

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

WRIT PETITION NO.311 OF 2017

M/s Hindustan Construction Company Ltd. and anr. .. Petitioners
V/s

Mr.Kishore Govind Magar ... Respondent

CIVIL APPLICATION NO. 2080 OF 2017

IN

WRIT PETITION NO.311 OF 2017

Mr.Kishore Govind Magar ... Applicant

In the matter between:

M/s Hindustan Construction Company Ltd. and anr. .. Petitioners
V/s

Mr.Kishore Govind Magar ... Respondent

Mr.P.M.Palshikar for the Petitioners.

Mr.Amit Gharte for the Respondent.

CORAM : S.C.GUPTE, J.

DATE : JULY 17, 2018.

P.C. :

1. Heard learned counsel for the parties.
2. This petition filed by an employer challenges an order passed by the Labour Court at Thane in an employee's complaint of unfair labour practice and the revisional order passed by the Industrial Court refusing to interfere with that order.
3. The respondent herein was working as a driver with the first petitioner-company. It was the case of the respondent that he was working with the company since 1990 as a temporary

employee and was entitled to permanency; he was terminated illegally. The case of the company was that he was merely a project employee and his appointment came to an end when the project was completed. It was submitted by the company that compensation payable to project employees upon retrenchment under Section 25FFF of the Industrial Disputes Act, 1947 had been duly paid to the respondent.

4. Though there is some controversy between the parties as to whether compensation purportedly paid by the petitioner-company was duly paid under the provisions of Section 25FFF of the Industrial Disputes Act, 1947 and judgments were cited before this Court by both parties, I do not propose to decide that question. Both Courts below have decided the complaint in favour of the respondent-employee on the basis that he was not a project employee, but a regular employee appointed temporarily by the petitioner-company. The Courts have accordingly proceeded on the footing that the termination was illegal inter-alia for failure to pay compensation under Section 25F of the Industrial Disputes Act, 1947.

5. The Labour Court in its impugned order held that the

complainant had adduced oral and documentary evidence, based on which his employment with the company since 1990 had been proved. It was noticed that the complainant-employee had joined the company in 1990 as a driver; he was working at its office at Vikroli between 1990 and 1993; since 1993 and till 2011 he continued to work at the head office. According to the plaintiff's evidence, as noticed by the Court; in May 2011, he was orally informed that there was no work for him in the company though he continued to be in service till about July 2011. He did not however receive any salary for the months of June and July 2011. When he inquired with the company about his salary, he was informed that his services were terminated. Even thereafter he made attempts to resume on duty, but it was of no use. The Court also considered the employer's evidence which inter-alia consisted of the appointment letter of 1st October 2006 suggesting the complainant's engagement on Bandra Worli Sea Link ("BWSL") project and oral testimony of its witness. The employer's witness admitted earlier engagements of the complainant since 1990. The Court held that the evidence on record, which included a letter addressed by Assistant Vice-

President Corporate Office of the employer to Dr.L.H. Hiranandani Hospital, Thane on 30th June 2011, i.e. after its purported termination as on 30th May 2011, showing a fresh appointment of the complainant as from 1st July 2011, supported the complainant's case that he was appointed in 1990 at the head office of the petitioner and that the latter had victimized him by creating evidence that his services were terminated with effect from 30th May 2011 as employee of BWSL project. The Revisional Court in its order once again went through the evidence on record, both oral as well as documentary, and came to the conclusion that the finding of the Labour Court was supported by evidence and did not merit any interference.

6. The foregoing narration shows that both Courts below have decided the complaint in favour of the respondent-employee on the basis of oral and documentary evidence produced before them. The complainant-employee had specifically pleaded in his complaint that he was appointed as a temporary driver since 1990. Though he was not issued any appointment letter by the company at its head office, the complainant was driving the car of the petitioner's Vice-President; he was transferred orally to

BWSL project. It was his case that the amount paid to him on 13th July 2011 (i.e. purportedly after terminating him on 31st May 2011) was not retrenchment compensation, but his salary for the months of June and July 2011. Towards the proof of his case, he not only stepped into the witness box and deposed to his case, but produced extensive evidence before the Court in support of his case. The documents on record before the Court included his provident fund and income tax record including Form No. 16, all of which show the name of his employer as Hindustan Construction Company Limited at his head office. Mobile bills issued to him were all at the address of the head office of the company; the identity card, bank card, insurance record and salary certificates showed him to be an employee of the petitioner-company at its head office. None of these documents had any endorsement or seal of any project or branch; they were all issued by the petitioner-company at its head office. The last, though not the least of these documents, was the letter addressed by Assistant Vice-President, Corporate Office services of the petitioner-company to Dr. L.H.Hiranandani hospital. This letter is dated 30th June 2011. It pertains to a check

up appointment of the respondent herein as the company's driver, whose appointment date was shown as 1st July 2011, i.e. after the date of his purported termination as of 31st May 2011. In the face of all this documentary and oral evidence, concurrent findings of two courts below on the employment of the respondent as a regular employee of the petitioner at its head office and not a project employee for BWSL project cannot be termed as findings based on no evidence. The findings are clearly supported by evidence. No relevant or germane material has been disregarded by the Courts below to arrive at their findings. So also, no irrelevant or non-germane material has been considered by the Courts below to hold in favour of the respondent.

7. Learned counsel for the petitioner mainly relies on the appointment letter issued to the respondent on 1st October, 2016, which purports to engage him as a driver for the “Bandra Worli Sea Link Project” on the terms and conditions mentioned therein. Learned counsel submits that this engagement was purely temporary and for project work. One of the terms of engagement set out in this letter provides for cessation of the

engagement “either automatically on 30th September 2007 or before monsoon season of 2007 or on completion of assignment work, whichever is earlier”. As for extension of this engagement, since the cessation of engagement was automatic, the letter provides for continuation or extension of the respondent's services expressly by a communication in writing. The letter provides that in case the respondent does not receive any written communication from the company, it is deemed that his services are not required and accordingly, he would cease to be in service and his dues would be settled as per rules. It is an admitted position that there was no extension by any written communication by the petitioner to the respondent. Learned counsel submits that the extensions were all oral and were made till and so long as the project continued; the services were terminated after the project was completed. Though that may be one way of looking at the matter, this state of affairs equally supports the inference that the letter was issued only nominally and the respondent was simply continued as a temporary employee as before. It is not for this Court to reassess the evidence to see if there is any possibility of another finding

based on the evidence before the Court. Orders of courts below are scrutinized in writ jurisdiction from the yardstick of Wednesbury principle. The orders are disturbed only if it is found that they are not supported by evidence or that irrelevant material is considered or relevant material disregarded by Courts while arriving at the orders. That, I am afraid, is not the case here.

8. In the premises, considering concurrent findings of two Courts below, supported by extensive oral and documentary evidence, the impugned orders do not merit any interference in writ jurisdiction. Accordingly, there is no merit in the petition. The petition is dismissed.

9. Learned counsel for the petitioner applies for stay of this Court's order. Two Courts below having rendered concurrent findings of fact upon extensive analysis of oral and documentary evidence placed before the Courts and this Court having comprehensively considered and dismissed the petition as lacking in merits, there is no question of any stay. The application is refused.

(S.C.GUPTE, J.)

Priya
Rajesh
Soparkar

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