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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6085 OF 2000

Shri Sudhir Balkrishna Sumant & 2 Ors. ...Petitioners

vs

Executive Engineer, M.S.E.B., Barshi
Division, Barshi & 2 Ors. ...Respondents

.....

Mr. Neel G. Helekar, for the Petitioners.

Mr. A.R. X. Baxi, for Respondent Nos. 1 and 2.

.....

CORAM : S.C. GUPTA, J.

DATED: JULY 13, 2018

ORAL JUDGMENT :

. This petition challenges an order passed by the Industrial Court at Solapur in four complaints of unfair labour practices. By the impugned order, the Industrial Court dismissed the complaints.

2. The Petitioners, who were original complainants, were in the employment of Respondent No.3, who was a contractor of Respondent Nos. 1 and 2. It was the case of the Petitioners that though they were employed by the third Respondent Contractor, they were in fact direct employees of Respondent Nos. 1 and 2. The Petitioners filed complaints of unfair labour practice claiming permanency and other benefits applicable to the permanent employees of Respondent Nos. 1 and 2. The complaints were dismissed by the Industrial Court on the ground that the question as to the direct employment of the complainants with the

Respondent Board cannot be gone into by the Court hearing a complaint of unfair labour practice under MRTU & PULP Act. The Court was of the view that the questions, namely, whether the contract between Respondent Board and Respondent No.3 Contractor was sham and bogus and whether the complainants were direct employees of the Respondent Board, could only be heard by the appropriate authority hearing a reference under the Industrial Disputes Act or hearing a matter under the Contract Labour Regulation Act. This order is challenged by the original complainants in this petition.

3. Considering the law laid down by the Supreme Court in the cases of **Cipla Ltd. vs. Maharashtra General Kamgar Union**¹ and **Sarva Shramik Sangh vs. Indian Smelting & Refining Co. Ltd.**², the relationship existing under a contractual arrangement, which is sought to be abandoned or negated and substituted by a claim that there was a direct master-servant relationship between the principal employer and the claimant, cannot be agitated before a Court hearing a complaint of unfair labour practice under MRTU & PULP Act. An industrial dispute must be raised in this behalf before the Court or the Tribunal constituted under the Industrial Disputes Act. It is only when the issue relating to the actual nature of employment is adjudicated by that Court or Tribunal that the Court hearing a complaint gets jurisdiction to rule on permanency and other benefits.

4. Learned Counsel for the Petitioners relies on a judgment of the Supreme Court in the case of **Raymond Limited vs. Tukaram Tanaji**

1 (2001) 3 SCC 101

2 (2003) 10 SCC 455

Mandhare³ and submits that this issue is still *res integra* and referred to a larger bench of the Supreme Court. Be that as it may, so far as this Court is concerned, the law laid down in **Cipla Limited** holds the field and according to this law, the complaints were rightly dismissed by the Industrial Court.

5. Learned Counsel for the Petitioners then relies on the judgment of the Supreme Court in the case of **Hindalco Industries Limited vs. Association of Engineering Workers**⁴. Learned Counsel submits that as in that case the Supreme Court ruled on the question as to whether or not the employees before it were direct employees of the principal employer by disregarding the contract for employment between the principal employer and the contractor, this Court must undertake the exercise of deciding the issue, particularly considering that a number of years have passed since the complaint was made. In **Hindalco Industries Limited**, on a complaint of unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act, the Industrial Court, after considering the evidence, held the employees before it to be direct employees of the company. These employees were all employed in a canteen maintained by the company. The Court found that the arrangement was merely on paper but that the canteen was infact run and managed by the company itself. Though the judgments of **Cipla Ltd.** and **Sarva Shramik Sangh** (supra) were cited before the Supreme Court, the Court nevertheless did not interfere with the impugned order. For this, the Court relied on a Three Bench Judge decision of the Supreme Court in the case of **Indian Petrochemicals Corporation Ltd. vs.**

3 (2011) 3 Supreme Court Cases 752

4 (2008) 13 Supreme Court Cases 441

Shramik Sena⁵. That was also a case of a canteen run by the appellant's establishment, though managed by engaging a contractor. The Court held that though workmen engaged in a canteen run for an establishment are workmen of the establishment for the purposes of the Factories Act and are not *ipso facto* workmen of the establishment for other purposes like recruitment, seniority, promotion, recruitment benefits, etc., in the case before the Supreme Court, on facts, the workmen of the particular canteen were really workmen of the establishment. The Court, in the premises, did not interfere with the High Court's direction to the management to absorb the workmen on conditions specified in the order. Considering the similarity of facts between **Hindalco Industries Ltd.** and **Indian Petrochemicals Corporation Ltd.**, the Supreme Court thought it fit not to interfere with the orders of the Industrial Court and the orders of the High Court. What is important to note is that the Supreme Court in **Hindalco Industries Ltd.** did not join issue with the statement of law in **Cipla Ltd.** or **Sarva Shramik Sangh** (supra).

6. In our case, what is important to note is that not only has the Industrial Court not found favour with the case of the complainant workmen on the issue of sham and bogus character of the contract or their claim for direct employment under the principal employer, the Court, in fact, relying on the law on the point, refrained from going into the question as to whether or not the contract was sham or bogus and whether or not the complainants were direct employees of the principal employer. The existing law on the point being what it is, it is

⁵ (1999) 6 Supreme Court Cases 439

impermissible to send the matter back to the Industrial Court for a full-fledged enquiry, if necessary, on evidence, as to the nature of the contract and identity of the real employer of the complainants, relying on the case of **Hindalco Industries Ltd.**

7. There is, thus, no merit in the petition. Rule is, accordingly, discharged and the petition is dismissed. No order as to costs.

(**S.C. GUPTE, J.**)