

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.10835 OF 2017**

Mansukhlal Kachra Shah (Bid) & Ors. .. Petitioners.

Vs.

Ram Sajivan Ramharak Yadav .. Respondent.

Dr. D.S. Hatle with Mr. D.P. Jamsandekar for the petitioners.

Mr.Avinash Jalisatgi with Mr.Amol B.Desai i/b Mr.Ratnesh R. Mishra for the respondent.

**CORAM : A.K. MENON, J.**

**DATED : 29TH JANUARY, 2018**

**P.C. :**

1. By this writ petition, the petitioners seek to challenge an award dated 5th December, 2016 passed by the Third Labour Court, Thane by which the respondent has been ordered to be reinstated in service with full back wages with effect from 24th May, 2013.

2. The challenge to award is on the basis that the respondent was not an employee of the petitioners at the relevant time and in absence of an Employee-Employer relationship, there is no question of granting any relief to the respondent. Reliance is placed on paragraph 2 of the written statement filed before the Labour Court by which the petitioners have questioned maintainability of the complaint on the basis that there was no Employee-

Employer relationship and the reference is, therefore, bad. According to the petitioners, the respondent carried out warping work on thread rolled unto beams which were later sent to the looms for weaving of cloth. His engagement as a “Warper” it is contended, was purely on assignment basis and depending on the number of beams prepared, the respondent was paid on a piece rate basis and there was no question of paying wages at any point of time.

3. The petitioners contend that the respondent would attend the premises of the petitioners for preparing beams “as per his leisure time”. Thus, there was no occasion to answer the reference in the affirmative. Reliance is also placed on the evidence in support of the petitioners' case before the Labour Court. The petitioners led evidence of four witnesses including the petitioner no.2 – Sagar Mansukhlal Shah. The others being Ratilal Meghaji Shaha, Alpesh J. Gada and a Shop Inspector – Mr.Raj Ramji Raghuvanshi. The impugned order held that the respondent has proved that his service had been terminated illegally, although it was initially stated that the issue of Employee–Employer relationship has not been considered. This aspect has been said to be dealt with in the impugned order.

4. On behalf of the respondent while opposing the petition, Mr.Jalisatgi, learned counsel submitted that the respondent was a worker employed since year 1983 whose services had been illegally terminated, therefore, he is entitled to continuity of service with full back wages. He

submitted that the petitioners led no material evidence to establish that the respondent was a piece rate worker and that he was not an employee. In this respect reliance was placed on the evidence of the petitioners' witnesses. The first witness was Mr.Sagar Mansukhlal Shah – petitioner no.2, admitted in his evidence that Mr.Ashwin Kumar Shaha was his uncle and the brother of petitioner no.1. The other witness who were examined are one Mr.Ratilal Sumaria. Mr.Ratilal Sumaria who deposed to the effect that the respondent worked with him for four and half months has relied upon a register which was apparently introduced into evidence to establish that the respondent was employed with him. However, in the course of evaluating evidence, the Labour Court found that the signature of the respondent in the said register did not tally with the signature on the statement of claim and affidavit of the said party i.e. affidavit of the respondent. It was also found that in some place that the signature of the respondent appeared in devnagiri script and in some places in english. The register was, therefore, found to be unreliable and the evidence of the said Ratilal Sumaria came to be rejected.

5. As far as the second witness – Mr.Alpesh Jayantilal Gada is concerned, he stated that the respondent was employed for the period from 1st May 2014 to 30th April 2016, 24th June 2014 to 11th February 2015 and from 15th February 2015 to 12th April 2016. Further this evidence has also been rejected due to discrepancies in the register. The third witness was Shop Inspector, Mr.Raj Rajguruat, who has filed Exhibit-C-23 corroborating the

version of the respondent that he was found working for M/s.Gutka Textiles for one and half months in June 2016.

6. Today, it is submitted across the bar that the respondent is not in employment. It is submitted that the respondent had made demands to petitioner nos.1 and 2 on 29th May, 2013 being Exhibit-B. The petitioner no.1 had replied to various points in the said letter which answers are set out at Exhibit-C and which has been delivered to the office of the Assistant Labour Court Commissioner on 26th August, 2013. At Item No.8, the petitioners admitted that the respondent had left without being asked to leave, from which it becomes evident that there was no substance in the petitioners' case that the respondent was engaged on piece rate basis as otherwise there was no occasion for petitioner no.1 to contend that the respondent has left on his own and he was not removed from his employment.

7. In further evidence Mr.Ratilal Sumaria, who was supporting the petitioners, was cross examined on 14th June, 2016 and in the course of cross examination he admitted that the petitioner no.2 was the nephew of the witness. It is therefore submitted by Mr.Jalsatgi that evidence of this witness was justifiably disbelieved by the Labour Court. I find that the impugned order records that the first party, namely, the petitioners herein did not lead any evidence showing that the respondent was paid on piece rate basis in regard of produce in order to show payment to the respondent and from the evidence it

was clear that the petitioners were engaged in business of warping and therefore they were required to maintain records even under relevant registration such as Shop and Establishment Act, Factories Act etc. The respondent had called upon the petitioners to produce these documents by an application dated 8th July, 2015. The Labour Court had directed production of these documents, however, the petitioners failed and neglected to produce the documents.

8. It was also found that the shop premises belonged to one Mr.Ashwin Kachara Shaha. One of the points raised by the petitioners was that the respondent was an employee since year 1983, however, the premises being used by the petitioners was taken on conducting basis from 18th October, 2005. However, during recording of evidence, it was found that the owner of premises, who is stated to have given premises for conducting business was the brother of petitioner no.1 and uncle of petitioner no.2. Moreover, the agreement was not a registered document. Even assuming in favour of the petitioners that the premises was let on conducting basis, it does not indicate that the respondent was not employed by the petitioners because there is nothing on record to establish that this was the only factory at which the petitioners were carrying on business.

9. In the circumstances, taking overall view it is evident that the petitioners and their associates attempted to avoid liability by setting up

defences which have not be established in evidence. The depositions of the petitioners' witnesses failed to prove that the respondent was a piece rate worker. Moreover the petitioners deliberately avoided compliance with directions to produce documents. Adverse inference can be drawn in the instant set of facts.

10. For all the aforesaid reasons there is no warrant to interfere with the impugned award under the writ jurisdiction of this Court. Hence I pass the following order :

- (a) Writ Petition is dismissed.
- (b) No order as to costs.

**(A.K. MENON,J.)**