

5 December 2023

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12673 OF 2022**

Omsingh Pomsingh Parmar

& Ors.

...Petitioners

V/s.

Yogendra Palakdhari Gautam

...Respondents

WITH

WRIT PETITION NO. 14766 OF 2022

Omsingh Pomsingh Parmar

& Ors.

...Petitioners

V/s.

Ramashish Bhajan Ram & anr.

...Respondents

WITH

WRIT PETITION NO. 12674 OF 2022

Omsingh Pomsingh Parmar

& Ors.

...Petitioners

V/s.

Jaiprakash N. Kushwaah & anr.

...Respondents

WITH

WRIT PETITION NO. 12672 OF 2022

Omsingh Pomsingh Parmar

& Ors.

...Petitioners

V/s.

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Guddu Surybali Prasad & anr.

...Respondents

Mr. Filji Frederick a/w. Ms. Shamika Surve, Mr. Archit Chaturvedi, Mr. Aayu Saxena i/b y. FF & Associates, for the Petitioners.

Mr. Vaibhav Jagdale, for Respondent No.1.

Mr. C.D. Mali, AGP for State.

CORAM : SANDEEP V. MARNE, J.

Resd. On : 1 December 2023.

Pron. On : 5 December 2023.

JUDGMENT :

1. These four petitions are filed by the employer challenging the Awards dated 29 June 2019 and 13 December 2019 passed by the Labour Court, Thane setting aside the termination of the four workmen/Respondents and directing their reinstatement w.e.f 13 November 2016.

2. The three Petitioners claim to be in the business of trading of cotton yarn and fabric in the name and style as 'Supeema Cottons Private Limited'. The Respondents claimed that Petitioners own and operate several manufacturing Units/power looms and that they were employed by the Petitioners from various dates in the year 2001 and have rendered more than 240 days of service in each year.

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Respondents complained that Petitioners were not issuing attendance cards to them nor granted leave or bonus and that Petitioners used to pay wages on mere vouchers by taking their signatures on simple registers. Respondents complained that they were terminated from service w.e.f 13 November 2016 without assigning any reason and without paying any retrenchment compensation, notice or notice pay. Respondents therefore complained before the Labour Enforcement Officer, Bhiwandi and the dispute was taken in conciliation. Since the conciliation failed, the Deputy Labour Commissioner made a reference to the Labour Court, Thane for adjudication in the matter of reinstatement of the Workmen alongwith backwages and continuity in service w.e.f. 13 November 2016.

3. Respondents filed their Statement of Claim. Petitioners filed Written Statement opposing the claim of the Workmen by taking various defences. They denied employer-employee relationship with Respondents and stated that Respondents were neither employed by the Petitioner nor terminated. Petitioners claimed that the concerned power loom unit was rented out to a tenant and that therefore Respondents are not the direct employees of the Petitioners. Petitioners appointed a legal practitioner to present their case. Such appointment was objected by Respondents by filing application at Exhibit-U-2 under Section 36 of the Industrial Disputes Act, 1947. By order dated 2 February 2018, the Labour Court allowed the application and thereby restrained the Petitioners from appointing legal practitioner without consent of

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Respondents. Another Application was filed by Petitioner's Advocate in his capacity as Vice President of Bhiwandi Textile Processor Association to represent the Petitioners. The Application came to be rejected by the Labour Court by Order dated 27 May 2019. Another application was filed for acceptance of the authority of the Advocate to represent Petitioners at Exhibit-C-11 which came to be rejected by Order dated 19 June 2019. Respondents led their evidence. However, they were not cross-examined by Petitioners despite grant of opportunity. Petitioners also did not lead their own evidence. The Labour Court has delivered Awards dated 29 June 2019 in case of Respondents - Yogendra Palakdhari Gautam and Guddu Suryabali Prasad in Reference (IDA) Nos. 110 and 111 of 2017. Separate Awards were rendered on 13 December 2019 in case of Respondents - Ramashish Bajan Ram and Jaiprakash Nagina Kushwaah in Reference (IDA) No. 109 of 2017 and 112 of 2017. By all four Awards, the Labour Court has directed Petitioners to reinstate Respondent-Workmen from the date of illegal termination i.e. 13 November 2016 with full backwages and continuity of service.

4. It appears that the Petitioners did not implement the Awards and therefore the Respondents initiated proceedings for execution of Awards. The Tehsildar, Bhiwandi issued recovery notices to the Petitioners. Petitioners have thereafter filed the present petitions challenging the Awards dated 29 June 2019 and 13 December 2019.

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5. Mr. Fredrick would appear on behalf of the Petitioners and submit that the impugned Awards have been passed without grant of any opportunity of hearing to the Petitioners. That denial of lawful request of the Petitioners for being represented by legal practitioner or legal expert has resulted in decision of References without any evidence, cross-examination and arguments on part of the Petitioners. He would therefore pray that the Awards be set aside and references be remanded for being decided afresh after grant of opportunity of defence to the Petitioners by engaging a legal practitioner.

6. Mr. Frederick would further submit that there is total absence of employer-employee relationship between the Petitioners and the Respondents. That Respondents were never employed by Petitioners. That the Powerloom in question was infact rented out to third parties by Petitioners and therefore the possibility of third parties utilizing the services of the Respondents as and when required. That the Respondents did not produce even a single document to prove employer-employee relationship with the Petitioners. That therefore the impugned Awards are liable to be set aside.

7. *Per-contra*, Mr. Jagdale, the learned counsel appearing for the Respondents would oppose the petitions submitting that there is gross delay in filing the same. That the Awards delivered on 29 June 2019 and 13 December 2019 are

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belatedly challenged by the Petitioners by filing the present petitions in October 2022. That there is no valid justification for such delay. That the petitions are filed only after the Tehsildar issued recovery notices. He would therefore submit that the petitions be rejected on the ground of delay and laches.

8. Mr. Jagdale would further submit that under the provisions of Section 36 of the ID Act, the Petitioners are not entitled to engage a legal practitioner. That the Respondents were represented by Union representative and not by a legal practitioner. That therefore the Labour Court has rightly rejected the request of the Petitioners for engagement of a legal practitioner. That the orders rejecting the representation by a legal practitioner have attained finally on account of failure on the part of the Petitioners to challenge the same. That therefore the Petitioners cannot now be permitted to raise the issue of refusal of permission to engage Legal Practitioner while challenging the final Awards. That repeated opportunities were given to the Petitioners to cross-examine the Respondents, to lead evidence and to produce documents. Infact on application filed by the Respondents, Petitioners were directed to produce various documents in the form of attendance register, wage register, leave register, bonus register etc. which were deliberately withheld by the Petitioners. That since the termination of the Respondents is effected in violation of the provisions of the ID Act, the Labour Court has rightly directed

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their reinstatement with full backwages and continuity in service.

9. Rival contentions of the parties now fall for my consideration.

10. In the present case, the References have been answered by the Labour Court in absence of any evidence on the part of the Petitioners. Though Petitioners filed Written Statement denying employer-employee relationship, they failed to cross-examine the Respondents nor led their own evidence. This has apparently happened on account of denial of opportunity to Petitioners to engage a legal practitioner. The chronology of events would indicate that the Statements of Claim was filed by the Workmen sometime in July 2017. The Written Statements were filed by the Petitioners in January 2018. The Petitioners apparently engaged an Advocate. The Respondent thereafter filed application at Exhibit-U-2 objecting to appointment of legal practitioner by Petitioners. By order dated 2 February 2018, the Labour Court allowed the application of the Respondents and restrained the Petitioners from engaging legal practitioner or Labour Law Consultant without consulting the Respondents. It appears that the Petitioners made one more attempt by engaging the services of Mr. Nitin Shivkar who was not only an Advocate but also President of Bhiwandi Textile Processor Association. The

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application was rejected by Order dated 27 May 2019. One more application filed for permission to represent Petitioners through Mr. Nitin Shivakar was rejected on 19 June 2019. Ten days later, the Labour Court rendered Award in Reference (IDA) No. 111/2017 (Yogendra Palakdhari Gautam).

11. It thus appears that the Petitioners kept on pressing for representation through Advocate till decision of Reference (IDA) No. 111 of 2017. Similar is the position in respect of the other References as well. In their quest for being represented by a legal practitioner, Petitioners have apparently missed out an opportunity to lead evidence, to cross-examine the Respondents and to file documents. While Labour Court cannot be faulted in denying permission to Petitioners for engaging legal practitioner, the effect of denial of such permission is required to be appreciated. No doubt the orders denying permission to appoint legal practitioner has attained finality on account of failure on the part of the Petitioners to challenge the order. However in the process of making repeated attempts to seek permission to engage legal practitioner, the References are decided virtually in absence of Petitioners.

12. Mr. Frederick has strenuously urged for remand of the References for fresh decision after grant of permission to the Petitioners to engage legal practitioner. In my view, considering the nature of dispute between the parties, it would be

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appropriate to give a full stop to the entire litigation, rather than making the parties to undergo one more round of litigation before the Labour Court. The Respondents have been discontinued from service since 13 November 2016. The Petitioners were directed by the Labour Court to produce various documents such as Wage Register, Attendance Register, Bonus Register etc. However, the said directions remained unimplemented on account of which the Labour Court has drawn an adverse inference against the Petitioners. Even in the present petitions, no documents are produced by the Petitioners to prove that Petitioners did not work with them or did not work for the period made in the Claim. Petitioners have vaguely stated in the petitions as under:

10. Petitioners state that they are solely engaged in the business of trading of cotton fabrics and not in any manner engaged in manufacturing or processing of cotton yarn or fabric. The Petitioners being the pioneers of the trade in Bhiwandi area coupled with the fact that they are the owners of the compound within which several such establishments are operating their units, the said compound popularly came to be known after the name of Petitioner No. 1. Respondent no. I may have been employed with one such unit which is situated within the said compound. It is also pertinent to note that the workers engaged in this industry are mainly floating workers with no fixed place of work or unit and many time unaware of the principal employer. Several galas in the said Compound are either sold or given out on rent to third parties.

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13. Petitioners have also took a defence in the Written Statement that they are merely engaged in trading business and that they do not undertake manufacturing activity. They also stated that Petitioner No.3-Mr. Amit Omsingh Parmar had rented out his Powerloom to independent tenant on rental basis. Petitioners thus sought to suggest that Respondent may have been engaged by the Tenant operating the Powerloom. If that was the case, Petitioners ought to have produced some documents alongwith the petitions to suggest that Respondents were indeed employees of other employers. It is difficult to accept that there is total absence of employer-employee relationship between the Petitioners and Respondents.

14. The Labour Court has awarded both backwages and continuity of service to the Respondents w.e.f. 13 November 2016. The amount of 100% backwages are reflected in Tehsildar's Recovery Certificate as under :

Sr. No.	Name of Workmen	Date of Recovery Certificate	Amount demanded
1.	Yogendra Palakdhari Gautam	30.01.2020	Rs.4,20,000/-
2.	Ramashish Bajan Ram	01.11.2022	Rs.7,52,402/-
3.	Jayprakash N. Khushwaha	04.10.2022	Rs.8,03,078/-
4.	Guddub Suryabali	23.08.2022	Rs.6,36,002/-

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	Prasad		
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15. The testimony of the Respondents about non-employment during the intervening period has gone unchallenged on account of absence of the Petitioners in proceedings due to refusal of permission to engage Legal Practitioner. One option available is to remand the References for grant of opportunity to Petitioners to lead evidence both to establish non-existence of employer employee relationship and also to contest claim of Respondents of not being gainfully employed. By now a period of 7 long years have elapsed from the dates of termination of Respondents' services. The relationship between the parties are now strained on account of pending litigation and especially in view of Respondents requiring to invoke the machinery of Tehsildar for recovery of Backwages. In such circumstances, reinstatement of Respondents in services of Petitioners may not be appropriate. Respondents may have, by now, secured some form of employment. In these circumstances, in my view, award of lumpsum compensation would be the appropriate remedy instead of directing reinstatement of the Respondents with Backwages. Award of full Backwages is also not be justified in the facts and circumstances of the case. Considering the amounts of backwages reflected in the recovery certificates, the backwages till date would be approximately about Rs. 9,00,000. Therefore, it would be appropriate to award lumpsum compensation of Rs. 6,00,000/- to each of the Respondents in

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lieu of reinstatement and backwages. It appears that some deposits are already made by Petitioners as under:

	Name of Respondent	Writ Petition No.	Amount deposited
1.	Yogendra Palakdhari Gautam	12673/2022	Rs.4,20,000 With Tehsildar full amount of recovery certificate
2.	Ramashish Bajan Ram	14766/2022	Rs.3,76,200 In Labour Court 50% amount of recovery certificate
3.	Jayprakash N. Khushwaha	12674/022	Rs.4,01,538 In Labour Court 50% amount of recovery certificate
4.	Guddub Suryabali Prasad	12672/2022	Rs.3,18,001 In Labour Court 50% amount of recovery certificate

16. Respondents can be permitted to withdraw the amounts deposited with Tehsildar or Labour Court, as the case may be, and Petitioners shall pay the balance amount of compensation to Respondents directly.

17. Accordingly, I proceed to pass the following order:

- (i) The Awards dated 29 June 2019 in Reference (IDA) No. 111 of 2017 and 110 of 2017 as well as Awards dated 13 December 2019 in Reference (IDA) No. 112 of 2017 and 109 of 2019 are modified to the extent that

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Petitioner shall pay to each of the Respondents a lumpsum compensation of Rs. 6,00,000/- in lieu of reinstatement and backwages.

(ii) Save and except the lump sum compensation so awarded, Respondents shall not be entitled to any other benefits from Petitioners.

(iii) Respondents are permitted to withdraw the amounts of compensation deposited with Tehsildar or the Labour Court, as the case may be.

(iv) Petitioners shall pay the balance amount of compensation directly to Respondents within 4 weeks.

18. With the above directions, the Writ Petitions are disposed of. There shall be no order as to costs.

**NEETA
SHAILESH
SAWANT**

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2023.12.06
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SANDEEP V. MARNE, J.