

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

[1] Writ Petition NO. 6298 OF 2016

M/s. Konark Infrastructure Ltd.	...Petitioner
<i>Versus</i>	
Shri. Dayanand Sandanand Ghostekar	...Respondent

WITH

[2] Writ Petition NO. 7836 OF 2016

M/s. Konark Infrastructure Ltd.	...Petitioner
<i>Versus</i>	
Shri. Vishal Ganesh Shinde	...Respondent

WITH

[3] Writ Petition NO. 8271 OF 2016

M/s. Konark Infrastructure Ltd.	...Petitioner
<i>Versus</i>	
Shri. Nilesh Namdev Suradkar	...Respondent

WITH

[4] Writ Petition NO. 8272 OF 2016

M/s. Konark Infrastructure Ltd.	...Petitioner
<i>Versus</i>	
Shri. Nasim Rafiq Shaikh	...Respondent

WITH

[5] Writ Petition NO. 8273 OF 2016

M/s. Konark Infrastructure Ltd.	...Petitioner
<i>Versus</i>	
Shri Amol Vishwas Gaikwad	...Respondent

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Mr.Pramod Anaokar, Advocate for the Petitioner.

Mr. Rajesh S. Datar, Advocate for the Respondent in all Writ Petitions.

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CORAM : R. G. KETKAR, J.

DATE : 07th JUNE, 2017

P.C.

1. Heard Mr.Pramod Anaokar, learned counsel for the petitioner and Mr.R.S. Datar, learned counsel for the respondent, at length.

2. These Petitions take exception to the judgments and orders dated 19.10.2015 passed by the learned Presiding Officer, First Labour Court, Thane in References. By these orders, the learned Trial Judge answered the References partly in the affirmative and directed the petitioner in each of the Petitions to pay legal dues i.e. notice pay of one month, retrenchment compensation, bonus, gratuity and provident fund to the second party with 6% interest from the date of the complaint to Assistant Labour Commissioner, Kalyan till realization. Since common questions of law and fact arise in these Petitions, same can conveniently be disposed of by this common order. In order to appreciate the controversy between the parties, the facts from

W.P. No.6298/2016 are taken into consideration.

3. In support of these Petitions, Mr. Anaokar strenuously contended that the learned trial Judge committed serious error in answering the Reference partly in the affirmative. He submitted that the petitioner/first party was appointed as a Contractor to collect octroi by Kalyan Dombivali Municipal Corporation (for short 'Corporation'). Second party and other similarly situated were fully aware that the collection of octroi was likely to be abolished. He submitted that the first party orally asked the second party as to whether the second party is willing to join other establishments of the petitioner/first party. The second party, however, declined to join at other place. He submitted that the learned trial Judge was, therefore, not justified in passing the impugned orders.

4. On the other hand, Mr.Datar invited my attention to paragraph-12 of the impugned order and submitted that the first party did not issue written transfer order to the second party. The learned trial Judge has categorically recorded a finding that the notice of alternate arrangement was not given to the second party. He, therefore, submitted that no case is made out for

interfering with the impugned order.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. In paragraph-12 the learned trial Judge has observed thus :

“12. After going through the arguments advanced by the parties and the evidence on record. It is pertinent to note that the services of the second party was terminated on 30.6.2012. There is no documentary evidence on record that notice was given to the second party at the time of termination of the service. There is no documentary evidence on record that alternate employment was offered to the second party. Under such circumstances, it cannot be safely said that notice of termination of service and notice of alternate arrangement was not given to the second party workman therefore it is illegal termination. It is pertinent to note that second party workman in his statement of claim has not pleaded that he has tried for alternate employment and he has not got any job. He has not deposed in his evidence to that effect.”

6. A perusal of paragraph-12, extracted above, shows that no documentary evidence was produced by the first party to show that notice was given at the time of termination of the

services of the second party. No documentary evidence was produced by the first party showing that alternate employment was offered to the second party. Notice of alternate arrangement was also not given to the second party workman. The learned trial Judge, therefore, held that the termination is illegal and accordingly answered the References partly in affirmative. For the reasons recorded in paragraph-12 of the impugned order, I do not find that the learned trial Judge committed any error in passing the impugned orders. Hence, Petitions fail and the same are dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)