

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.13399 OF 2021

- 1) Suman w/o Ganesh Jadhav,
Age 37 years, Occu. Nil,
R/o At Post Ranjangaon (Shenpunji)
Tq. Gangapur, Dist. Aurangabad
- 2) Shobha w/o Rajaratan Kamble,
Age 36 years, Occu. Nil,
R/o At Post Ranjangaon (Shenpunji)
Tq. Gangapur, Dist. Aurangabad
- 3) Kalpana w/o Tejrao Dabhade,
Age 38 years, Occu. Nil,
R/o At Post Ranjangaon (Shenpunji)
Tq. Gangapur, Dist. Aurangabad
- 4) Vandana w/o Ramchandra Jadhav,
Age 37 years, Occu. Nil,
R/o At Post Ranjangaon (Shenpunji)
Tq. Gangapur, Dist. Aurangabad ... **PETITIONERS**
(Orig. Complainants)

VERSUS

M/s Laxmi Metal Pressing Works Pvt. Ltd.
Plot No.E-77, Waluj MIDC, Waluj,
Tq. Gangapur, Dist. Aurangabad
Through its Authorised Signatory,
Shri Haridas s/o Shrirang Malve
Age 57 years, Occu. Service,
R/o Aurangabad ... **RESPONDENT**
(Orig. Respondent)

.....
Shri Ashok A. More, Advocate for petitioners
Shri S.S. Vidwans, Advocate for respondent
.....

CORAM : R. G. AVACHAT, J.

DATED : 3rd FEBRUARY, 2021

J U D G M E N T :

The challenge in this Writ Petition is to the judgment and order dated 1/8/2018, passed by Industrial Court at Aurangabad in Revision (ULP) No.78/2014. By the impugned judgment and order, the order dated 22/9/2014, passed by Labour Court-II, Aurangabad allowing the Complaint (ULP) No.8/2009 was set aside. The respondent is a private limited company. The learned Judge of Labour Court had declared that the respondent orally terminated services of the petitioners and it amounted to unfair labour practice within the meaning of Item 1(a) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (MRTU & PULP Act for short). The respondent – Company was directed to reinstate all the petitioners with continuity in service and back wages from the date of their oral termination.

2. Mr. More, learned counsel for the petitioners would submit that, the Industrial Court has travelled beyond the scope of its revisional jurisdiction. It has decided the application like an appeal. He took me through the judgment

of the Labour Court and submitted the same having been passed consistent with the evidence in the case. According to him, the MRTU & PULP Act is a welfare legislation. Provisions of, if capable of two constructions, one which further the policy and object of the Act and which is more beneficial to the employees should be preferred. The learned counsel has relied on judgment of the Apex Court in the case of **Colour-Chem Ltd. Vs. A.L. Alaspurkar & others** reported in (1998) 3 SCC 192 and submitted for allowing the Writ petition.

3. Mr. Vidwans, learned counsel for the respondent would, on the other hand, submit that, except bare words of the petitioners/ complainants, there was no evidence in support of their claim. The respondent Company produced before the Labour Court evidence to show the petitioners/ complainants were engaged through contract labour. It was the Labour Contractor who paid them their wages and deposited contributions towards E.S.I. and E.P.F. Learned counsel reiterated the reasons given by the Industrial Court for setting aside the judgment and order passed by the Labour Court.

4. I have considered the rival submissions, perused the judgments and orders passed by both the Courts below.

Admittedly, except bare words of the petitioners/ complainants, there was nothing to indicate the respondent Company to have had engaged them in its service. On the other hand, the respondent Company examined the witnesses (employees) of M/s Mauli Enterprises, Contract Labour Agency to show the petitioners/ complainants were engaged as contract labours. The petitioners did not produce on record their appointment orders, pay bills, attendance sheets etc. On the other hand, the respondent Company produced documentary evidence to show that the Labour Contractor paid the wages of the petitioners and contributed for their E.S.I. and E.P.F. True, M/s Mauli Enterprises was not a registered Labour Contractor. No labour agreement was executed between it and the respondent Company. The learned Judge of the Industrial Court, placing reliance on the judgment in case of **M.M.T.C. Ltd. Vs. The learned Fourth Industrial Tribunal (2016-LLR-292) (Calcutta High Court) and Employees in relation of Management of Bhagban Colliery of M/s Bharat Coking Coal Ltd. Vs. Their Workmen, represented by Sri D. Mukherjee Bihar Colliery Kamgar Union (2015-LLR-277)**, observed that the said lapse would at the most invite penal consequence, but the petitioners could not be held to be the employees of the respondent Company.

5. There can be no two views over what has been submitted by learned counsel for the petitioners on the basis of Apex Court judgment in case of Colour-Chem Ltd. (supra). The facts of the present case, however, indicate that except the oral evidence of the petitioners, there was nothing to infer them to have been engaged by the respondent Company and they have completed 240 days of service for being entitled to be recognized as permanent employees. Since day one of the commencement of the dispute, the respondent Company denied the employer-employee relationship. It produced on record evidence to prove the petitioners/ complainants to have been engaged through a labour contractor.

6. In my view, the Industrial Court has rightly set aside the judgment and order passed by the Labour Court in Complaint (ULP) No.68/2009. No interference, in exercise of writ jurisdiction, is called for with the impugned judgment and order. The Writ Petition, therefore, fails. It is dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-