

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

WRIT PETITION NO. 14381 OF 2017

Vishnu S/o Bhanudas Nagre,
Age : 50 Years, Occ. : Business
R/o Plot No. 10, Gajanan Colony
Garkheda Parisar, Aurangabad.
Dist. Aurangabad. .. Petitioner

Versus

- 1] Altaf S/o Shabbir Shaikh,
Age : 33 Years, Occu. : Service,
R/o At Sirasgaon, Tq. Shrirampur,
Dist. Ahmednagar.
- 2] The Superintending Engineer
MSEDCL urban Circle
Jublee Park Aurangabad
Dist. : Aurangabad.
- 3] The Executive Engineer
MSEDCL City Division-1,
Zonal Office Jublee Park,
Aurangabad Dist : Aurangabad.
- 4] The Junior Engineer,
of Fuse-Call Center,
MSEDCL, Jublee Park,
Aurangabad Dist : Aurangabad. .. Respondents

Shri Rahul A. Tambe, Advocate for the Petitioner.
Shri K. B. Jadhav, Advocate for the Respondent No. 1.
Shri U. S. Malte, Advocate for the Respondent No. 3.

**CORAM : SANDEEP V. MARNE, J.
DATE : 12TH OCTOBER, 2022.**

ORAL JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent of parties matter is taken up for final hearing.

2. By the present petition, petitioner challenges judgment and award dated 17.08.2017 passed by the Commissioner for Workman Compensation and Judge Labour Court – 01, Aurangabad in Misc. W.C. Restoration No. 100 of 2012 in Application W.C. No. 20 of 2010.

3. The dispute has arisen on account of accident which occurred on 28.02.2009 involving the respondent No. 1. The petitioner is the contractor of respondent Nos. 2 to 4 and the respondent No. 1 was the employee of the petitioner. The respondent No. 1 filed Application W. C. No. 20 of 2010 for compensation under the provisions of the Workmen's Compensation Act, 1923. It is an admitted position that the petitioner's wife received summons of Complaint W. C. No. 20 of 2010, but the petitioner failed to appear in the complaint on account of which the same proceeded ex-parte against him. After Complaint W. C. No. 20 of 2010 was allowed by the Commissioner for Workman Compensation and Judge Labour Court – 01, Aurangabad by award dated 20.07.2012, the petitioner filed application bearing Misc. W. C. Restoration No. 100 of 2012 on 10.12.2012 for restoration of the complaint. That application has been rejected by order dated 17th August, 2017.

4. The narrow controversy which needed to be determined by the Labour Court was whether the respondent No. 1 was enrolled with the Employees State Insurance Corporation (for short "ESIC") in view of specific bar under Section 53 of the Employees State Insurance Act, 1948. My attention is invited to specific averment made in the complaint filed by the respondent No. 1, which reads as under :

"The applicant was earning Rs. 3000/- as salary from respondent No. 4. The respondent no. 4 has also enrolled his name in the E.S.I. corporation. The identity card in form-4 issued by E.S.I. Corporation along with photo of applicant is enclosed herewith and marked as Exh. "L"."

5. There appears to be an admission by the respondent No. 1 himself that he was enrolled with the ESIC and he even produced copy of the identity card issued by the ESIC. Despite this position, the Labour Court appears to have answered the issue No. 4A in affirmative by holding that on account of absence of the petitioner before the Court, full information about enrollment of the respondent No. 1 with ESIC could not be placed before the Court.

6. After hearing both sides, there appears to be serious dispute as to whether the respondent No. 1 was indeed a member of the ESIC or not. Despite specific admission in the complaint by the respondent No. 1. Mr. Jadhav, appearing for the respondent No. 1 disputes the position that the respondent No. 1 was a member of the ESIC. He would submit that the slip produced by

the petitioner along with restoration application pertains to the year 2008 and there is no conclusive evidence to prove that the respondent No. 1 continued to be a member of ESIC on 28.02.2009 when the accident occurred. As against this, Mr. Tambe, the learned counsel appearing for the petitioner relies upon a statement maintained by the petitioner for February 2009 showing contribution made to ESIC in respect of the respondent No. 1.

7. In the light of the position that emerges, it would be necessary that this controversy is determined by the Labour Court so that the issue of bar under Section 53 of the ESI Act, 1948 can be decided. Therefore, I deem it appropriate to set aside the order dated 17.08.2017 rejecting the petitioner's restoration application.

8. Consequently, the order dated 20.07.2012 passed in W.C.A. No. 20 of 2010 is also set aside and W. C. A. No. 20 of 2010 is restored on the file of Commissioner for Workman Compensation and Judge Labour Court – 01, Aurangabad. The petitioner shall be granted an opportunity to file pleadings and documents as well as to lead evidence in support of his case. Considering the fact that, the substantial period has passed from the date of accident, the Commissioner for Workman Compensation and Judge Labour Court – 01, Aurangabad is requested to finally decide the application as expeditiously as possible and preferably within a period of three (03) months from today. The amount of

Rs. 1,50,000/- deposited by the petitioner in this Court on 30.01.2018 in pursuance of order dated 13.12.2017 along with accrued interest shall be transferred to the Commissioner for Workman Compensation and Judge Labour Court – 01, Aurangabad. The disbursement of the amount would be subject to final decision in W. C. A. No. 20 of 2010.

9. However, since the petitioner was at fault in not appearing before the Court despite receipt of summons by his wife, in my opinion, interest of justice would meet, if, costs of Rs. 10,000/- (Rs. Ten thousands only) are imposed on the petitioner for allowing the restoration application. The costs shall be paid by the petitioner to the respondent No. 1 within a period of two (02) weeks from today. Rule is made absolute in above terms.

[SANDEEP V. MARNE, J.]

bsb/Oct. 22