

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12715 OF 2016

1. Shailesh Singh
Age... Years, Occ. Service
Maxlife Insurance Company Ltd.,
R/o 3rd, 11, 12th Floor,
DLF Squire, Jacardanda Marg,
DLF City, Phase 2, Gurgaon,
Haryana 122 002.
having its Registered office at
Max House 3rd Floor,
1 Dr. Jha Marg, Okhla, New Delhi.

2. Mr.Sourabh Sharma
Age ... years, Occ. Service
as Branch Manager,
Maxlife Insurance Company Ltd.
Shivkamal Silver Arch,
Nandi Stop, AUSA Road,
Latur. 431 512 (Maharashtra)
Through its power of attorney
holder Mr.Rajendra Hari Harsh
Age 43 years, Occ. Service,
Address :- Shivmani Apartments,
Flat No.105, Jainagar, Aurangabad.

..Petitioners

Versus

Pradip Sandipan Gaikwad
Age 33 years, Occ. Nil,
R/o Prakash Nagar,
Suryodaya Colony (W),
Sachin Niwas, Latur.

..Respondent

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Advocate for Petitioners : Shri Patil Swapnil S.
Advocate for Respondent : Shri Sagar Killarikar B.L.
h/f Shri Gilche D.N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 06, 2017

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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. The petitioners are aggrieved by the order dated 7.9.2015 passed by the Labour Court under Section 30(2) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act ") by which, the application for interim relief is disposed off and a declaration of ULP under item 1(f) of Schedule IV has been made. Consequentially, the petitioners are directed to reinstate the respondent in service, till the decision in the main complaint.
5. The petitioners are also aggrieved by the judgment dated 7.12.2016, delivered by the Industrial Court, by which, Revision (ULP) No. 20 of 2016 filed by the petitioner has been dismissed.
6. I have considered the submissions of the learned Advocates for the respective sides and have gone through the record available.

7. The petitioners have filed an application Exhibit C-4 before the Labour Court in Complaint (ULP) No.3 of 2015, praying for the recalling of the “Proceed ex-parte” order dated 5.9.2015 and for filing the Written Statement in the complaint. Same is pending, though having been filed on 21.9.2015. Prior thereto interim order dated 7.9.2015 has been passed.

8. The respondent has claimed to be appointed as a Sales Manager by order dated 15.2.2010. After completion of his probation period he was confirmed in service as a Sales Manager. As such, without considering his job profile and without arriving at a finding that he is a “workman” under Section 2(s) of the Industrial Disputes Act read with Section 3(5) of the 1971 Act, the Labour Court would not have a jurisdiction to entertain a complaint.

9. The other issue that deserves consideration is as to whether final relief in the nature of reinstatement in service could be granted as an interim relief.

10. In my view, the Labour Court could not have granted interim relief before coming to a conclusion that the original complainant was a workman. The law on this count has been settled in catena of judgments. The learned Division Bench of this Court in the matter of

Chandrashekhar Chintaman Vaidya Vs. National Organic Chemical Industries Ltd. [2010 II CLR 121 = 2010(3) Mh.LJ 434], has concluded that neither the designation nor the salary structure is material while deciding the status of an employee. Nature of his duties would matter and as such the job profile of the original complainant would be a material aspect before the Labour Court to conclude whether he is a workman / employee or not.

11. In the light of the above, it is obvious that the Labour Court has failed to consider these aspects, inasmuch as the Industrial Court has also turned a blind eye while dismissing the revision petition of the petitioners.

12. Learned Advocates for the respective sides submit on instructions that they are willing to lead oral and documentary evidence before the Court if the issue as to whether the complainant is workman or employee is framed and pursuant to the decision on the said issue, if the complainant is a workman, his application Exhibit U/2 can be considered afresh.

13. In the light of the above, this petition is partly allowed on the following conditions:-

(A) The impugned order dated 7.9.2015 passed by the

Labour Court and the judgment of the Industrial Court dated 7.12.2016 are quashed and set aside on the condition that the petitioner shall deposit an amount of Rs.20,000/- before the Labour Court, Latur within a period of four weeks from today.

(B) The respondent / employee would be at liberty to withdraw the said amount without conditions for the hardships suffered by him in litigation.

(C) The Labour Court shall decide application Exhibit C/4 within six weeks from today and by imposing costs, permit the petitioner to file it's written statement along with all objections, if any.

(D) Thereafter, the Labour Court shall frame an issue as regards the maintainability of the complaint in the light of the objections of the petitioner and also frame an issue as to whether the complainant is a workman / employee or not.

(E) The request of the litigating sides to lead evidence on the above said issues is accepted and they are permitted to lead oral and documentary evidence.

(F) The Labour Court shall decide the above said two issues peremptorily.

(G) Application Exhibit U/2 filed by the respondent is restored to the file the Labour Court.

(H) After the two issues are decided and if the Labour Court concludes that the complaint is maintainable, it shall

proceed to decide application Exhibit U/2 afresh.

(I) If the costs as directed are not deposited, this order shall stand recalled, the petition shall then stand dismissed and the order of the Labour Court dated 7.9.2015 shall be restored.

(J) At the request of both the litigating sides, the above said exercise till the decision of the application Exhibit U/2, shall be concluded as expeditiously as possible and preferably within a period of eight months from today.

14. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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akl/d