

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5264 OF 2008

Deepak Gajanan Tambekar and another.

Vs.

Maharashtra Vehicles Private Limited and another.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. B. Agasti, Advocate for petitioners.

None for respondent no.1.

Mr. V. P. Maldhure, AGP for respondent no.2.

CORAM : AVINASH G. GHAROTE, J.

DATE : FEBRUARY 13, 2020.

Heard Mr. Agasti, learned counsel for the petitioners. Mr. Maldhure, learned AGP for the respondent no.2. None appears for the respondent no.1 though served.

2. It is contended that the petitioners were engaged as Watchmen by the respondent no.1 establishment on 16.09.1997 and 01.12.1997 respectively. It is further contended that since their appointment they have continuously worked with the respondent no.1 and have completed 240 days of continuous of service and therefore had acquired status of a permanent employee. Request to regularize their service, was declined and the petitioners were not permitted to resume their duties from 17.12.2000 without assigning any reasons resultant to which the complaint under Section 28 read with Section 33 (2) of the Maharashtra Act No.1 of 1972, alleging that the respondent no.1 had engaged

in unfair labour practice under Item 9 Schedule 5 of the Maharashtra Act No.1 of 1972 was filed before the Industrial Court as Complaint ULPA No.118 of 2001. The respondent no.1, upon appearance denied the relationship of employer and employee by contending that the petitioners were never employed by the respondent no.1 and the complaint therefore was required to be dismissed. The learned Industrial Court holding that since the existence of the relationship itself was disputed, by relying upon **Vivid Kamgar Sabha Vs. Kalyani Steels Ltd., 2001 (1) CLR 532** and **Lokmat Proprietors, Lokmat News Papers Ltd. Vs. Prabhakar Rambhauji Chaudhari 2003 (1) Mh. L.J.485**, held that the complaint was not maintainable. It further held that there was no document on record to establish that the petitioners were ever appointed by the respondent no.1. It further held that the office order dated 24.03.2000, as well as the office memo dated 23.10.1998, did not establish a relationship of employer and employee, between the petitioners and respondent no.1. It therefore dismissed the complaint.

3. Learned counsel for the petitioners submits, that the learned Industrial Court, has misread the office memo dated 23.10.1998 and 24.03.2000. According to him these two documents unequivocally established the engagement and appointment of the petitioners with the respondent no.1, in light of which, he therefore submits that the impugned judgment, cannot be sustained.

4. With the assistance of learned counsel, I have perused the office orders dated 23.10.98 & 24.03.2000. In my opinion, both of these do not establish any relationship of employer and employee between the petitioners and the respondent no.1. The office memo dated 23.10.1998 merely admonishes the petitioners for being absent without prior intimation and the one dated 24.02.2000 is merely marked as a copy to the petitioners. In light of the defence raised by the respondent no.1 that it had never appointed or engaged the services of the petitioners but in fact, had engaged Regency Trade Links, to send Security Guards, and the petitioner no.1 had thus been sent by Regency Trade Links and the petitioner no.2 had been engaged by Shivalaya Security Services, it was necessary for the petitioners to place on record some documents, to show their engagement / employment or for that matter receipt of emoluments from the respondent no.1. However, except for the office memo dated 23.10.1998 and 24.03.2000, which do not assist the case of the petitioners, nothing has been placed on record, in light of which the judgment of the Industrial Court cannot be faulted with. The petition therefore is without any merits, and is accordingly dismissed. In the circumstances, there shall be no order as to costs.

JUDGE