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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4091 OF 2017

M/s. Sunrise Textile And Ors.	...Petitioners
vs	
Shri. Amarjit Chandgur Rajbhar	...Respondent
.....	
Mr. Prashant G. Kayande, for the Petitioners.	
Mr. Prashant C. Kamble, for Respondent No.1.	

.....
CORAM : S.C. GUPTE, J.

DATED: 06 FEBRUARY, 2020

P.C. :

. Heard learned Counsel for the parties.

2. This writ petition challenges an award passed by the Labour Court at Thane on a reference made to it under the Industrial Disputes Act. The reference concerned termination of services of the Respondent herein, who was the original second party before the reference court. The Labour Court, by its impugned award, held that there was an employer-employee relationship between the parties and the second party had proved that he was illegally terminated. The court also found that the second party was not gainfully employed and, accordingly, awarded reinstatement in service with full back wages and continuity of service with effect from 27 November 2009, i.e. the date of termination.

3. Learned Counsel for the Petitioners (original first party) submits that the second party was not its workman. Learned Counsel for the Petitioners points out from the cross-examination of the second party that it had failed to produce any documentary evidence in support of its case that he was working as a weaver with the first party. Learned Counsel also submits that the muster records produced by the first party also did not reflect the second party as a workman. It is submitted that the court has not taken into account both these circumstances. What the court has considered is that the first party was ordered by the court to produce documents, being statutory records, including wage register, bonus register, overtime register, licence under Shops and Establishment Act or Factory Act, but that the first party had not produced any of these documents. All that the party produced before the court was the muster roll from 1 January 2004 to 21 December 2009, which, as contended by learned Counsel for the Petitioner first party, did not reflect the name of the Respondent second party. The court, however, after going through the record, did not accept the first party's contention that the second party did not work with it. The court noticed that, firstly, the register did not show the full names of workers engaged by the first party. The register only showed single names such as Raju, Shankar, Ramu, etc. Secondly, the court observed that it was an admitted fact that the first party had settled the matter with these other workmen, who had raised similar industrial disputes against the first party alleging illegal termination. The court found that even in those cases the relationship of employer and employee was denied by the first party. These workmen, who were at Sr. Nos. 7 to 12 (such as Ramprasad, Munna, Kailash, Rajkumar, Shaligram and Sandeep), were missing from December 2009;

Sr. Nos. 7 to 11 of the register were blank since the month of December 2009. The court, therefore, deduced that there was support for the second party's case that matters were settled with these workmen. The court also noticed the oral evidence of the second party that the workers named in the register were working with him. It was proposed to the first party in his cross-examination that he had been offered a full and final settlement without prejudice to the rights of the first party. It was submitted that the same amount was offered to the other workmen referred to above and they had settled their respective disputes by accepting the amount. The court did not believe the version of the first party that the workers were settled only with these amounts. The court held, besides, that making of such proposal to the second party also indicated that the first party was trying to get rid of its liability towards the second party. This also supported the court's observation that the second party was really in the employment of the first party. The court also considered the evidence of the shop inspector tendered by the first party. The evidence, according to the court, did not indicate that workmen working with the first party were paid on meter basis. The court noticed that the workers were paid wages/salary under the head "pay" and not on "meter basis". The court, in the premises, did not believe the version of the shop inspector that the workmen were paid on meter basis. On an overall assessment of the evidence on record and going by the principle of preponderance, the court was of the view that it had no hesitation in believing the version of the second party that he was engaged by the first party from 3 February 2004 and there was an employer-employee relationship between the parties.

4. No fault can be found with the finding of the labour court. It is clearly a possible view; it is supported by some evidence as indicated above; it takes into account all relevant and germane circumstances and materials; and it does not take into account any irrelevant or non-germane material or circumstance.

5. Coming now to the case of alleged gainful employment of the second party, the court has considered the second party's evidence that he was not gainfully employed. Nothing was pointed to the court in support of the first party's case that the second party was gainfully employed. Accordingly, as per the law stated in **Hindustan Tin Works Private Ltd. vs. Employees of Hindustan Tin Works Pvt. Ltd.**¹, the court applied the normal rule of full back wages, since the party objecting to it had failed to establish any circumstance necessitating departure from the normal rule. Once again, no fault can be found with either the approach or assessment of the labour court in this behalf.

6. The petition, accordingly, has no merit and is dismissed.

(S.C. GUPTE, J.)

Smita
Gonsalves

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¹ 1979 AIR (SC) 75