

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

**LETTERS PATENT APPEAL NO. 23 OF 2006
IN
WRIT PETITION NO. 1956 OF 2001**

**Balasaheb Desai Sahakari Sakhar Karkhana Ltd. ..Appellant.
Vs.
Pramod Prabhakar Kulkarni & anr. ..Respondents**

Mr. K.S. Bapat i/b. Mr. A.H. Fatangare, advocate for appellant.

Mr. B.V. Bukhari, advocate for the Respondent No. 1.

**CORAM : RANJIT MORE &
SMT.SADHANA S. JADHAV, JJ
DATE : 21ST AUGUST, 2017**

P.C.

1 Heard the learned Counsel appearing for the respective parties.

2 By this Letters Patent Appeal, the Appellant has taken exception to the Judgment passed by the learned Single Judge of this Court in Writ Petition No. 1956 of 2001 dated 3/8/2005. By the said Judgment the learned Single Judge of this Court allowed the Writ Petition filed by the Respondent by setting aside the order of the Industrial Court.

3 The facts in brief giving rise to the present Appeal are as under :

(i) The Respondent No. 1 filed BIR Application No. 3 of 1992 before

the Labour Court at Satara under section 78 and 79 of the Bombay Industrial Relations Act, 1946 for reinstatement with continuity of services and full back wages.

(ii) The learned Judge of the Labour Court at Satara by his Judgment and Order dated 12/8/1999 allowed the Application thereby directing the Appellant to reinstate the Respondent with continuity of services and full back wages from the date of termination till the reinstatement.

(iii) The appellant challenged the order of the Labour Court by filing an Appeal (I.C) No. 2 of 1999 before the Industrial Court at Satara. The Industrial Court allowed the said Appeal of the Appellant by its Judgment and Order dated 13/12/2000 and set aside the order of the Labour Court.

(iv) As stated above the Respondent has approached the learned Single Judge of this Court by referring Writ Petition No. 1956 of 2001 and this Petition came to be allowed by the order impugned in this appeal.

4 Mr. Bapat, learned Counsel for the Appellant submitted that the respondent's application before the Labour Court was contested by the Appellant on various ground including that the services of the respondent were taken on contract basis and for the specific purpose. He submitted that the Appellant's Appeal was allowed by the Industrial Court on the sole ground that the provisions of the Industrial Dispute Act are not applicable. Mr. Bapat also contends that the learned Single Judge of this Court having come to the

conclusion that the Industrial Dispute Act is applicable to the facts and circumstances of this case, in the absence of any finding on the contention of the Appellant regarding nature of service of the Respondent by Industrial Court, the matter ought to have been remanded to the Industrial Court.

5 The learned Counsel for the Respondent No. 1 opposed the Petition vehemently. The learned Counsel does not dispute that there was no finding recorded by the Industrial Court regarding the nature of the services of the Respondent. The learned Counsel however, states that since the Respondent is out of service since 1992, this Court should not entertain this appeal.

6 Having considered the rival submissions of the respective Counsel and having gone through the memo of appeal alongwith relevant orders, we find merits in the contention of learned Counsel Mr. Bapat.

7 The respondent filed application before the Labour Court for reinstatement with continuity of services and full back wages. This application was opposed by the Appellant on various grounds. The appellant had raised a specific contention that the Respondent was not its employee and his services were not terminated. It was also a case of the Appellant that the services of the Respondent were utilised on contract basis and for specific purpose and

therefore, there was no relationship of master and servant. Labour Court had come to the conclusion that the Respondent is an employee of the Appellant and the appellant dismissed his services illegally. The appellant thereafter, challenged this order by filing appeal before the Industrial Court. In appeal, it was the specific contention of the Appellant that the Respondent was appointed on ad-hoc basis and therefore, the application was not maintainable. The appellant also contended before the Industrial Court that since the Industrial Disputes Act is not applicable to the Appellant's establishment, the Respondent's application is not maintainable. The Industrial Court in paragraph-6 of its order accepted the submission of the Appellant that the Industrial Disputes Act is not applicable. The Industrial Court in the light of this finding allowed the appeal on this sole ground. The respondent thereafter, approached the learned Single Judge of this Court by filing Writ Petition No. 1956/2001, which came to be allowed by the impugned order. The learned Single Judge after hearing both the sides came to the conclusion that the Industrial Disputes Act is applicable and therefore, quashed and set aside the order of the Industrial Court and restored the order of the Labour Court.

8 In our view, once the learned Single Judge of this Court concluded that Industrial Disputes Act is applicable, in that event, the matter should have been remanded back to the Industrial Court for recording the finding

regarding the nature of appointment of the Respondent No. 1, especially when there was no issue framed or findings recorded by the Industrial Court, in this regard.

9 In the light of the above, we allow the Letters Patent Appeal. The impugned order is quashed and set aside. The matter is remanded to the Industrial Court at Satara. The Industrial Court at Satara shall frame the issue regarding the nature of appointment of the Respondent, hear both the sides and decide the appellant's appeal as expeditiously as possible and in any case within 3 months from the receipt of this order.

[SMT.SADHANA S. JADHAV,J]

[RANJIT MORE, J]