

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4969 OF 2017

Exide Industries Limited

..Petitioner

v/s.

Subhadra Naresh Kumbharkar & Anr.

..Respondents

Mrs. Mitra Das a/w. M/s. Jayta Das i/b. Adv. Mayur Shikhare for the
Petitioner.

Ms. C.S.Rokade Prabhu for the Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 9th JUNE, 2017.

P.C.

1. Rule. Rule made returnable forthwith. With consent of the
parties matter is take up for final hearing.

2. The petitioner herein has challenged the Order dated 19th
January, 2017, whereby the learned Presiding Officer, 2nd Labour
Court, Thane, dismissed the application filed by the petitioner for
recasting issue no.1 and also for trying the said issue as preliminary
issue.

3. The Respondent No.1 had raised an industrial dispute challenging her termination and the same was referred by the appropriate court under the following terms of reference:

“ Smt. Subhadra Naresh Kumbharkar, may be reinstated in the service with full backwages and continuity of service with effect from 05.12.2013 with all consequential benefits”

4. The Respondent No.1 and the Petitioner herein filed their statement of Claim and the written statement respectively. The Respondent had claimed that her husband was employed with the petitioner as a Temporary trainee. The Respondent claimed that while on duty her husband died due to the negligence of the Petitioner. She addressed a letter to the petitioner for employment on compassionate ground. She was provided job and that she joined duty on 2.1.2012 on payment of wages of Rs.6000/- per month. She had put in more than 240 days of continuous work. The grievance of the petitioner was that she was refused work w.e.f. 5.12.2013. The respondent had therefore sought reinstatement

w.e.f. 5.12.2013 with all other consequential reliefs.

5. Amongst other grounds, the petitioner inter alia claimed that the respondent was offered temporary appointment for a period of six months between 2.1.2010 and 1.7.2012. The Petitioner denied that the respondent was in the employment as on 5.12.2013. The petitioner claimed that the respondent was not a workman within the meaning of Section 2(5) of the Industrial Dispute Act.

6. In the light of the said averments, the learned Presiding Officer framed the issue no.1 which reads as under:

“Whether second party proves employer-employee relationship between him and the first party”

7. By application dated 12.8.2016 the petitioner filed an application for recasting the issue no.1 as under:

“Whether the second party proves that there was employer-employee relationship between her and the First Party Company on the alleged date of termination i.e. on 5.12.2013?

8. The petitioner further prayed that the said issue no.1 should be treated as a preliminary issue. The learned Presiding Officer dismissed the said application by the impugned order dated 19th January, 2017.

9. Aggrieved by the dismissal of the said application, the petitioner has filed the present petition. Heard the learned Counsel for the petitioner and the respondents.

10. The averments made in the statement of claim vis-a-vis the written statement reveals that the respondent no.1 had claimed that she was in continuous service for 240 days and was not allowed to join service on 5.12.2013, whereas the petitioner had claimed that the respondent was employed on temporary service only for a period of six months from 2.1.2012 to 1.7.2012. The petitioner had denied that the respondent was in its employment as on 5.12.2013 and had thus denied employer-employee relationship as on 5.12.2013. In the light of the specific averments the onus was on the respondent to

prove the employer-employee relationship as on 5.12.2013. In the light of these specific averments, the learned Presiding Officer was therefore not justified in recasting the issue no.1.

11. As regards treating the issue no.1 as a preliminary issue, it is to be noted that the issue nos.1 and 2 are inter linked and the evidence has already commenced. Furthermore, considering the decision of the Apex Court in *D.P. Maheshwari v/s. Delhi Administration & Ors.*¹ and *National Council for Cement vs. State of Haryana*² it is desirable that all issues are heard and decided together.

12. Under the circumstances, the impugned order is set aside. The learned Presiding Officer of the Labour Court, Thane is directed to recast issue no.1 as indicated above. The issue no.1 be heard and decided together with all other issues.

(ANUJA PRABHUDESSAI, J.)

¹ AIR 1984 SC 153

² 1996 SCC (3) 206