

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10509 OF 2017

Shobhabai W/o. Raosaheb Mokal,
Age : 38 years, Occ. Nil,
R/o. Garam Pani, Prakash Nagar,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10510 OF 2017

Vidyabai W/o. Gokul Bagul,
Age : 30 years, Occ. Nil,
R/o. Bapu Nagar, Mondha,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10511 OF 2017

Anil S/o. Ramrao Bankar,
Age : 27 years, Occ. Nil,
R/o. Rajiv Nagar, Railway Station,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10512 OF 2017

Vikas S/o. Raosaheb Ujgare,
Age : 30 years, Occ. Nil,
R/o. Nagsen Nagar, Osmanpura,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10513 OF 2017

Mahendra S/o. Prabhakar Guttikar,
Age : 35 years, Occ. Nil,
R/o. Bhim Nagar, Bhavsingpura,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10514 OF 2017

Chhayabai W/o. Ramdas Hiwrale,
Age : 40 years, Occ. Nil,
R/o. Ambedkar Nagar, Town Hall,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10515 OF 2017

Raosaheb S/o. Supdaji Sabde,
Age : 35 years, Occ. Nil,
R/o. Jai Bhim Nagar, Town Hall,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10516 OF 2017

Ambabai W/o. Sarjerao Gavhane,
Age : 32 years, Occ. Nil,
R/o. Kanchanwadi, Gautam Nagar,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10517 OF 2017

Mangalabai W/o. Rameshwar Pagore,
Age : 30 years, Occ. Nil,
R/o. Rahul Nagar, Railway Station,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10518 OF 2017

Ganesh S/o. Raju Hiwale,
Age : 30 years, Occ. Nil,
R/o. Chota Murlidhar Nagar,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10519 OF 2017

Zarina Begum W/o. Mohammad Khan,
Age : 40 years, Occ. Nil,
R/o. Jai Bhim Nagar, Gulabwadi,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10520 OF 2017

Choturam S/o. Parasram Sure,
Age : 40 years, Occ. Nil,
R/o. Jadhavwadi, Nava Mondha,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10521 OF 2017

Nanubai W/o. Ramrao Bankar,
Age : 45 years, Occ. Nil,
R/o. Rajiv Nagar, Railway Station,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10522 OF 2017

Latabai W/o. Bhalchand Jagtap,
Age : 35 years, Occ. Nil,
R/o. Gulab Nagar, Town Hall,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10523 OF 2017

Sangita W/o. Manoj Pakhare,
Age : 32 years, Occ. Nil,
R/o. Nagsen Nagar, Osmanpura,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 10524 OF 2017

Janabai W/o. Raju Kamble,
Age : 35 years, Occ. Nil,
R/o. Siddharth Nagar, N-12, HUDCO,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

WITH
WRIT PETITION NO. 9293 OF 2017

Sow. Sheetabai W/o. Bhagwan Gaikwad,
Age : 35 years, Occ. Nil,
R/o. Nagsen Nagar, Osmanpura,
Aurangabad, Tq. & Dist. Aurangabad. ...Petitioner.

Versus

The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad, Tq. & Dist. Aurangabad. ...Respondent.

Advocate for Petitioners : Mr. R.K. Khandelwal.
Advocate for Respondent : Mr. S.S. Tope.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 26th June, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally at admission stage, by the consent of the parties.

2. All these identically placed petitioners, who were

second party workmen before the Labour Court, are aggrieved by the judgment and award delivered by the Labour Court, by which, their reference have been answered in the negative.

3. For ready reference, the Writ Petition numbers, the Reference case numbers, the names of the petitioner/second parties and the dates of the impugned judgment and award are as under :

Sr. No.	W.P. No.	Reference (IDA) No.	Name	Order
1.	10509/17	277/10	Shobhabai Raosaheb Mokal	28.12. 2016
2.	10510/17	285/10	Vidyabai Gokul Bagal	28.12. 2016
3.	10511/17	276/10	Anil Ramrao Bankar	28.12. 2016
4.	10512/17	291/10	Vikas Roaosaheb Ujgare	28.12. 2016
5.	10513/17	306/10	Mahendra Prabhakara Guttikar	28.12. 2016
6.	10514/17	287/10	Chhayabai Ramdas Hivrale	28.12. 2016
7.	10515/17	283/10	Raosaheb Supdaji Salve	28.12. 2016
8.	10516/17	284/10	Ambabai Sarjerao Gavhane	28.12. 2016

9.	10517/17	290/10	Mangalabai Rameshwar Pagore	28.12. 2016
10.	10518/17	292/10	Ganesh Raji Hiwale	28.12. 2016
11.	10519/17	303/10	Zareena Begum Mohammad Khan	28.12. 2016
12.	10520/17	307/10	Choturam Parasram Sure	28.12. 2016
13.	10521/17	309/10	Nandubai Ramrao Bankar	28.12. 2016
14.	10522/17	286/10	Latabai Bhalchand Jagtap	28.12. 2016
15.	10523/17	301/10	Sangita Manoj Pakhre	28.12. 2016
16.	10524/17	296/10	Janabai Raju Kamble	28.12. 2016

4. I have considered the strenuous submissions of Shri Khandelwal, learned advocate on behalf of all these petitioners and Shri Tope, learned advocate appearing on behalf of the respondent/Municipal Corporation.

5. In all these petitions, the petitioners had raised an industrial dispute in the year 2010 under Section 2-A of the ID Act, 1947, alleging that they have been orally terminated from 01/08/2010, after having worked for about two years as Safai Kamgar on daily wages.

Considering the industrial dispute raised, as the Conciliation Officer submitted a failure report, the appropriate government referred the industrial dispute to the Labour Court.

6. The petitioners filed their statements of claims in each of their cases. Each one of them has specifically contended that he/she is working as a Safai Kamgar on daily wages with the Corporation. The work is of perennial nature and is available. Considering that Aurangabad City has grown in the last two decades and the population is said to be approximately 13.60 Lakhs, a large strength of Safai Kamgar is required for cleaning the roads and for scavenging. Since, the quantum of work is available, there was no reason for the respondent to orally terminate their services. Sections 25 F, G and H of the ID Act have not been complied with while terminating their services and therefore, their unlawful termination amounts to illegal retrenchment.

7. It is then submitted that a notice for production of documents was filed by these workers and the Labour Court had directed the Corporation to produce its attendance register and wage register. These

documents were not submitted and hence an adverse interference deserves to be drawn. The initial burden as regards the proof of employment has been discharged by the petitioners and as such, the onus shifted to the respondent/Corporation to prove that these petitioners had not completed 240 days in its continuous and uninterrupted employment and that these petitioners were not its employees. It is, therefore, prayed that as the Labour Court has delivered perverse awards, these petitions deserve to be allowed. The impugned awards deserve to be quashed and set aside and the reference cases deserve to be answered in the affirmative.

8. Learned counsel for the respondent/Corporation has strenuously supported the impugned awards. He has drawn my attention to the paragraphs in which the Labour Court has analyzed the oral and documentary evidence. He points out that though these petitioners contend that they have been directly engaged by the Corporation, they have failed to produce the identity cards and the ESIC cards which allegedly were issued to them by the Corporation.

9. Reference is made to Section 54 of the

Maharashtra Municipal Corporation Act to contend that not a single employee can be appointed by the Corporation without following the due procedure of law. It is further pointed out that these petitioners have admitted in their evidence that they were engaged through contractors and as they were doing the work of sweeping and cleaning the roads and the gutters, they were under the impression that they were appointed by the Corporation.

10. Reliance is placed upon the following judgments by the respondent to support the contention that a back door entry cannot be permitted in public employment :

(i) Megha Chandrakant Kale V/s. State of Maharashtra [Judgment and Order dated 12/03/2014 delivered by the Division Bench of this Court at Aurangabad in Writ Petition No. 8853/2013].

(ii) Secretary, State of Karnataka and Others V/s. Umadevi and Others [(2006) 4 SCC 1].

(iii) Secretary to Government, School Education Department, Chennai V/s. Thiru R. Govindaswamy and Others [Judgment and Order dated 21/02/2014 delivered by Hon'ble Supreme Court in Civil Appeal No. 2726-2729/2014].

(iv) Surendra Prasad Tewari V/s. Uttar Pradesh Rajya Krishi [Judgment and Order dated 08/09/2006 delivered by Hon'ble Supreme Court in Civil Appeal No.3981/2006].

(v) University of Rajasthan and Another V/s. Prem Lata Agrawal and Others [(2013) 1 Supreme 577].

(vi) A. Umarani V/s. Registrar, Co-operative Societies [(2004) 7 SCC 112].

(vii) State of Bihar V/s. Upendra Narayan Singh and Others [(2009) 5 SCC 65].

(viii) Chanchal Goyal V/s. State of Rajasthan [(2003) 3 SCC 485].

(ix) State of U.P. And Others V/s. Rekha Rani [(2011) 11 SCC 441].

(x) State of Haryana V/s. Jasmeer Singh [(1996) 11 SCC 17].

(xi) Parag Sahadeorao Tayade V/s. The State of Maharashtra and Others [Judgment and Order dated 20/03/2014 delivered by this Court in Writ Petition No. 10812/2012].

11. I have considered the record available with the assistance of the learned advocates.

12. Pursuant to the judgment of the Hon'ble Apex Court in the matter of **Vividh Kamgar Sabha Versus Kalyani Steels and Another [(2001) SCC 381]** and **Maharashtra General Kamgar Union versus Cipla Limited [(2001) 3 SCC 101]**, the law has crystallized that any relationship between a contractual employee and his contractor can be repudiated and after proving that the contractor is a camouflage, a direct relationship between the contractor employer and the principle employer can be established, only under the ID Act, 1947. The five Judges bench of the Hon'ble Apex Court in the matter of **Steel Authority of India & Others v. National Union Waterfront Workers and Others [(2001) 7 SCC 1]**, has held on 30th August, 2001 that even when contract labour system is abolished under Section 10 of the Contract Labour (Regulation and Abolition Act, 1970), the contract labourers have to follow the contractor and have to take up employment wherever the contractor would deploy them. If the contractor does not desire to continue their contractual service, he can retrench them by following the law of retrenchment as is provided under the ID Act.

13. There is no dispute that these workers have

admitted in cross-examination that they were doing work through a contractor and the contractor used to give them work on different roads and streets in the Aurangabad City. It is also admitted by these petitioners that after 2001, the Aurangabad Municipal Corporation has stopped recruiting employees directly. These admissions in the cross-examination would indicate that though these petitioners admitted that they were contractual employees, they have suppressed this aspect before the Conciliation Officer when they raised their individual industrial disputes. Similarly they did not divulge this aspect in their statements of claim. As a legal consequence, the failure report of the Conciliation Officer was not on the issue as to whether the contractor deploying these petitioners was sham and bogus. Needless to state, the appropriate government, while framing the terms of reference addressed to the Labour Court, had no reason to take up these issues due to lack of pleadings. In this backdrop it needs to be inferred that these petitioners have acquiesced the right to raise a claim that the contractor is sham and bogus.

14. The petitioners claimed that they have ESIC cards

and identity cards issued by the Corporation. It is settled law that an identity card is purely for the purpose of identification of an employee and it gives him a right to enter the work premises. An identity card per se is not considered to be a conclusive proof of employer and employee relationship.

15. Insofar as ESIC cards are concerned notwithstanding that the petitioners did not produce these cards, if the contractor fails to register the workers as insured persons (IP), the principal employer could opt to do so in order to avoid the liability of payment of compensation in the event of an accident arising out of and in the course of employment, since the employees compensation act mandates the principal employer to pay compensation, if the contractor fails to do so. Hence, ESIC cards, as a stand alone piece of evidence and without corroborative evidence, would not assist these petitioners.

16. Insofar as the production of documents is concerned, I am of the view that these petitioners have opted a path of suppression of material facts. Despite being contract labourers, they suppressed this aspect.

Consequentially, they prayed for production of the attendance register and the salary register of the Corporation employees which obviously would not reflect their names as they were working through a contractor. The petitioners never came with a case that they are shown to be contractual employees, their names were actually maintained on the rolls of the Corporation and the daily wages were paid directly by the Corporation. As such, in this backdrop, the said documents would not have assisted the petitioners.

17. As the petitioners contended that the Corporation has not recruited any person directly from the year 2001 onwards, it is a matter of circumspection as to how can they get an entry in the employment of the Corporation, as is contended by them. Obviously, they were proved to be contractual employees deployed by some contractors as Safai Kamgar.

18. Considering the above, I do not find that the impugned awards can be termed as being perverse or erroneous. These petitions being devoid of merit are, therefore, dismissed. Rule is discharged.

19. Learned counsel for the petitioners submits that presently the Corporation is engaging daily wagers as Safai Kamgar through some Bachat Gats (Saving Groups), on contract basis. Learned counsel for the Corporation submits that the Corporation is not recruiting Safai Kamgars. In this backdrop, if at all any Bachat Gat is engaged as a contractor for deploying contract labour with the Corporation, this judgment would not be an impediment for these petitioners to choose to join any Bachat Gat.

(RAVINDRA V. GHUGE, J.)

S.P.C.