

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.1181 OF 2016
WITH
INTERIM APPLICATION NO.1750 OF 2022**

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Sukhdeo Bhaguji Bulakhe

..Petitioner

Versus

M/s. Bajaj Auto Ltd.

..Respondent

Ms. Sangeeta Salvi i/by Seema Sarnaik, for the Petitioner.

Mr. Chetan Alai a/w Varun Joshi, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 24th NOVEMBER, 2022

PC.

1. Contentions of counsel for the petitioner are, the writ petition is covered by the judgment of this Court delivered in Writ Petition No.4502 of 2006 with other connected matters decided on 1st February, 2021.

2. The subject matter of the petition is the award delivered by the Labour Court at Pune on a reference made to it under the provisions of the Industrial Disputes Act, 1947. The respondent company, a manufacturer of two wheeler and three wheeler, appears to have employed the petitioner. It is claimed that in the aforesaid petition, the High Court has framed the following issues for its considerations :-

“(I) Whether the termination of services of temporary workmen in the present case could be termed as termination as a result of non-renewal of the contract of employment on its expiry or under a stipulation in that behalf contained in the contract and thus, amounting to an exception to the definition of ‘retrenchment’ contained in Clause (oo) of Section 2 of the ID Act? Or whether the rotational arrangement, such as the one in the present case, where there are continuous temporary engagements of the same workmen over long periods of time (adopted as a strategy to deny benefits of permanency to the concerned workmen), does not amount to an engagement on a fixed period contract so as to form an exception under sub-clause (bb) of Clause (oo) of Section 2 of the ID Act ?

(II) Whether, (a) Sundays and holidays during the period of service could be counted within 240 days as per the applicable Standing Orders so as to make up aggregate service of 240 days in a year within the meaning of the Standing Orders and (b) such 240 days should be reckoned as forming part of the calendar year of 12 months immediately preceding the dates of termination?

(III) Should a Labour Court dealing with terminations of workmen in a reference under the ID Act refuse to consider their claim of permanency ?”

3. It is the contention of counsel for the petitioner that all those petitions were disposed of by this Court vide following order :-

“51. Rule is accordingly made absolute and the petition is allowed by quashing and setting aside the impugned award of the labour court and answering the references in the

affirmative and awarding to all second party workmen compensation in lieu of reinstatement as follows :

(i) Each of the second party workmen shall be paid a lump-sum amount calculated at 85 days' salary, inclusive of all allowances, for the number of years each workman had actually worked irrespective of the days a workman may have put in a year, calculated on the basis of work during a calendar year, such calendar year in which a workman may not have worked at all being kept out of consideration while calculating the amount. In calculating the salary for each workman, the minimum salary that would be taken into account would be Rs.8,000/- per month subject to the condition that if on the date of termination, the salary of any particular workman was more, then the calculation would be made on actual last drawn salary. The calculation in the abovesaid manner would be made for a period up to the date of termination in the year 1997-98. For the period after termination till date, the basis of calculation would be lump-sum three years of service on the basis aforesaid, namely, 85 days for each calendar year i.e. salary for 255 days.

(ii) Each workman shall be entitled to receive interest at the rate of 8 per cent per annum on the amount calculated as above from 11 September, 2003 till this date and thereafter till payment or realization.

52. The cases of each of the second party workmen, who are concerned in the accompanying writ petition, are on the same footing as the workmen whose references have given rise to Writ Petition No.4502 of 2006, and whose facts are discussed above and whose references are determined as above. For the reasons stated in their cases, the workmen in all other references are entitled to the same relief as the former workmen. Each of these latter workmen shall,

accordingly, be entitled to receive the same compensation as mentioned in clauses (i) and (ii) of paragraph 51 above.”

4. The counsel as such would claim that identical issue is raised in the present petition and that being so, the present writ petition may be disposed of in terms of the aforesaid order of this Court delivered in Writ Petition No.4502 of 2006 with other connected matters decided on 1st February, 2021.

5. Counsel for the respondent/employer would oppose the prayer, as according to him, the aforesaid judgment dated 1st February, 2021 is subject matter of challenge in Special Leave Petition before the Apex Court in which the notices are already issued. He would further claim that the judicial discipline warrants that the hearing of the writ petition be either adjourned or the petition can be adjourned subject to outcome of the aforesaid SLP.

6. I have appreciated the said submissions.

7. From the record, it can be inferred and also not disputed that the issue raised in the present petition is identical to the one which is decided by this Court vide aforesaid order dated 1st February, 2021. In the aforesaid background, merely pendency of the SLP before the Apex Court will not preclude this Court from deciding the writ petition particularly when the order of this Court dated 1st February, 2021 is not stayed or set aside.

8. As such, the writ petition, in my opinion needs to be allowed. The petition as such stands allowed in terms of the judgment dated 1st February, 2021 delivered by this Court in Writ Petition No.4502 of 2006 with other connect petitions.

9. This Court directs the respondent/employer to extend the benefits which are given to the other similar employees as has been directed in the aforesaid judgment dated 1st February, 2021 in paragraph 51.

10. In view of disposal of the petition, the interim application also stands disposed of.

[NITIN W. SAMBRE, J.]