

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PEITION NO. 13708 OF 2016

M/s. Premier Co-operative Printers Limited,]
 Maharashtra Sahakari Mudranalaya,] Petitioner
 Vs.
 Smt. Jayashree Dattatray More & Ors.] Respondents

WITH

WRIT PEITION NO. 13707 OF 2016

M/s. Premier Co-operative Printers Limited,]
 Maharashtra Sahakari Mudranalaya,] Petitioner
 Vs.
 Shri Santosh Mahadev Ipte & Ors.] Respondents

WITH

WRIT PEITION NO. 10883 OF 2015

M/s. Premier Co-operative Printers Limited,]
 Maharashtra Sahakari Mudranalaya,] Petitioner
 Vs.
 Shri Laxman Baban Fale & Ors.] Respondents

WITH

WRIT PEITION NO. 10990 OF 2015

M/s. Premier Co-operative Printers Limited,]
 Maharashtra Sahakari Mudranalaya,] Petitioner
 Vs.
 Sharda Jintendra Gayakwad] Respondents

WRIT PEITION NO. 10953 OF 2015

M/s. Premier Co-operative Printers Limited,]
 Maharashtra Sahakari Mudranalaya,] Petitioner
 Vs.
 Shri Sunil Tukaram Chavan & Ors.] Respondents

WRIT PETITION NO. 11112 OF 2015

M/s. Premier Co-operative Printers Limited,]
 Maharashtra Sahakari Mudranalaya,] Petitioner
 Vs.
 Ganpat Daji Sapkar & Ors.] Respondents

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Mr. Kiran Bapat a/w Mr. T.R. Yadav i/b Mr. Avinash H. Fatangare,
 for petitioner in all the Petitions.
 Mr. Prashant Kamble i/b Mr. A.S. Rao, for respondents in all the
 Petitions.

CORAM : R.G. KETKAR, J.

DATE : 4th AUGUST, 2017.

P.C.

Heard Mr. Bapat, learned Counsel for the petitioner
 and Mr. Kamble, learned Counsel for the respondents in all the
 Petitions at length.

2. By these Petitions under Articles 226 and 227 of the
 Constitution of India, the petitioner, hereinafter referred to as
 “First Party No.1” has challenged the Judgments and Awards dated
 13th March, 2015 passed by the learned Presiding Officer, 4th
 Labour Court, Pune [for short 'Labour Court'] in References. By
 these orders, the Labour Court allowed References and directed the
 first party No.1 to reinstate respondent No.1-hereinafter referred to
 as “Second Party” along with continuity of service and 50% back
 wages.

3. As common questions of law and facts arise in these
 Petitions, same can conveniently be disposed of by this common

order. For appreciating the controversy raised in these Petitions, facts from Writ Petition No. 10953 of 2015 are taken into consideration.

4. Respondent No.1 [second party] had raised industrial dispute claiming that First Party No.1 had terminated his service. In pursuance of reference of industrial dispute, second party submitted statement of claim on 19th December, 2006. Second party came with the case that respondent No.2 herein, hereinafter referred to as "First Party No.2" is the alleged contractor. Second party was working with First Party No.1 as a skilled workman since last 20 years on permanent basis. Every year, the second party had put in 240 days continuous service. First Party No.1 had employed 125 employees on permanent basis on various posts. In the year 2008, there were 80 permanent employees. There are various departments such as Printing, Binding, D.T.P, Plate making etc. First Party No.1 has to follow all the labour laws that are applicable. Second party was working in Binding Department till he was terminated. Supervisor Shri Waikar and Bhiku Kadam were giving instructions and orders to the second party since 1992. Supervisor Prakash Maruti Kadu of first party No.1 was issuing instructions and orders to second party and as per his instructions and orders, second party was executing the work. First party No.1 had given benefits of ESI and Provident Fund to the second party. Second party is employee of First Party No.1. In June, 2005, second party joined Pune Majdoor Sabha, registered Union.

5. First Party No.1 filed written statement resisting the claim of the second party. First Party No.1 contended that there are various departments in First Party No.1. However, there is no binding department. Work of binding is done through contractors as per job works. There is no relationship of employer and employee between First Party No.1 and second party. Work of the second party was supervised by first party No.1 and salary was also paid by First Party No.1. First Party No.1 had engaged First Party No.2 as a contractor and Shri Manohar Chavan was supervising the work of First Party No.1. First Party No.1 used to make payment through cheque to First Party No.2. In short, First Party No.1 contended that there is no relationship of employer and employee between it and the second party.

6. First Party No.2 did not participate in the proceedings. The parties adduced evidence. After considering the evidence on record by the impugned Award, the Labour Court has allowed Reference. It is against this order, First Party No.1 has instituted the present Petitions.

7. In support of this Petition, Mr. Bapat has taken me through the Statement of Claim of the second party, written statement filed by First Party No.1, oral evidence adduced by the parties. In particular, he has taken me through the cross-examination of the second party and submitted that the Labour Court has not considered various admissions given by the second party. Second party admitted that he did not make any application

for securing employment. No appointment order was issued by First Party No.1. He also did not produce any document to establish that the First Party No.1 was paying salary to him. He submitted that these vital admissions were totally ignored by the Labour Court while passing the impugned order. He submitted that on behalf of First Party No.1, evidence was adduced of two witnesses. They have produced muster roll of First Party No.2 as also documents at Exhibit 23, 29 to 31.

8. Mr. Bapat further submitted that in the present case reference was made by the Labour Court of section 2(A) of the Industrial Disputes Act, 1947 [for short 'I.D. Act']. He submitted that though references were made by several workmen, only one witness was examined on their behalf. He submitted that reference u/s 2(A) itself is not maintainable. He relied upon decision of Andhra Pradesh High Court in case of **Oil and Natural Gas Corporation Limited, K.G. Project, Rajahmundry Vs. N. Satyanarayana and others, 2003 (iii) LLJ, 289** and in particular paragraphs 31 and 32 thereof. He submitted that this being a pure question of law can be raised for the first time in this proceeding.

9. On the other hand, Mr. Kamble supported the impugned orders. He has taken me through cross-examination of Ganpat More, witness No.2 examined by First Party No.1. He submitted that the said witness referred to documents at Exhibit 29, 30 and 31. He, however, deposed that Manohar Chavan was one of the employees of First Party No.1. After his termination, he

had raised industrial dispute. The said witness further admitted that First party No.2 had not taken separate number of provident fund. First Party No.1 has signed the same exhibit as a principal employer. He has also taken me through the impugned order and submitted that after appreciating the evidence on record, Labour Court has answered reference in the affirmative. He, therefore, submitted that no case is made out for invoking powers under Articles 226 and 227 of the Constitution of India.

10. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, Second Party has come with the case that he is employee of First Party No.1 and First Party No.2 is a namesake contractor. There is no relationship of employer and employee between First Party No.2 and Second Party. As noted earlier, parties have adduced evidence in support of their case. Labour Court has appreciated the evidence on record. In paragraph 16, Labour Court noted that in order to establish that First Party No.2 was contractor, First Party No.1 produced documents at Exhibit 29 to 31. These documents show that from 1st February, 2004 First Party No.1 instructed not to deposit Provident Fund and ESI contribution through the First Party No.1's code number. First Party No.2 has not produced any separate number of ESI. From documents, it was evident that the contract came to an end on 30th June, 2005. First Party No.1 did not produce any contract as also contractors licence or that Manohar Chavan was working as contractor. After considering the evidence

on record, the Tribunal in para 19 reiterated the findings that First Party No.1 did not establish that First Party No.2 was hired as a contractor. After considering the material on record and in particular admissions given during the cross-examination of witnesses examined by First Party No.1 as also in the light of the findings recorded by the Tribunal in paragraphs 16 to 19 and 21, I do not find that the Labour Court committed any error in answering the reference in the affirmative. Findings recorded by the Labour Court are based upon evidence on record. It cannot be said that findings recorded by the Labour Court are contrary to the evidence on record or that the findings are not supported by the evidence on record. In other words, it cannot be said that the findings recorded by the Labour Court are perverse. Merely because on the basis of the evidence on record, another view is possible, that itself is not ground for invocation of powers under Articles 226 and 227 of the Constitution of India.

11. Mr. Bapat relied upon decision of Andhra Pradesh High Court in the case of **Oil and Natural Gas Corporation Limited, K.G., Project, Rajahmundry** [supra]. In that case, Central Government had issued Notification dated 9th December, 1976 u/s 10 (1) of the Contract Labour (Regulation and Abolition] Act, 1970, prohibiting engagement of contract labour as Watchmen. On 8th September, 1994, another Notification was issued by the Central Government u/s 10 prohibiting the employment of contract labour in various kinds of workers including Typist and Clerks. The petitioner O.N.G.C had entered into a contract with respondent

No.2, Godavari Industrial Workers, Maintenance and Supervision Co-operative Society, Rajahmundry for providing security to its establishment and workmen. The contract was entered into in the year 1989 and was renewed from time to time. Respondent No.2, in turn, had engaged the number of contract labours to perform its contract with the petitioner. Contract was not renewed firstly on the ground that Government of India had issued instructions to its Public Sector Undertakings to entrust security work of contract being given to Societies or Agencies established by Ex-Servicemen. Secondly, there were certain allegations as to irregularities and misappropriation of provident fund contribution by the second respondent. Respondent No.2 had instituted Writ petition in the High Court for declaration that all the employees purported to have been employed on contract basis by it were regular employees of O.N.G.C and in any event, the Management cannot unilaterally terminated contract at their will and pleasure. By order dated 22nd June, 2000, Writ Petition was dismissed by holding that petitioners [second respondent] were not entitled to any relief. The High Court, however, left it open to concerned employees to take recourse to the appropriate forum if they choose.

12. It was in that context, contract labour approached Industrial Tribunal by filing Applications u/s 2-A (2) of the I.D. Act, inter alia, praying for direction to the first respondent (O.N.G.C) to reinstate the petitioner with full back wages from the date of termination i.e 1st July, 1997 continuity of service and all other attendant benefits. Petitioner also prayed for further direction to respondent No.1 to pay petitioners difference in salary from 1st

March, 1989 to 30th June, 1997, bonus, incentives, annual increments and other benefits as were paid to regular employees.

13. Learned Single Judge of Andhra Pradesh High Court referred to various decisions including decision of Constitution Bench in the case of **Steel Authority of India Ltd. & Ors. etc Vs. National Union Water Front Workers & Ors, 2001 (7) SCC 1**, wherein it was held that contention that by virtue of engagement of the contract labour by the contractor in any work or in connection with work of an establishment, relationship of Master and Servant is created between the principal employer and the contract labour cannot be accepted. It was also observed that what is true of a workman could not be true of contract labour. Learned Single Judge referred to paragraphs 68 and 125 in paragraphs 27 to 29 of that decision. In paragraph 31, learned Single Judge referred to the Petition as to the form in which dispute was raised before the Tribunal and it was observed that to invoke section 2-A, there should not exist any dispute as to the person invoking it having been under the employment of the employer and the termination thereof. The adjudication will be only as the mode of discharge, dismissal, retrenchment or termination and the consequences thereof. When it is categorically held by the Supreme Court that a contract labour can never be treated as an employee of the principal employer, it is too difficult to imagine that such a contract labour stands discharged, dismissed, retrenched or terminated, with the expiring of the labour contract. Even where a notification under Section 10 (1) of the CLRA Act is issued, the Supreme Court categorically held that such a

notification could only bring about an end to the contract between the principal employer and the labour contractor. It was further observed that the relationship of the master and servant between the labour contractor and contract labour would continue to exist even after such a notification. When this is the legal and factual aspect, it cannot be said that there existed any relationship of master and servant or employer and employee between the contract labour on the one hand and the petitioner on the other till 30th June, 1997 and that the contract labour stood discharged, dismissed, retrenched or terminated with effect from 1st July, 1997. Learned Single Judge, therefore, held that applications filed by the contract labour before the Tribunal u/s 2-A were not maintainable. Thus, in that case, Writ Petition filed by 2nd respondent for declaration that all the employees purported to have been employed on contract basis by it were regular employees of O.N.G.C amongst other reliefs was dismissed by the High Court. Contract was not renewed by O.N.G.C beyond 30th June, 1997.

14. In the present case, labour Court after considering the evidence on record held that First Party No.1 did not establish that first Party No.2 was a contractor. First Party No.2 did not participate in the proceedings. A perusal of that decision shows that at the threshold O.N.G.C had instituted Petition in the High Court seeking writ of prohibition. Apart from this, petitioner cannot be allowed to raise this contention for the first time at this stage. In view thereof, the decision relied on by Mr. Bapat does not advance the case of the First Party No.1 and is not applicable to the present case.

15. In the light of the above discussion, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. Hence, Petitions fail and the same are dismissed.

[R.G. KETKAR, J.]