

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12629 OF 2016

Anthony Nadar ... Petitioner
Vs.
M/s. Giri Textiles and another ... Respondents

Mr. G. H. Keluskar for Petitioner.
Mr. Sunil Kharwal i/b. Raj Legal for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JULY 10, 2017

P.C. :

Heard Mr. Keluskar, learned Counsel for petitioner and Mr. Kharwal, learned Counsel for respondent No.1 at length.

2. On the oral application made by Mr. Keluskar, leave to delete respondent No.2 is granted as petitioner has claimed relief of reinstatement against respondent No.1 herein. Leave to delete respondent No.2 is granted. Amendment shall be carried out forthwith.

3. By this Petition under Articles 226 and 227 of the Constitution of India, petitioner, hereinafter referred to as the 'applicant', has challenged the judgment and order dated 03.11.2015 passed by the learned Judge, 3rd Labour Court, Thane below exhibit U-7 in Appeal (BIR) 1 of 2014. By that order, the Labour Court rejected the application made by the applicant at exhibit U-7 for production of - (1) Attendance Register for the period of March 1998 to 05.07.2008 and (2) Wage Register from the period March 1998 to 05.07.2008.

4. Rule. Mr. Kharwal waives service for respondent No.1. Having regard to the narrow controversy raised in this Petition as also at the

request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

5. Applicant has filed application under Sections 78, 79 read with 42(4) of the Maharashtra Industrial Relations Act (for short 'Act') inter alia praying for directing respondent No.1 herein to reinstate the applicant in their employment with effect from 05.07.2008 as a Weaver with full back wages and continuity of service; for condoning the delay in approaching respondent No.1 and also in filing the application.

6. During the pendency of this application, exhibit-U2 seeking direction against the respondent No.1 to produce documents as mentioned above, was filed by the applicant. Respondent No.1 filed reply dated 30.07.2015 resisting the application. In paragraph 1a), respondent No.1 contended that it has raised an objection as regards the very maintainability of the proceedings filed under the Act on the ground that provisions of the Act are not applicable to the first respondent. Respondent No.1 has engaged only 6-7 workmen. The provisions of the Act are not applicable to the first respondent. In paragraph 1c), respondent No.1 contended that applicant is trying to make fishing and roving enquiry. Application for production of documents is made on the presumption that the documents are in existence. Applicant has not shown any documents to suggest that the documents called for are in existence and in custody of the respondent No.1. Application is filed with mischievous intention and with a view to harassing the first respondent. Respondent No.2 also filed reply dated 30.07.2015 inter alia contending that earlier, applicant along with others had raised industrial dispute bearing Reference (IDA) No.169 of 2009 and after adjudication, by making award dated 07.02.2012, Labour Court held that there is no employer-employee relationship between the

applicant and respondent No.2.

7. By the impugned order, the Labour Court rejected the application on the ground that applicant is claiming production of documents “only for the reason” that respondent No.1 had contended that applicant has not completed 240 days in a year. However, it is well settled law that a person who takes a plea has to prove it. Opponent No.1 (respondent No.1 herein) has taken a plea that applicant has not completed 240 days in a year though it has admitted relationship as employer-employee. In such circumstances, it will not be proper to compel the respondent No.1 to produce the documents called for simply for the reason that it has taken a plea that the applicant has not completed 240 days in a year.

8. In support of this Petition, Mr. Keluskar submitted that respondent No.1 has not disputed employer-employee relationship. In fact, in the award dated 07.02.2012 made in Reference (IDA) No.169 of 2009, it has been held that applicant is employee of respondent No.1. Labour Court committed error in holding that the applicant is claiming production of documents only because respondent No.1 contended that applicant has not completed 240 days in a year. He submitted that the Labour Court completely misdirected itself in recording this finding. He submitted that respondent No.1 has contended that provisions of the Act are not applicable as it has employed 6 to 7 workmen. If the documents sought for are produced, it will also help the Court in deciding whether the provisions of the Act are applicable or not apart from deciding whether applicant has continuously worked for 240 days in a year. It is also relevant to note that documents will be in the custody of the respondent No.1 being the employer of the applicant. He, therefore, submitted that the impugned order deserves to be set aside thereby allowing the application exhibit U-7.

9. On the other hand, Mr. Kharwal relied upon Section 13-A of the Payment of Wages Act, 1936. Sub-section (1) thereof requires every employer to maintain such registers and records giving such particulars of employees among other particulars and in such form as may be prescribed. Sub-section (2) thereof lays down that every register and record required to be maintained under this section shall, for the purposes of this Act, be preserved for a period of three years after the date of the last entry made therein. He also relied upon Rule 20 of the Maharashtra Shops and Establishments Rules, 1961 (for short 'Rules'). Sub-rule (1) thereof requires every employer or manager of the shop or commercial establishment to maintain a register of employment in Form H. Sub-rule (10) requires the employer or manager to preserve the registers and records relating to any year for a period of two years after the last entry is made therein. He, therefore submitted that under the Payment of Wages Act, 1936, registers are required to be preserved for the period of three years after the date of the last entry made therein. Under Rule 20(2) of the Rules, registers and records are required to be preserved for 2 years after the last entry made therein. He also invited my attention to the affidavit in reply filed on behalf of the respondent No.1 to this Petition, and in particular paragraph 14 thereof wherein it is stated that applicant has filed the present case after 6 years, knowing fully that no such documents would have been retained. Applicant is trying to take advantage of the said fact. It is further asserted that application seeking production of such documents is not tenable after about 9 years.

10. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, relationship between the applicant and the first respondent, namely, employer-employee is not in dispute. Applicant has

filed application for reinstatement as a 'weaver' with effect from 05.07.2008. In paragraph 1 of the application, applicant has specifically asserted that he was employed as a weaver since last 10 years prior to abrupt termination of his services. It is also not in dispute that award was made on 07.02.2012 in Reference (IDA) No.169 of 2009 wherein the Labour Court held that there is employer-employee relationship between the applicant and the first respondent herein. Pending the application, applicant filed application exhibit-U-7 seeking direction against the first respondent to produce - (1) Attendance Register for the period of March 1998 to 05.07.2008 and (2) Wage Register from the period March 1998 to 05.07.2008. The Labour Court rejected the application on the following grounds:

“The applicant is claiming the production of documents only for the reason that the opponent No.1 has taken a plea that the applicant has not completed 240 days in a year. However, it is well settled law that a person who takes a plea has to prove it. Here the opponent no.1 has taken a plea that the applicant has not completed 240 days in a year though it has admitted relationship as employer-employee. In such circumstances, it would not be proper to compel the opponent No.1 to produce the documents called for simply for the reason that it has taken a plea that the applicant has not completed 240 days in a year. Hence, application is liable to be rejected.”

11. In my opinion, the Labour Court completely misdirected in observing that the applicant has filed application as respondent No.1 took the plea that applicant did not complete 240 days in one year. A perusal of written statement filed by the respondent No.1 also does not indicate respondent No.1 taking such plea. A perusal of written statement shows that respondent No.1 came with the case that applicant on his own has left the employment of opponent-respondent No.1. Applicant has not completed 240 days preceding alleged date of termination of the applicant to attract Section 25-F and 25-G of the Industrial Disputes Act, 1947. A perusal of paragraph 4-a shows that

respondent No.1 denied that applicant was employed with respondent No.1 since last 10 years as alleged or otherwise. In other words, respondent No.1 did not come with the specific case that applicant has not completed 240 days in a year. That apart, respondent No.1 in the written statement contended that it has employed 6 to 7 persons, and therefore, provisions of the Act are not applicable. It is in this context, application at exhibit U-7 made by the applicant was required to be considered by the Labour Court. Mr. Kharwal relied upon Section 13-A of the Payment of Wages Act, 1936, which reads thus,

“13A. Maintenance of registers and records.-

(1) Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every register and record required to be maintained under this section shall, **for the purposes of this Act**, be preserved for a period of three years after the date of the last entry made therein.

(emphasis supplied)”

12. A perusal of sub-section (2) of Section 13-A, extracted hereinabove, shows that every register and record required to be maintained under Section 13-A is to be maintained for the purposes of this Act, thereby meaning, for the purposes of Payment of Wages Act, 1936.

13. Rule 20(1) and (10) of the Rules reads thus,

“20. Maintenance of registers and records and display of notices.-

(1) Every employer or manager of a shop or commercial establishment shall maintain a register of employment in Form H, provided that where the opening and closing hours and period of interval for rest are ordinarily uniform, the employer or manager may maintain such register in Form J.

(2) to (9) ...

(10) The registers and records relating to any year shall be

preserved for period of two years after the last entry is made therein.”

14. A perusal of Rule 20(10) shows that the employer or manager of the shop or commercial establishment has to maintain the registers and records relating to any year for a period of two years after the last entry is made therein. A perusal of the reply filed to the application exhibit U-7 as also reply to the present Petition does not even remotely indicate that respondent No.1 has alleged that the record sought for by the applicant is destroyed. Reliance placed on Section 13-A as also Rule 20(10) does not advance the case of the respondent. As this Rule mandatorily requires employer or manager of the shop or commercial establishment to maintain record either for a period of 3 years as per Payment of Wages Act or for two years as per the Rules from the last date of entry made therein.

15. In view thereof, I do not find any merit in the submission advanced by Mr. Kharwal based on Section 13-A of the Payment of Wages Act and Rule 20(10) of the Rules. Hence, the impugned order is set aside. Application exhibit U-7 stands allowed. In the event of respondent No.1 not producing the documents, the Labour Court will proceed to draw adverse inference against the respondent. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

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