

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

920 WRIT PETITION NO.13914 OF 2021

**BALU MADHAVRAO MAGAR
VERSUS
THE SUPERINTENDING ARCHAEOLOGIST AND
ANOTHER**

...

Mr U. V. Khonde, Advocate for petitioner;
Mr R. R. Bangar, Advocate for respondents

**WITH
WRIT PETITION NO.13975 OF 2021**

**UBED KHAN WAHED KHAN
VERSUS
THE SUPERINTENDING ARCHAEOLOGIST AND
ANOTHER**

...

Mr U. V. Khonde, Advocate for petitioner;
Mr R. R. Bangar, Advocate for respondents

**WITH
WRIT PETITION NO.13979 OF 2021**

**SHRIHARI GOPINATH TUPE
VERSUS
THE SUPERINTENDING ARCHAEOLOGIST AND
ANOTHER**

...

Mr U. V. Khonde, Advocate for petitioner;
Mr R. B. Bhosale, Advocate for respondents

**WITH
WRIT PETITION NO.13969 OF 2021**

**RANJEET VISHNU KIRTIKAR
VERSUS
THE SUPERINTENDING ARCHAEOLOGIST AND
ANOTHER**

...

(2)

Mr U. V. Khonde, Advocate for petitioner;
Mr A. N. Patale, Advocate for respondents

WITH
WRIT PETITION NO.3850 OF 2022

THE SUPERINTENDING ARCHAEOLOGIST AND
ANOTHER
VERSUS
BALU MADHAVRAO MAGAR

...

Mr R. R. Bangar, Advocate for petitioners

WITH
WRIT PETITION NO.3852 OF 2022

THE SUPERINTENDING ARCHAEOLOGIST AND
ANOTHER
VERSUS
RANJEET VISHNU KIRTIKAR

...

Mr A. N. Patale, Advocate for petitioners

WITH
WRIT PETITION NO.3851 OF 2022

THE SUPERINTENDING ARCHAEOLOGIST AND
ANOTHER
VERSUS
UBED KHAN WAHED KHAN

...

Mr R. R. Bangar, Advocate for petitioners

WITH
WRIT PETITION NO.3853 OF 2022

THE SUPERINTENDING ARCHAEOLOGIST AND
ANOTHER
VERSUS
SHRIHARI GOPINATH TUPE

...

Mr R. B. Bhosale, Advocate for petitioners

(3)

CORAM : RAVINDRA V. GHUGE, J**DATE : 24th March, 2022****PER COURT:**

1. I have considered the strenuous submissions of the learned Advocates for the respective sides and with their assistance, I have gone through the petition paper books and the records available.

2. There is no dispute that the primary contentious issue between the two sides is, as to whether the second party/workmen proved that they had worked for 240 days in continuous employment with the first party in the 12 calendar months preceding the date of the Reference. The second contentious issue is that, whether the Archaeological Survey of India (ASI) is not an 'Industry' under Section 2(j) of the Industrial Dispute Act, 1947.

3. The petitioner/second party/workmen have relied upon **Union of India Thru. it's Secretary Culture and anr. Vs. Surendra Singh Rashtriya Adhyaksha INTUC and anr., 2019 SCC Online All 4671.**

(4)

4. Having perused paragraph 4 of the Judgment in Surendra Singh (supra), the said case was exclusively with regard to the Garden maintained near the monuments and the Allahabad High Court concluded that, a Garden or the Horticultural wing of ASI is an 'Industry'. This Judgment would not establish that the ASI is an 'Industry'.

5. I find from the record that, though the petitioners filed a compilation of the documents received under the Right To Information Act, below Exh.U-14 in their Reference Proceedings, the contents of the documents were not proved as is required under the provisions of the Evidence Act, on the misconceived belief of the petitioners that, once the documents are exhibited, the contents are automatically proved. Earlier, the respondent/ Department was under the misconception that, merely taking a plea that the Archaeological Survey of India is not an 'Industry', would be enough to hold that it is not an 'Industry'. The establishment, existence and the operational activities of the ASI have to be proved before the Court, in order to enable the Court to conclude, as to whether ASI can be termed to be an 'Industry' in view of the law laid down in **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others, 1978 (2) SCC**

213. As in Surendra Singh (supra), evidence was led to the extent of the Garden and Horticultural wings and based on the evidence, the Allahabad High Court accepted that the Garden and Horticultural wing of the ASI was an 'Industry'.

6. Both the parties are agreeable to lead additional evidence before the Labour Court in view of the above. I am of the view that, this opportunity could be granted in the peculiar facts and circumstances of these cases and the request can be accepted.

7. As such, these petitions filed by the second party/workman and the writ petitions filed by the Superintending Archaeologist, Archaeological Survey of India, are partly allowed.

8. The impugned Award, to the extent of it's answers to issue Nos. 2,3, 4, 5, 6 and 7, stands quashed and set aside. The four Reference Cases shall stand restored to the file of the Labour Court-I, Aurangabad, with the following directions :-

(a) All the litigating parties shall appear before the Labour Court on 12/04/2022.

(b) The petitioner/second party/workman shall lead evidence with reference to the contents of the documents below Exh.

(6)

U-14 and shall conclude such recording of evidence, on or before 07/05/2022.

(c)The ASI shall commence recording of it's evidence by filing additional documents, if advised, from 06/06/2022 and would conclude the recording of it's evidence, on or before 30/06/2022.

(d)The litigating parties shall advance their oral submissions in between 04/07/2022 to 22/07/2022. Written Notes of submissions alongwith Case Law are permitted.

(e)The Labour Court shall deliver it's awards on issue Nos. 2 to 7, as expeditiously as possible and preferably, on or before 15/09/2022.

(RAVINDRA V. GHUGE, J.)

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