference (IDA) Nos.12/2009 and 15/2009, respectively, in the negative.

3 Both the Petitioners, who claim to be working as Sweepers in the Guest House conducted by the Respondent/Industry, preferred Complaint (ULP) No.89/2005 before the Industrial Court, Ahmednagar praying for permanency. It was claimed that they were working from 1980 as Sweepers in the said Guest House. The complaint was lodged before the Industrial Court on 30.08.2005 and immediately upon gathering knowledge, the Respondent orally terminated the Petitioners on 01.09.2005.

4 Complaint (ULP) No.89/2005 was dismissed. The Petitioners preferred Writ Petition No.4192/2013 in this Court and the said petition was withdrawn on 28.08.2013 as the Petitioners were granted liberty to avail of the remedy for challenging the termination.

5 Reference (IDA) Nos.12 and 15 of 2009 were registered with the Labour Court. By the impugned awards, both the Reference Cases have been answered in the negative.

6 With the assistance of the learned Advocates for the respective sides, I have gone through the petition paper books and the record available.

7 It is trite law that the burden of proving completion of 240 days in continuous employment under Section 25-B of the Industrial Disputes Act, 1947 and non compliance of the law of retrenchment under Section 25-F of the Industrial Disputes Act, 1947, rests on the shoulders of the claimants. The employee has to prove these aspects. If the documents are not available with the employee and if the notice of production of documents is filed, the employer is then required to produce the documents.

8 It is apparent from the observations of the Labour Court in paragraphs 23 and 24 that there was no evidence before the Labour Court for supporting the contentions and averments of the Petitioners. The pay slip was produced at Exhibit U/26 which did not disclose any aspect as regards the payment being made by the Respondent Management. The author of the pay slip was also not examined before the Labour Court. Though six persons inclusive of both the Petitioners herein appear to be named in Exhibit U/26, the Labour Court has observed that the Petitioners did not produce any witness amongst the said list to support their case.

9 The Labour Court has also recorded that five registers were produced as being the muster rolls at Exhibit U/17. It was noticed that though the Petitioners claimed that these registers were the muster rolls of the Respondent Management, there was no evidence to prove this aspect. The Labour Court observed that the said registers were maintained by the Security Guard at the Guest House wherein he entered the names of the persons at the time when they entered in the Guest House and left the premises. Thus, this was not the evidence to establish employment of the Petitioners with the Respondent.

10 In the light of the above, I do not find that the Petitioners

could establish their employer-employee relationship with the Respondent and their tenure of employment. In the absence of evidence, I do not find that the impugned awards could be termed as being perverse or erroneous. These Writ Petitions being devoid of merit are, therefore, dismissed.

11 Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)