

Sonali Mane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6156 OF 2022

Shri. Prakash Jayram Sutar

...Petitioner

Vs.

Thane Municipal Corporation

...Respondent

Mr. T. R. Yadav i/b Mr. Vaibhav Jagdale, Advocate for the Petitioner.

Mr. Jagdish G. Aradwad (Reddy) for the Respondent

CORAM:- N. J. JAMADAR, J.

DATED:- 28th MARCH, 2023

PC.

1) The challenge in this petition is to the Award dated 1st July, 2019 passed by the learned Presiding Officer Second Labour Court, Thane in Reference (IDA) No.274 of 2010, whereby the reference was answered in the negative.

2) The Petitioner claimed that he was appointed as a Clerk with the Respondent Municipal Corporation on temporary basis since the year 1988. He was entrusted duties which were of perennial nature. The Respondent had appointed the Petitioner in the Property Tax Department in the year 1995, under an appointment order dated 24th March, 1995.

The Respondent followed the practice of issuing appointment orders for a short period of time of three months. However, the petitioner was made to work continuously for years together. Those appointment orders were mere subterfuge to deprive the Petitioner of the benefit of continuous work for 240 days in a year.

3) In the year 2001, the Petitioner was called for an interview. However the Petitioner was not appointed on permanent basis. In the year 2003-2004 one Mr. Mahesh Jadhav, who was junior to the Petitioner, was made permanent. The Petitioner alleged that he was illegally terminated on 25th May, 2007.

4) Upon an industrial dispute being raised, the appropriate government made a reference to the jurisdictional Labour Court under Sections 10 (1) and 12 (5) of the Industrial Disputes Act 1948.

5) The Petitioner filed his statement of claim. The Respondent filed its written statement. It was denied that there was employer - employee relationship between the Petitioner and Respondent. The Petitioner was allegedly employed on a fixed term contract basis, initially on 27th March, 1995 for a period of three months only. Thereafter, he was employed periodically for a period of two to three months till the year 1999. Since then the Petitioner had not worked with the Corporation.

6) The learned Presiding Officer, Labour Court, after appraisal of the material on record, was persuaded to answer the reference in the

negative holding, inter alia, that the petitioner admitted that he never worked for 240 days continuously in any working year. Conversely, there was material on record to show that the Petitioner was employed for a fixed term and a fresh appointment letter was issued to the Petitioner every time he was appointed on a contract basis. Thus, no case of illegal termination was made out.

7) Being aggrieved the petitioner has preferred this petition.

8) I have heard Mr. Yadav, learned Counsel for the Petitioner, and Mr. Jagdish G. Aradwad (Reddy), learned Counsel for the Respondent, at some length. With the assistance of the Counsel for the parties, I have perused the material on record and the impugned order.

9) Mr. Yadav submitted that the Labour Court has completely misconstrued the case of the Petitioner. In the face of the material on record, which shows that multiple orders were issued to the petitioner and the services of the petitioner were utilized for years together, the Labour Court could not have non-suited the Petitioner by observing that the Petitioner conceded that he did not work for a period of 240 days in any year. Respondent did not place on record the documents despite an order dated 5th July, 2018 of the Labour Court, which would have thrown light on the nature of the relationship and the period for which the Petitioner worked for the Respondent.

10) In opposition to this, Mr. Reddy submitted that the impugned award does not warrant any interference. In view of the admission that the Petitioner did not work for 240 days, the Labour Court was justified in answering the reference in the negative. Mr. Reddy took the Court through the cross-examination of the Petitioner.

11) I have carefully considered the aforesaid submissions. It is true that in the cross-examination the Petitioner admitted that he never lodged any complaint before the Corporation that he was not allowed to complete 240 days in a year.

12) In the aforesaid context, from the perusal of the impugned Award, it becomes evident that the learned Presiding Officer, Labour Court, after recording the evidence led by the parties recorded reasons in paragraph No. 18 only. It reads as under :

“18. The second party himself admitted that he never worked for 240 days continuously for any working year. It is well settled law that the employer should bound to follow the due process of law while terminating any workman by way of retrenchment, only when the workman proved that he was working with employer for 240 days continuously without interruption. It is matter of record that the workman was employed for fixed term and every time he has been issued fresh appointed letter.”

13) It becomes abundantly clear that the Labour Court proceeded on the premise that the Petitioner admitted that he never worked for 240 days continuously in a year. I am afraid, the cross-examination of the Petitioner does not contain such a clear and categorical admission. What

the Petitioner conceded was that he had not lodged a grievance with the Respondent of being deprived of 240 days continues work.

14) It would be contextually relevant to note that on 17th March, 2016, the Petitioner sought production of the documents, like daily muster book for the period of 1988 to 2007, wherein the Petitioner claimed to have signed on each working day. Since no reply was filed to the said application, by an order dated 5th July, 2018, the Respondent was directed to produce those documents, which were in its custody. Admittedly, the documents were not produced.

15) The learned Presiding Officer, Labour Court, had not at all adverted to the fact of non-production of the documents despite the order of the Court. Instead the reference came to be answered on the strength of a supposed admission, which is not strictly borne out by the cross-examination. This approach has vitiated the findings of the Labour Court.

16) In the aforesaid view of the matter, I am impelled to hold that the Labour Court has not properly appreciated the dispute and correctly adjudicated the reference. Therefore, it would be expedient in the interest of justice to remit the reference back to the Labour Court with a direction to provide an opportunity to the Respondent to place the documents on record as ordered by the Court and, thereafter, hear and

decide the Reference afresh in the light of those documents and further evidence, if the parties choose to lead.

17) Hence the following order :

ORDER

- (i) The Petition stands partly allowed.
- (ii) The impugned Award stands quashed and set aside.
- (iii) The Reference (IDA) No. 274 of 2010 stands remitted back to the Labour Court with a direction to provide an opportunity to the Respondent to produce the documents in terms of the order dated 5th July, 2018 of the Labour Court and hear and decide the Reference afresh after considering those documents and further evidence, which the parties may choose to adduce, on its own merits and in accordance with law.
- (iv) By way of abundant caution, it is clarified that this Court has not entered into the merits of the matter and the Labour Court shall not be influenced by any of the observations made hereinabove while deciding the Reference afresh.

Rule made absolute in the aforesaid terms.

No order as to costs.

[N. J. JAMADAR, J.]