

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No. 17 OF 2011

WORKMEN

Represented by,
Gomantak Mazdoor Sangh
G-5, Machado Appts,
Ponda-Tisk, Ponda-Goa.

... Petitioner

Versus

1. AIRPORT Authority OF INDIA
Through its Director
Goa Airport, Dabolim-Goa.
2. PRESIDING OFFICER
Central Government Industrial Tribunal No. 2.
Mumbai.

... Respondents

Mr. Shivraj Gaonkar, Advocate for the petitioner.

Mr. M. Bandodkar, Advocate with Mr. P. Bandodkar, Advocate for the respondents.

Coram :- C. V. BHADANG, J.

Reserved on: 22nd June, 2017

Pronounced on: 23rd June, 2017

JUDGMENT:

The challenge in this petition under Article 227 of the Constitution of India is to the Judgment and Award dated 09.04.2009 passed by the Central Government Industrial Tribunal No. 2, Mumbai ('CGIT' for short) in Reference Number CGIT-2-73 of 2002.

2. By an Order dated 22.10.2002 the Central Government had referred the following dispute for the adjudication of the Tribunal:

"Whether the persons involved in the dispute are workmen falling under the definition of Section 2(s) of the Industrial Disputes Act, 1947? If yes, to what relief the persons involved in the dispute are entitled for?"

3. The case made out by the petitioner in their Claim Statement before the Tribunal was that the Dabolim Airport at Goa is under the management and control of the respondent - Airports Authority of India (AAI), and it is for the said Authority to provide all facilities to the petitioners at the airport. It was contended that the Authority collects levy from the passengers towards handling luggage of the passengers and in order to fulfill this commitment, the Authority was providing trolleys at the Airport which are owned and controlled by the respondent Authority. It was the material case that the work of handling the trolleys, lifting luggage and retrieving the trolleys was performed by the 20 workmen who are the workmen involved in this petition. It was contended that these workmen were engaged by the Authority since last several years. To be precise, from the year 1982 till 19th December, 2001 when the Authority refused to employ them which resulted into their termination. It was contended that these workmen have worked for more than 240 days during the last preceding twelve months, next prior to their termination. It was contended that these workmen were engaged as casual helpers and their termination is illegal, particularly, on account of violation of Section 25F of the Industrial Disputes Act, 1947 ('The Act' for short). The petitioner sought a declaration that the termination of these workmen is illegal, unjustified and bad in law and the consequent relief of reinstatement with full back-wages and continuation of service.

4. The respondent resisted the claim. It was denied that the

concerned workmen were ever employed by the respondent and there is no employer-employee relationship between the respondent Authority and the workmen and, as such, the question of their termination of service does not arise. It was contended that the respondent Authority, being a public body had executed license agreement for advertisement for the free baggage trolleys from time-to-time and which licences were issued to various independent contractors for such periods and on such terms as set out in the contracts. One of such agreement was executed on 23.10.2000 with one Mr. Dinesh Dedhia which was valid for a period of three years, i.e. from 01.11.2000 to 30.10.2003. It was contended that the said contractor Mr. Dedhia was registered under the provisions of the Contract Labour (R&A) Act, 1970, and was providing services by engaging his own employees. The said contract was terminated by Mr. Dinesh and it was subsequently awarded to one Mr. Vasant Naik, another independent contractor. As per the terms of the contract it was the contractor who was supposed to pay licence fee to the Authority. In short, according to the respondent the Authority does not charge any fees from the passengers for providing free trolleys. It had entered into a contract with the contractors permitting them to display advertisement on such trolleys and these contractors were employing certain people who used to provide the service of loading, unloading and retrieving of the trolleys.

5. The Tribunal framed two issues, namely, *whether the persons involved in the dispute are workmen falling within the definition of*

Section 2(s) of the Act and, if yes, to what relief the persons involved in the dispute are entitled for?

6. Before the Tribunal, the petitioners examined two workmen, namely, Mr. Suresh Wagdhare, Mr. Shamim Ramzan Khan and one representative of the petitioner, one Mr. P. Gaonkar and produced documents essentially consisting of the daily permits issued by the respondents for the period from 13.04.2000 to 12.05.2000. On behalf of the respondent, one B. Suresh Babu working as a housekeeper, was examined. The respondent produced the licence agreement for advertisement of Free Baggage Trolleys. The Tribunal came to the conclusion that there was no employer-employee relationship between the respondent and the concerned workmen and answered the issued no. 1 in the negative and rejected the Reference, which brings the petitioner to this Court.

7. I have heard Shri Gaonkar, the learned Counsel for the petitioner and Shri Bandodkar, the learned Counsel appearing for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record and the Impugned Award.

8. It is submitted by Shri Gaonkar, learned Counsel for the petitioner that the petitioner has not claimed permanency. It is submitted that there is enough evidence to show that the concerned persons were employed with the respondent as Trolley Retrievers. It is submitted that the question of existence of employer-employee relationship has to

be decided on the basis of preponderance of probability. It is submitted that the petitioners have clearly come with a case that there were no appointment letters issued nor there were any receipts or vouchers showing payments and thus non-production of any such documents would not be material. It is submitted that the petitioners have produced the gate passes issued by the respondent and they would clearly show that these persons were employed by the respondent. The learned Counsel points out that the entire control of the Airport area is with the respondent and the original record about the issuance of the gate passes ought to be in possession of the respondent. It is submitted that once the petitioner has produced the gate passes of the concerned persons for certain period, it was for the respondent to show that there were no gate passes issued for any other period and their failure to do so would require an adverse inference being drawn. It is submitted that the Tribunal has gone wrong in rejecting the Reference on the ground that no case for grant of permanency is made out. It is submitted that the petitioner is not claiming permanency. It is submitted that the Tribunal also erred, as in considering only two parameters about control and supervision in deciding the question of existence of employer-employee relationship but did not consider other parameters. On behalf of the petitioner reliance is placed on the decision of the **Supreme Court in the case of Ajaypal Singh versus Haryana Warehousing Corporation: (2015) 6 Supreme Court Cases 321** in order to submit that in a case of an employer indulging in unfair labour practices and

terminating the employees without complying with the mandate of Section 25-F of the Act, reinstatement can be directed and for that purpose the Judgment of the Supreme Court in the case of **State of Karnataka v/s. Umadevi 2006 (4) SCC 1** would not come in the way.

9. On the contrary, it is submitted by the learned Counsel for the respondent that there is no evidence worth the name to show that the concerned persons were employed by the respondent as Trolley Retrievers. It is submitted that although it is the case of the petitioners that they were employed from the year 1982 till 19th December, 2001, except some gate passes for the period from 3.04.2000 to 12.05.2000 no other gate passes have been produced. It is submitted that the gate passes produced are only in respect of 9 persons out of 20. It is submitted that only two such persons have been examined. Learned Counsel points out that in two of these gate passes, the name of the contractor namely, D. D. Agencies is mentioned. It is submitted that the burden of proof of the existence of employer-employee relationship lay on the petitioners which has not been discharged. It is submitted that there is no evidence to show that the concerned persons were working continuously for a period of 240 days during the period of 12 calendar months immediately prior to their alleged termination in the year 2001. The learned Counsel for the respondent has relied upon the decision of the **Punjab and Haryana High Court in the case of Maruti Suzuki India Ltd., v/s. State of Haryana & Others: 2016 LLR 365.**

10. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. According to the petitioners, there were no appointment letters issued nor there is any existence of vouchers evidencing the payments made to the concerned persons by the respondent. The only evidence produced by the petitioners consists of the oral evidence of two persons out of the 20 who are concerned in this petition and some gate passes. The gate passes are produced (at page 85 to page 92 of the compilation). The petitioners have chosen to produce the gate passes only in respect of 9 persons. They are for the period from 13.04.2000 to 12.05.2000, i.e. for a period of one month. In one of the gate passes pertaining to one Shri Shivaji Dukne (page 88), the name of one D.D. Agencies is mentioned. These gate passes are only for the purpose of entry in the Airport area. There is one gate pass for the period from 15.11.2000 to 14.12.2000 in the name of one Shri Shamim Khan which again refers to one D. D Agencies. The respondents have produced two contracts on record out of which the second contract which was for the period from 2006 to 2009 would not be strictly relevant as, according to the petitioner, the employees were terminated in the year 2001 itself. The contract which may be looked into is the one dated 23.10.2000 which is between the respondent and one Dinesh Dedhia. This contract was for the period from 01.11.2000 to 30.10.2003. A perusal of the terms of the contract would show that the respondent provided 500 serviceable trolleys over which the contractor,

Mr. Dedhia had no claim. It was the contractor who was paying the licence fee at the prescribed rates to the respondent. As per clause IV of the contract, the contractor was to employ 20 number of Trolley Retrievers and one supervisor to the satisfaction of the Airport Contractor and at the expense of the licensee and which persons were to be on the regular roll of the licensee. It can thus be seen that under the said contract the respondent had provided the free trolleys on which the contractor can display advertisement. It was the contractor who was to pay the licence fee to the respondent and employ 20 persons as Trolley Retrievers. The contention on behalf of the petitioner is that the gate passes are pertaining to a period prior to the said contract and one gate pass subsequent to its termination of the contract which would indicate that these persons were employed by the respondent. This contention, in my considered view, cannot be accepted. A specific query was made to the learned Counsel for the petitioner as to whether it is their case that for whatever period there was a contract the concerned persons were the employees of the contractor and after the contractor left the scene on expiry/termination of the contract, the persons were employed by the respondent. The answer was in the affirmative. Such arrangement appears to be highly improbable and implausible. At any rate, the evidence which has been brought on record is insufficient to hold that the concerned persons were in the employment of the respondent and/or had completed 240 days of continuous service within the last preceding 12 calendar months prior to their alleged

termination. It was submitted by the learned Counsel for the petitioners that the Tribunal has unnecessarily gone on the issue of the fees levied for the use of the trolley. I would tend to disagree. This is because it is the case of the petitioner that the respondent was charging fees from the passengers for providing the trolleys and was engaging the trolley retrievers for providing these services. Even assuming that any such reference was not required, the fact remains that the evidence produced by the petitioners is absolutely insufficient to establish a relationship of employer-employee between the respondent and the concerned persons.

11. I have carefully gone through the Impugned Judgment and I do not find that it suffers from any infirmity so as to require interference. Once it is held that the petitioner has failed to establish that the concerned persons were workmen within the meaning of Section 2(S) of the Act, it is not necessary to examine whether they are entitled to reinstatement. In my considered view, no case for interference is made out. In the result, the petition is dismissed, with no order as to costs.

C. V. BHADANG, J.

msr.