

25 October 2023

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3568 OF 2012**

SPACO Carburettors (India) Ltd.

(Now Known as Spaco Technologies (I)
Pvt. Ltd. D2/62, M.I.D.C. Chinchwad,
Pune-411019.

.....PETITIONER

: V E R S U S :

1. Shri. Nemichand Sudam Sabale,
Panchashilnagar, Near M.S.E.B.,
Pimpale Nilakh, Pune-27.

2. M/S. C.T. Associates Pvt. Ltd. Prabhat
Road, 10th Lane, Opposite-Swaroop
Hotel, Pune-4.

...RESPONDENTS

ALONGWITH

WRIT PETITION NO. 5287 OF 2012

M/s. C.T. Associates Pvt. Ltd., Prabhat
Road, 10th Lane, Opposite-Swarop Hotel,
Pune.

.....PETITIONER

: V E R S U S :

1. Shri. Nemichand Sudam Sabale,
Panchashilnagar, Near M.S.E.B.,
Pimpale Nilakh, Pune-27. (Original
Second Party)

25 October 2023

2. SPACO CARBURETTORS (INDIA)
LIMITED (NOW KNOWN AS SPACO
TECHNOLOGIES PVT. LTD), 02/62,
M.I.D.C. Chinchwad, Pune-411 019
(Original First Party No.1)

...RESPONDENTS**APPEARANCES :**

Mr. Dhananjay Bhanage, for Petitioner in both the petitions.
Mr. Nikhil Adkine a/w. Mr. Kishor Shinde, for Respondent
No.1.

CORAM : SANDEEP V. MARNE. J.**Judg. Resd. On : 16 October 2023.****Judg. Pron. On : 25 October 2023.****JUDGMENT :**

1. The challenge in these petitions is to the Judgment and Award dated 12 December 2011 passed by the 2nd Labour Court, Pune in Reference (IDA) No.108/2001. By its Award, the Labour Court has proceeded to allow the Reference with a direction to both the Petitioners to reinstate Respondent on his original post as Watchman w.e.f. 1 December 1999. Both the Petitioners are directed to pay full backwages to the Respondent alongwith the costs of Rs.1,000/-. Petitioner in Writ Petition No. 3568 of 2012: Spaco Carburettors (India) Ltd (**SPACO**) claims that Respondent No. 1 is an employee of the contractor-M/s. C.T. Associates Pvt. Ltd (**C T Associates**), who is the Petitioner in Writ Petition No. 5287 of 2012. The

impugned Award directs both SPACO and CT Associates to reinstate Respondent No. 1 with full backwages, which is a reason why both of them are aggrieved by Labour Court's decision and have accordingly filed these two petitions.

2. Briefly stated, facts of the case are that SPACO is engaged in the business *inter alia* of manufacture of Carburetors. It is the case of the Respondent No.1 that he was engaged as a Watchman in SPACO since 17 August 1994. He claims that the Senior Officials of SPACO deputed Respondent No.1 to work as Watchman at the residence of the Company's Managing Director at 10, Range Hill Corner, Yeshwant Nagar, Ganeshkhind Road, Pune. On the contrary, it is SPACO's case that SPACO had taken a bungalow on rent in the year 1997 for residence of one of its Directors and CT Associates was awarded a contract to provide security at that Bungalow by issuance of Work Order dated 1 September 1997. That the Contract was for one year from 1 April 1997 to 31 March 1998. It was renewed for further period of one year from 1 April 1998 to 31 March 1999. It is SPACO's case that CT Associates had engaged Respondent No.1 for being deployed as a Security Guard towards performance of the contract. That as per the landlord's request, the Bungalow was required to be vacated on 11 October 1999 and therefore there was no necessity of provision of any security by CT Associates at the Bungalow and accordingly the contract of CT Associates was terminated w.e.f. 30 November 1999. It is SPACO's case that, Respondent No.1 was instructed by CT Associates to report for work in another Contract of CT Associates. That while other

security guard Mr. Jauk reported at the new site, Respondent No.1 refused to work at another site of CT Associates. That after termination of contract with SPACO, CT Associates did not terminate the services of Respondent No.1 but offered him alternate assignment, which Respondent No.1 failed to execute. On the other hand, it's the case of Respondent No. 1 that he was a direct employee of SPACO and by creating a artificial contract with CT Associates, he was terminated from service by SPACO.

3. In the aforesaid background, Respondent No.1 raised a demand for his reinstatement, which resulted in referring an industrial dispute by the Deputy Labour Commissioner, Pune vide Reference for deciding termination of services of Respondent No.1 effected on 1 December 1999. Respondent No.1 filed his Statement of Claim. Both SPACO and CT Associates filed their Written Statement. Evidence was led by both the sides. The Labour Court thereafter proceeded to pass Award dated 12 December 2011 setting aside the termination of Respondent No. 1 effected on 1 December 1999 and directed his reinstatement with full backwages alongwith costs of Rs.1,000/-. Both SPACO and CT Associates are aggrieved by the decision of the Labour Court and have filed the present petitions. After the present petition was admitted by this Court by order dated 16 October 2012 and interim relief was granted in terms of prayer clause (b), Respondent No.1 filed Civil Application No. 786/2016 for payment of wages under Section 17B of the Industrial Disputes Act. The said

application came to be rejected by this Court by order dated 3 October 2016.

4. I have heard Mr. Bhanage, the learned counsel appearing for the SPACO as well as for CT Associates in both the petitions. He would submit that there was no employer-employee relationship between Respondent No.1 and SPACO. That therefore direction for reinstatement of Respondent No.1 by SPACO is totally erroneous. So far as CT Associates is concerned, Mr. Bhanage would submit that Respondent No.1 was never terminated by CT Associates, which had deputed him for job at an alternate site. That it was Respondent No.1 who refused to report for duties at the alternate site. That in such circumstances, there was no termination of services of Respondent No.1. It is also the contention of Mr. Bhanage that Respondent No.1 had not sought a declaration of contract being sham and bogus and therefore the Labour Court could not have gone into that aspect.

5. Mr. Bhanage would further submit that both SPACO as well as CT Associates had produced ample evidence on record in the form of Work Orders, Leave and License Agreement of bungalow, order terminating contract etc. to demonstrate that deployment of Respondent No.1 by CT Associates was towards performance of the specific contract and that since the Bungalow was vacated, there was no question of providing any security in the form of continuation

of services of Respondent No.1 at that site. Mr. Bhanage would take me through the entire evidence on record and highlight the various admissions given by Respondent No.1 to the effect that he was indeed deputed to work at the alternate site and that his colleague did report for duties at alternate site. He would submit that after considering the evidence on record, it was impossible for a person of ordinary prudence to arrive at a conclusion that there is termination of services of Respondent No.1 in any manner. For having worked for merely two years, the Labour Court has directed reinstatement of Respondent No.1 with full backwages, which puts new financial burden on both SPACO as well as CT Associates. That there is specific evidence on record that Respondent No.1 was gainfully employed and that therefore direction for award backwages is totally unwarranted. Relying on the order passed by this Court while rejecting the application under Section 17B of the Industrial Disputes Act, Mr. Bhanage would submit that there is no question of granting any backwages to Respondent No.1. He would pray for setting aside the order passed by the Labour Court.

7. *Per-contra*, Mr. Adkine the learned counsel appearing for Respondent No.1 would oppose the petition and support the order passed by the Labour Court. He would submit that the so-called contract between SPACO and CT Associates was sham and bogus and that Respondent No.1 was actually a direct employee of SPACO. That the entire theory of deployment of Respondent No.1 to perform contract for

provision of security at the Bungalow of Director in the year 1997 is fallacious and that Respondent No.1 has been in the employment of SPACO since the year 1994. That after having rendered substantial service with SPACO, he was unceremoniously thrown out of service by showing him as an employee of CT Associates on the pretext of vacation of the Bungalow by the Managing Director of SPACO. That after vacation of the Bungalow, the service of Respondent No.1 ought to have been transferred back to the office of SPACO where Respondent No.1 was earlier working prior to his deployment at the Bungalow. That therefore non-continuation of his service at SPACO is nothing but his termination, which has rightly been set aside by the Labour Court. In support of his contention, he would rely upon the Judgment of Kerala High Court in ***Kerala State Coir Corporation Ltd. V/s. Industrial Tribunal*** 1995-I-L.L.N.-365.

8. I have considered the submissions canvassed by the learned counsels for both the parties. There appears to be a dispute between the parties about the date of first engagement of Respondent No.1. While both the Petitioners contend that Respondent No.1 was engaged by CT Associates only after award of Contract dated 1 September 1997 by SPACO to CT Associates for provision of security at the Bungalow, it is the contention of Respondent No.1 that he was in service of SPACO since 17 August 1994.

9. Perusal of the order of the Labour Court would indicate that the Labour Court had not recorded any specific finding about the exact date of commencement of employment of Respondent No.1. On the contrary, it has concentrated mainly on the nature of relationship between SPACO and Respondent No.1 and has arrived at a conclusion that CT Associates could not be treated as a contractor on account of non-registration under the provisions of Contract Labour (Regulation and Abolition) Act, 1970. Perusal of the Reference order would indicate that there was no declaration sought by Respondent No.1 to the effect that the contract was sham or bogus and that he was a direct employee of SPACO. He had only challenged his termination order. Therefore, in my view, the Labour Court has erred in going into the issue as to whether Respondent No.1 was a direct employee of SPACO or not. Also of relevance is the fact that direction for reinstatement is not issued to SPACO alone and it appears that the direction is issued jointly to SPACO as well as to CT Associates. Therefore, it is difficult to accept that Respondent No.1 was a direct employee of SPACO, who alone must reinstate him.

10. Coming to the aspect of validity of termination order, it is the case of SPACO as well as CT Associates that Respondent No.1 was never terminated and that he refused to join duties for execution of another contract of CT Associates. The Labour Court, after analyzing the evidence, has discarded the theory set up by SPACO and CT Associates and upheld the

contention of Respondent No.1 that he is indeed been terminated.

11. Respondent No. 1 has admitted that he was offered alternate job and that his colleagues actually reported at the venue of the alternate job. There is nothing on record to indicate that Respondent No. 1 was directly appointed by SPACO. He has not placed on record any appointment order issued by SPACO. This would lead credence to the defence of SPACO and CT Associates that he was indeed an employee of CT Associates and not of SPACO. In that view of the matter, the direction issued by the Labour Court to SPACO to reinstate Respondent No. 1 would be rendered erroneous. This would leave a question whether direction for reinstatement could be issued to CT Associates. However Respondent No. 1 has admitted that he was deputed to work as another site of CT Associates and that his colleague accepted the alternate job. Therefore whether there is any termination and whether directions for reinstatement with backwages could be issued becomes debatable.

12. While I could have delved deeper into the correctness of theories set up by both the parties about the exact reason behind cessation of services of Respondent No.1, in my view, considering the peculiar facts of the case, it is necessary to give a quietus to the entire litigation by holding that Respondent No.1 would be entitled to a lumpsum compensation in lieu of reinstatement and backwages. Respondent No.1 has succeeded before the Labour Court on 12

December 2011. He litigated for over 12 years before the Labour Court. However on account of interim order granted by this Court, he has not been reinstated despite passage of period of 12 years from the date of Labour Court's decision. This Court has also rejected prayer of Respondent No.1 for payment of wages under Section 17B of the Industrial Disputes Act. It would be apposite to refer to the findings recorded by this Court in its order dated 3 October 2016 which reads thus :

1 The above Civil Application has been filed invoking Section 17B of the Industrial Disputes Act. The Applicant herein is the original Respondent No.1 to the above Writ Petition and the Respondent No.2 herein is the original Petitioner, and the Respondent No.2 herein is the original Respondent No.1 in the above Petition. The above Petition was filed taking exception to the Award of the Labour Court dated 12/12 / 2011 by which the Reference in question was allowed and the Applicant herein was granted reinstatement with backwages.

2 As is necessary for an application under Section 17B of the Industrial Disputes Act, the same is sought to be founded on the fact that the Applicant is unemployed. However, significantly in the Civil Application a_{1} filed there is no averment to the said effect but the said averment was sought to be introduced by way of an Additional Affidavit dated 12/4 / 2016 which was filed by the Applicant in support of the Civil Application.

3 It is required to be noted that though the above Petition came to be admitted on 16/12 / 2012 the Civil Application was affirmed on 29/7 / 2015 i.e. almost after a period of three and half years after the Petition was admitted, and though the Civil Application was affirmed on 29/7 / 2015 in fact it has been filed on 12/4 / 2016 which speaks volumes as regards the need of the Applicant and the urgency in filing the same.

4 Be that as it may, the averment as indicated above in support of the unemployment of the Applicant is controverted by the Respondent Nos.1 and 2 by filing separate affidavits. In so far as the Respondent No.2 is concerned, an affidavit has been filed by

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way one Nityananda Balkrishna Tadvalkar in which affidavit in paragraph 10 it has been stated that the Applicant has not stated as to what he was doing for the last so many years and how he and his family were surviving. It is also stated that the affidavit is false meaning thereby that it suffers from suppressio veri. It is also stated in the affidavit that on enquiries with the Provident Fund Authorities, it is found that the Applicant is employed with one ANSEC Human Resource Services Pvt. Ltd. 110/1A, 2B, Tank Road, Shantinagar, Yerawada Pune on 13/12/2012 and his Provident Fund No. is MH/PUN/122585/19614. To the said affidavit are also annexed the documents in support of the case of the Respondent No.2 that the Applicant is employed with the said ANSEC Human Resource Services Pvt. Ltd. It is after the said affidavit was filed that the Applicant in his rejoinder has accepted his employment with the said ANSEC Human Resource Services Pvt. Ltd. The Applicant has therefore changed his stand and he now seeks to contend that he is entitled to the wages under Section 17B by applying the criteria of whether the wages he is earning are adequate. In support of the said contention the learned counsel for the Applicant sought to place reliance on the judgment dated 12/03/2010 of a learned Single Judge of this Court in *Civil Application No.75 of 2010 in Writ Petition No.1399 of 2008* in the matter of *Kirloskar Pneumatic Kamgar Sangh v/s. Kirloskar Pneumatic. Company Ltd.* The learned counsel for the Applicant also reiterated the case of the Applicant that adequacy of the wages would not have to be seen by this Court whilst adjudicating upon the Application under Section 17B of the Industrial Disputes Act.

5. In my view, it is not possible to accept the aforesaid contentions of the learned counsel for the Applicant inter alia for the following reasons. Firstly, the Applicant does not seem to be in any direct need of wages as can be seen from the fact that the Civil Application has been filed almost after the period of three and half years after the Petition being admitted and though the Civil Application 12/04/2016. Implicit in the said fact would be the fact that the Applicant was affirmed on 29/07/2015 it has been filed on seems to be gainfully employed elsewhere. Secondly it is required to be noted that the Applicant initially in the Civil Application as filed has not stated anything about his unemployment but has stated so thereafter in the additional affidavit that is filed. Significantly in the said additional affidavit there is not a whisper as regards what the Applicant was doing in the interregnum i.e. from the date of the Petition being admitted till filing of the above Civil Application. The least that is expected from the Applicant, who has filed an

application under Section 17B of the Industrial Disputes Act, is a certain amount of candor. It was necessary for the Applicant to state that he was employed but the said employment does not bear him adequate wages. However, such an averment as indicated above is lacking. The above Civil Application therefore lacks bonafides and it would have to be said that the Applicant has not come with clean hands to this Court by making a true and full disclosure. In so far as the judgment of the learned Single of this Court is concerned, the facts in the said case were that the Applicant therein was selling Chinese goods from which he had intermittent income. It is in the said circumstances that the learned Single Judge held that the factum of the Applicant therein earning Rs.2000/- pm would not come in the way of the said Applicant from claiming the last drawn wages under Section 17B of the Industrial Disputes Act. The learned Single Judge therefore did not countenance the contention made on behalf of the employer therein that the said amount be adjusted against the last drawn wages payable to the Applicant therein. However, the facts in the instant case are clearly distinguishable from the facts in the said case. In the instant case, lack of bonafides on the part of the Applicant is ex-facie clear from the facts as aforestated. It is also required to be noted that ultimately if the Applicant succeeds in the above Writ Petition, he would be entitled to the payment of backwages as would be determined by this Court at the hearing of the above Writ Petition. This is in the context of the fact that the Applicant has already attained the age of 58 years, as on date. Hence no relief can be granted to the Applicant. The above Civil Application is accordingly rejected.

13. Considering the overall conspectus of the case, I am of the view that ends of justice would meet if Respondent No.1 is awarded a lumpsum compensation in lieu of relief of reinstatement and backwages. Mr. Bhanage has fairly submitted that though Respondent No. 1 was in fact an employee of CT Associates, who should be directed to pay the compensation, considering the fact that he represents both SPACO and CT Associates in these petitions, direction to pay compensation by SPACO would ensure that the Respondent No.

l actually receives the same in an expeditious manner. Considering this fair offer made by Mr. Bhanage, instead of directing CT Associates to pay the amount of compensation, the same be paid by SPACO.

13. Accordingly, the present petition is partly allowed. Judgment and Award dated 12 December 2011 passed by the Labour Court is modified to the extent that Petitioner-SPACO in Writ Petition No. 3568/2012 shall pay to Respondent No.1 lumpsum compensation of Rs. 4,00,000/- in lieu of reinstatement and backwages. The amount of compensation shall be paid to Respondent No.1 within a period of eight weeks from today. With the above directions, the Writ Petitions are **disposed of**. Rule is partly made absolute.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.

Digitally signed by
NEETA SHAILESH
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