

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 629 OF 2004

The Sanjivani (Takli) Sahakari
Sakhar Karkhana Ltd.,
At Sahajanandnagar, P.O.
Shinganapur, Tq. Kopargaon,
Dist. Ahmednagar,
Through : its Maneging Director.

... **Petitioner.**

VERSUS

Parasaram s/o Popat Ukirde,
Age 47 years, Occ. Service,
R/o. Savalgaon, Post Sirasgaon,
Tq. Kopargaon, Dist. Ahmednagar.

... **Respondent.**

WITH

WRIT PETITION NO. 652 OF 2004

The Sanjivani (Takli) Sahakari
Sakhar Karkhana Ltd.,
At Sahajanandnagar, P.O.
Shinganapur, Tq. Kopargaon,
Dist. Ahmednagar,
Through : its Maneging Director.

... **Petitioner.**

VERSUS

Vikram s/o Dhondiba Khandekar,
Age 47 years, Occ. Service,
R/o. Shinganapur, Tq. Kopargaon,
Dist. Ahmednagar.

... **Respondent.**

...

Mr. V.D. Hon, learned Senior Counsel, h/f Mr. A.V. Hon, learned
counsel, for petitioner.

Mr. P.L. Shahane, learned counsel for respondent.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 08th May, 2018

JUDGMENT :

1. In both these petitions, the same petitioner sugar factory is aggrieved by the common judgment dated 28.07.2003 delivered by the Industrial Court in Appeal (IC) No. 9 and 10 of 1994. By the impugned judgment, both the identically placed respondents have been granted reinstatement with continuity of service and 50% back wages from the date of termination which is 01.06.1982.

2. So far as the respondent in the Second Petition namely Vikram Dhondiba Khandekar is concerned, after his termination on 01.06.1982, he is said to have joined the Godawari Khore Sahakari Doodh Utpadak Sangh Limited on 01.03.1985. The said organization has issued a certificate on request to the petitioner/sugar factory dated 13.04.1994 and the same has been placed on record in this petition by the petitioner/sugar factory. Though this document could not be produced earlier, learned counsel for Mr. Khandekar fairly states on instructions that Mr. Khandekar was working with the other organization after his termination, for a short period of about six to eight years. As such, even if the said certificate is accepted, Mr. Khandekar can be said to have been working from 1985 to 1994.

3. I have considered the strenuous submissions of Mr. Hon, learned senior advocate on behalf of the petitioner/sugar factory

and Mr. Shahane learned advocate on behalf of both the identically placed respondents.

4. This Court had stayed the impugned judgment of the Industrial Court by order dated 04.02.2004. These two petitions were admitted on 04.03.2004 and ad-interim relief was continued. Mr. Shahane submits that both the respondents have attained the age of superannuation in 2010.

5. In the light of the strenuous submissions of the learned senior advocate and Mr. Shahane, I find that the only contentious issue emerging from these two cases is as under :

(i) Since the sugar factory has taken a stand that the respondent workmen were contractual employees, was any evidence brought before the Labour Court to establish the factum of the contractual relations between the respondents and their contractor and whether there was any privity of contract between the petitioner sugar factory and the contractor.

6. Both these respondents claimed to have been terminated by the petitioner/sugar-factory on 01.06.1982. Both of them were working as daily wagers and were earning Rs. 6/- per day as on the date of their termination. They approached the Labour Court by

filing applications for challenging the termination under section 42(4), 78(1)(A to D) and section 79 of Bombay Industrial Relations Act 1946, which is now known as the Maharashtra Industrial Relations Act. Their applications were earlier allowed by the Labour Court. The Sugar Factory approached the Industrial Court. The Industrial Court set aside the judgment of the Labour Court and remitted the matter to the Labour Court for reconsideration.

7. The respondents had specifically taken a stand that they were terminated by the sugar factory after working from 1964 till 01.06.1982. The sugar factory took a stand that both these workers were contractual employees and were engaged through a contractor under The Contract Labour (Regulation and Abolition) Act, 1970. When the Industrial Court remitted the matters to the Labour Court, it granted liberty to the parties to add the contractor as a respondent in the proceedings before the Labour Court. It is strenuously contended by the petitioner that the workers did not add the contractor and hence their applications deserve to be rejected. Per contra, the respondents contend that it was never their case that they were contract labourers. It was the sugar factory which had averred this aspect and one who alleges has to prove. The sugar factory should have added the contractor in support of its contentions.

8. I find fallacies in the contention of the petitioners. Firstly; that these workers have been working from 1964 and the CLRA Act was introduced for the first time by the Parliament in 1970. If these respondents were working from 1964 till 1970 on the rolls of the sugar factory, they cannot be later on converted into contract labourers without their written consent as it amounts to a drastic change in their service conditions and which would squarely attract section 9(A) of the I.D. Act. 1947. Secondly, when the sugar factory contended that they were contractual employees, assuming that they were inducted as such under the CLRA Act after 1970, the sugar factory which is the custodian of the records as per the provisions of CLRA Act, was obliged to produce the records before the Labour Court. The petitioner failed to do so and has therefore suffered the consequences.

9. The sugar factory, without adding the contractor, produced a witness by name Mr. Rambhau Parjane on the ground that he was the contractor, who engaged the respondents. Mr. Parjane's evidence was recorded before the Labour Court wherein he stated that he cannot tell whether these two respondents were working under him. He deposed that he could only sign and could not read or write. Despite this evidence, the Labour Court, while delivering its judgment on 31.05.1994, rejected the applications filed by these respondents. It failed to note that the basic principle of Evidence

“one who alleges has to prove” was not complied with by the sugar factory. No evidence in documentary form was brought on record by the factory to indicate that the attendance-cum-wages register, salary slips, identity cards and similar such documents could prove that these respondents were factually contract labourers.

10. Learned counsel for the sugar factory then contended that the matter be remitted to the Labour Court and the sugar factory be permitted to lead fresh evidence and bring documentary evidence on record to prove that these respondents were contract labourers. Bearing in mind that these two respondents were terminated on 01.06.1982, which is about 36 years ago and remitting the matter to the Labour Court would reverse the clock by 36 years, that I called upon the petitioner to make a statement that as to whether the petitioner would compensate the respondents by paying costs of Rs. one lakh each for the loss of these 36 years. Learned counsel submits that the petitioners would not make such a statement.

11. Considering the above, I do not find that the impugned judgment of the Industrial Tribunal could be termed as perverse or erroneous or likely to cause gross injustice to the petitioner factory keeping in view the law laid down by the Supreme Court in the matter of *Syed Yakoob v/s K.S.Radhakrishnan*, **AIR 1964 SC 477** and *Surya Dev Rai v/s Ram Chander Rai*, **AIR 2003 SC 3044**.

12. It needs mention that the respondent Vikram D. Khandekar, would not be entitled for any back wages for the period 01.03.1985 till April, 1994.

13. These two petitions are therefore dismissed and disposed off respectively. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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