

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1991 OF 2006

Shantilal Hansraj Karani

...Petitioner

Versus

Sushila B. Salunke and Anr.

...Respondents

...

Mr. Anand Pai a/w Mr. Netaji Gawade i/by M/s. Sanjay Udeshi & Co. for
Petitioner.

Mr. R. K. Mendadkar, for Respondent.

...

CORAM : SANDEEP V. MARNE, J.

DATE : SEPTEMBER 05, 2023.

P.C.:

1. By this Petition, Petitioner has challenged award dated 1 June 2005 passed by Labour Court, Thane in Reference (IDA) No.267 of 2000.

2. It is the case of Respondent No.1 that she was engaged by Petitioner on the Job of feeding dogs in the year 1992. It is her case that in addition to the job of feeding dogs, she was also directed to perform the work of sweeping and thus rendered 8 hours of service everyday. She was abruptly terminated from service in October 1999. The last wages drawn by her in the month of October 1999 was Rs.600/- per month.

3. On the contrary it is the case of Petitioner that there was no employer-employee relationship between Petitioner and Respondent No.1. That she was engaged for less than one hour every day for the purpose of feeding dogs. That there was a private contract between Petitioner and Respondent No.1, out of performance of which, she used to feed the dogs of the Company and was being paid Rs.600/- by way of vouchers. That she never signed the muster role.

4. Respondent No.1 raised industrial dispute which was referred to the Labour Court and registered as Reference (IDA) No.267 of 2000. The Labour Court has held that the Respondent No.1 comes under the definition of the term 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 ("IDA Act"). The Labour Court answered the Reference in affirmative and directed that Respondent No.1 be reinstated in service with full backwages and continuity of service with effect from 7 December 1999.

5. While admitting the present Petition, this Court granted interim relief in terms of prayer Clause '(b)' which reads thus :

“(b) Pending the hearing and final disposal of this petition, this Hon’ble Court be pleased to stay the operation, implementation and enforcement of the said impugned award dated, being Exhibit -I hereto the extent in directs Petitioner to pay full backwages to the 1st Respondent.”

6. It thus appears that there was no stay to the directions of the Industrial Court to reinstate Respondent No.1, Mr. Mendadkar would submit that the Petitioner - Company used to credit amount of Rs.600/- per month in the account of Respondent No.1 till the year 2019, whereafter the Petitioner - Company has stopped depositing any amount.

7. Mr. Pai, the learned Counsel appearing for Petitioner would submit that the Labour Court has not applied its mind to the main contention raised by Petitioner about absence of employer-employee relationship. That the Labour Court has erroneously assumed that the Respondent No.1 was a part time employee and has recorded finding that definition of 'workman' under Section 2(s) of the IDA Act is comprehensive and wide enough to include even a part time employee. He would submit that the Petitioner never admitted the position that the Respondent No.1 was a part time employee.

8. He would place reliance on the Judgment of the Apex Court in **Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh**¹ in support of his contention that the issue as to whether employee answers the description of a 'workman' or not has to be determined on the basis of conclusive evidence. He would submit that despite there being evidence on record to suggest that

1 2005 3 SCC 232.

Respondent No.1 was not a workman, the Labour Court has not erroneously considered her as a workman without discussing the evidence on record.

9. Per contra Mr. Mendadkar, the learned Counsel appearing for Respondent No.1 would oppose the Petition and support the order passed by the Labour Court.

10. After having heard the submissions canvassed by the learned counsels for the Parties, it appears that the Petitioner - Company did admit before the Labour Court that Respondent No.1 was engaged since the year 1992. It was contented by the Petitioner before the Labour Court that she used to perform the job allotted to her about 45 minutes to 1 hour everyday. Thus, there is no assertion on the part of Petitioner that Respondent No.1 was never employed by it. On the contrary it was the case of Respondent No.1 that she was a full time employee and used to perform sweeping job as well for a period of eight hours. Findings recorded by the Labour Court would indicate that, the Labour Court has not accepted the contention of Respondent No.1 about being a full time employee. However, based on the evidence placed before it, the Labour Court has arrived at conclusion that she was part time employee. Once Respondent No.1 was considered as a part time employee, the Labour Court thereafter proceeded to record a finding that she would be

covered by the expression 'workman' within the meaning of Section 2(s) of IDA Act.

11. In that view of the matter, it cannot be stated that the Industrial Court has not considered the evidence or that its findings are not supported by the evidence on record. Therefore, reliance of Mr. Pai on the Judgment of Apex Court in **Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh** (supra) would not assist the case of Petitioner.

12. So far as the aspect of termination from service is concerned, it is an admitted position that the procedure required in law for retrenchment was not followed. In that view of the matter, no fault can be found in the direction issued by the Industrial Court in directing reinstatement.

13. Coming to the issue of direction issued by the Industrial Court for payment of full backwages, this Court had stayed the said direction by its interim order dated 8 June 2007. Even though this Court did not stay relief of reinstatement, there is nothing on record to indicate that the Respondent No.1 presented herself for duty after 8 June 2007. On the contrary it appears that she has been paid last drawn wages of Rs.600/- till the year 2019.

14. Now Respondent No.1 is at an advanced age of 60 years, and the question of reinstatement in service does not arise.

15. In that view of the matter, with a view to put an end to the entire controversy, in my view, direction can be issued to Petitioner to pay a compensation of Rs.3,00,000/- to Respondent No.1 towards full and final settlement.

16. Accordingly, Writ Petition is disposed of with a direction to the Petitioner to pay compensation of Rs.3,00,000/- to Respondent No.1 within a period of two months from today. Respondent No.1 shall not be entitled to claim any other benefit from Petitioner over and above the compensation so awarded.

(SANDEEP V. MARNE, J.)