

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 59 OF 1999**

Janvadi General Kamgar Mazdoor Union)
having its office at, C.P.W.D. office)
compound Bamanwada, Vile Parle (East))
Mumbai 400 057) ..Petitioner

Vs.

1. Central Institute of Fisheries Education)
Indian Council of Agricultural Research)
Jaiprakash Road, Seven Bungalows,)
Versova, Mumbai 400 601)

2. Union of India)
through the Secretary, Ministry of Labour)
Shram Bhavan, New Delhi)

3 Central Advisory Contract Labour)
Board, having its office at)
Jaisalmer House, Mansingh Road,)
New Delhi)

4 Regional Labour Commissioner (Central)
Shram Raksha Bhavan, Opp Priyadarshini)
Eastern Express Highway, Shiv Shrushti)
Marg, Sion (East) Mumbai 400 022)

5 M/s Maharashtra Agencies)
Sagar Kutir Sangh, K.W. G -21)
Seven Bungalows, Versova, J. P. Road,)
Andheri (West) Mumbai 400 061) ..Respondents

Mr. Jaiprakash Sawant for the Petitioner
Mr. Rakesh Singh I/b M. V. Kini & Co. for the Respondent No.1
Mr. P. M. Palshikar for the Respondent No.4

CORAM :R. M. SAVANT, &
NITIN W. SAMBRE, JJ
DATE : 11th OCTOBER, 2018

ORAL JUDGMENT (PER R. M. SAVANT J.)

1 The above Writ Petition has been filed seeking a direction against the Respondent No.1 to absorb the workers listed in the Exhibit A and to regularise their services with effect from their respective date of joining the Respondent No.1. It is the case of the Petitioner Union that the work which is being performed by its members a list of which is at Exhibit A and Exhibit B is perennial in nature and therefore the workmen should be treated as direct employees of the Respondent No.1. It is also the case of the Petitioner Union that the contract between the Respondent No.1 and the contractor who has supplied the labour, is sham and bogus and in fact the members of the Petitioners are in direct employment of the Respondent No.1. It is trite that such a dispute cannot be gone into by the writ court under Article 227 of the Constitution of India and the said question can only be adjudicated by the competent court exercising jurisdiction under the Industrial Disputes Act.

2 On behalf of the Petitioners reliance is sought to be placed on the judgment of a Division Bench of this court P. B. Majmudar (as His Lordship then was) and R. M. Savant JJ, dated 8-7-2009 passed in Writ Petition No.1885 of 2001. The said case also concerns another set of workers who were the members of the Petitioner Union on identical relief was sought in the said Petition, as sought in the instant Writ Petition. The Division Bench of this court in view of the fact that a dispute was raised and was pending

adjudication before the conciliation officer had directed the conciliation officer to submit a failure report. On such submission of the failure report the Respondent No.2 herein was directed to refer the dispute as per the provisions of the Industrial Disputes Act to the appropriate forum for adjudication. A direction was issued to the said forum to decide the said dispute within 3 months from the date of the said order. We are informed that the dispute is referred to the CGIT and bears reference No.CGIT-II/9/2009. We are informed that the said reference is at the stage where the evidence is being recorded. We are inclined to follow the same course of action as propounded by the Division Bench in the said judgment and order dated 8-7-2009. However, what we find in the instant case is that the dispute was raised by the Petitioner and a failure report was submitted to the Central Government, however the Central Government refused to refer the dispute to the Tribunal in view of the pendency of the instant Writ Petition.

3 In view of the fact that a long period of time has elapsed since the failure report was submitted by the Conciliation Officer, we permit the Petitioner Union or the individual workmen as the case may be to raise an industrial dispute as regards the contract being sham and bogus and that they are entitled to be treated as direct employees of the Respondent No.1. If any such dispute is raised by the Union or the individual workmen, the Conciliation Officer would consider the same and submit his failure report if

the occasion arises within 4 weeks of the dispute being raised by the Petitioner Union or the individual workmen. The dispute to be raised within 4 weeks from date. If the dispute is referred to CGIT having regard to the fact that the above Petition is of the year 1999, meaning thereby that the members of the Petitioner Union were working prior thereto. We direct the concerned Tribunal to decide the Reference expeditiously and within 6 months of the Reference being referred to it. In the interregnum i.e. till the Reference is decided, if the members of the Petitioner Union whose names are appearing in Exhibit A and Exhibit B are still working with the Respondent No.1, then the status-quo in respect of their services would be maintained till the disposal of the reference.

4 The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[NITIN W. SAMBRE, J]

[R.M.SAVANT, J]

Meera
Mahesh
Jadhav

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