

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

912 WRIT PETITION NO.2824 OF 2020

THE SUPERINTENDING ENGINEER PWD AND ANOTHER
VERSUS
MANDABAI ANAND SHINE AND OTHERS

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Advocate for Petitioners : Shri Dhage Vivek J.
Advocate for Respondents : Shri Khandelwal Rajesh K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 18, 2020

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PER COURT :-

1. By this petition, the petitioners seek to challenge the common order dated 21.12.2019, passed below Exhibit U/2 and U/8 filed by the respondents in Complaint (ULP) No.180 of 2018. By the impugned order, the Industrial Court, Aurangabad has directed the petitioners not to change the service conditions of the applicants without following the due process of law and to pay arrears of wages from the months of May 2018 till December 2019.

2. I have considered the extensive submissions of the learned Advocate for the respective sides and I find that the following factors are relevant in this case:-

(a) The original complainants have approached the Industrial Court contending that they are working as daily wagers with the petitioners.

(b) None of the complainants have mentioned their dates of first joining duties with the petitioners, as daily wagers.

(c) The petitioners have taken a stand that the complainants were working through petty contractors and were never engaged directly by the petitioners.

(d) There is no employer-employee relationship between the petitioners and the complainants.

(e) Neither in Exhibit U/2 nor in Exhibit U/8, have the complainants stated the dates on which they have actually worked from May 2018 onwards.

(f) Their daily rates of wages have also not been mentioned.

(g) The number of days that they claimed to have worked from May 2018, have also not been pleaded.

(h) There is no documentary evidence placed before the Industrial Court to indicate the dates on which the complainants have worked.

3. In the light of the above, I have perused the directions issued by the Industrial Court, vide the impugned order. The petitioners are directed not to change the service conditions of the complainants without following the due process of law. This direction does not call

for any interference.

4. The Industrial Court has directed the petitioners to pay arrears of monthly wages from May 2018 till December 2019. A document dated 12.3.2015, by which, the Superintending Engineer, PWD has informed the Chief Engineer, PWD that the daily rated workers are working on consolidated wages and the work allotted to them depends on availability of such work. All of them are shown to be working as Mazdoor and one person Ramesh Darekar is working as a Chaukidar on a godown at the rate of Rs.218/- per day.

5. The above stated communications and the accompanying chart dates back to 12.3.2015 and the petitioners have now taken a stand that none of these workers have worked in between May 2018 to December 2019.

6. In my view, granting backwages or arrears of wages is an order which can be passed after recording of oral and documentary evidence and not at an interim stage with no evidence or skeletal evidence being available.

7. This petition is, therefore, partly allowed. The direction issued by the Industrial Court at Clause (C) in the impugned order is

quashed and set aside. Rest of the order is maintained. The litigating sides are at liberty to move applications for seeking amendment in the complaint and/or the written statement to bring details before the Industrial Court as regards the area of work, the nature of duties, the mode of payment of wages, the daily wages paid and the contractor through whom such daily wagers are employed.

(RAVINDRA V. GHUGE, J.)

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