



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**58 REVIEW APPLICATION (CIVIL) NO. 56 OF 2024
IN
WRIT PETITION NO.8406 OF 2023**

**CHIEF ENGINEER & CHIEF ADMINISTRATOR
COMMAND AREA DEVELOPMENT AUTHORITY,
GARKHEDA, AURANGABAD & OTHERS**

VERSUS

**THE ASSISTANT COMMISSIONER OF LABOUR, GOVT
OF MAHARASHTRA, LATUR & OTHERS**

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Advocate for Applicants : Mr.S.C.Arora
AGP for Respondent-State : Adv.P.V.Diggikar
Advocate for Respondent nos.2 to 18, 20 to 48 & 50 to 56 :
Adv.P.V.Barde

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CORAM : ARUN R. PEDNEKER, J.

DATE : 23.09.2024

P.C. :

1] Heard the learned counsel for the review applicants.

2] The review petitioners – applicants raised grounds in the review application, as under :

I. This Hon'ble court may consider that, the writ petition was heard mainly on the legal

ground of interpretation and application of section 33 – C (1) of the Industrial Disputes Act, 1947 and the submissions of the applicants on the facts were restricted. Whereas, this Hon'ble Court has dealt with the facts of the matter while dismissing the writ petition and the applicants have lost the opportunity to point out the pleadings regarding challenge to the State of the respondent nos.2 to 55 as employees, which was equally challenge by the respondent nos.57 to 59 Contractors as well.

II. This Hon'ble Court may consider that, the applicants have categorically challenged the status of the respondent nos.02 to 55 as to have ever worked on daily wages at the barrages and have challenged their status as employees of the contractors. The applicants have placed the copy of their say at page no.51 of the writ compilation and in this say the status of the employees to have been worked in on daily wages or they have received any remuneration from the contractor is categorically challenged which appears in para no.4 of the Say at page no.52 of the Writ compilation. Whereas, this Hon'ble Court while dismissing the writ petition in its order in paragraph no.7 has observed that

there is no dispute about the principal employer and employees, which goes to the root of the matter that, the same has been well disputed by the applicants as well as the contractor.

III. This Hon'ble Court may consider that, the letter issued to the contractor as referred in para no.14 of the order under review nowhere suggest that, in this letter the applicants have admitted the liability of the respondent employee in any manner. Through this letter only directions were given to the contractor to pay the minimum wages to the employees working on the barrages. Relying on this letter this Hon'ble Court have dismissed the petition and has further held that, the respondent employees be given with the payments within four weeks of the order. If this aspect is reviewed then certainly there remains no scope so as to say that, the respondent nos.2 to 55 could be held to be the employees who worked on the barrages.

IV. This Hon'ble Court may consider that, the scope of section 33 – C (1) of the Industrial Disputes Act, is only to execute the order passed by the Labour Court etc. If a person

unlike the respondent nos. 2 to 55 employees without approaching to the Labour Court and by just making an application to the Labour Commissioner and the Labour Commissioner without any authority enquires into such claim and passes a judgment and order and a recovery certificate would certainly settle a precedence for the employees and in such cases there will be no need to enquire into the authenticity of such claims under the ambit of applicable laws, as otherwise the claims of the minimum wages or any other claims has to be gone into by a proper authority as provided under the Labour Laws, and then only the Labour Commissioner will have an authority to execute such orders as would be passed by the Labour Court. By not following the procedure such aspect of the employer employee relationship will have to be presumed. Unlike the applicants being Government Institution will face heavy financial burden which is exchequer public money, by not following the law by the respondent nos. 2 to 55 employees.

V. *This Hon'ble Court may consider that, the in the case of **Lily Thomas & Ors. V/s. Union of India & Ors.** Reported in (2000) 6 SCC 224, in*

this case the Hon'ble Apex Court had observed, "if the court finds that the error pointed in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous exemption which infact did not exist and in perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error."

3] The applicants filed review application, seeking review of the order dated 11.03.2024 passed in Writ Petition No.8406 of 2023. The review applicants are raising grievance that the respondent nos. 2 to 55 are not the employees of the Contractor and this aspect of the matter is not considered in the judgment under review. However, the learned counsel for the applicants had not raised dispute as regards respondents-employees being not the contract employees of the contractors in the writ petition. There is categorically findings of the Assistant Commissioner of Labour, Latur in the order dated 19.06.2023 that the petitioners are the principal employers and the respondent - employees are the contract employees of the contractors of

the petitioners. This fact is not challenged in the writ petition by raising appropriate grounds and by providing material to that effect.

4] The writ petitioners in Writ Petition No.8407 of 2023 has stated at para no.3 as under :

*3. This application has been filed in utter suppression of facts particularly that there is no employer-employee relation in between the applicants and the petitioner irrigation department. The petitioners filed their written statement and have categorically contended that the applicants are not their employees. It is also clarified that the respondent nos.57 to 59 **could be the workers of the Labour Contractors** of the petitioner irrigation department and who are entrusted with the work of providing personnel's for their 21 barrages at Latur during the mansoon season and even their period of work / tender was classified.*

5] The only argument canvassed before this Court for consideration as noted in judgment under review is, as under :

1. Whether the respondent no.1 Assistant Commissioner of Labour, Latur could have initiated proceeding under Section 33-C (1) of the Industrial Disputes Act, 1947, without there being any award of the Labour Court?

2. Whether the respondent no.1 Assistant Commissioner of Labour, Latur failed to consider the fact that the petitioners and the applicants do not fall within the ambit of the employer – employee relationship and whether the recovery certificate could have been issued in the facts of the case?

6] The applicants have not raised grounds in the Writ Petition that the respondents – employees are not the employees of the contractors rather it is contended in the writ petition that they are not the employees of the petitioners and that the respondents could be workers of the labour contractors of the petitioners. Be that as it may, even in the impugned order dated 19.06.2023 passed by the Assistant Commissioner of Labour, Latur in the writ petition, the Assistant Commissioner of Labour, Latur has held that the petitioners are the principal employers and the employees are the contract employees of the petitioners. The said finding is not specifically challenged, so also, the

final direction issued is only to pay difference between the wages as paid by the contractor and the Minimum Wages Act.

7] The letter dated 27.06.2022 written by the Executive Engineer, Latur Irrigation Department No.1, Latur to the Chhatrapati Security Forces, Latur, wherein direction was given to pay the minimum wages to the concerned employees. In view of the specific letter of the Executive Engineer, Latur Irrigation Department No.1, Latur, it is not permissible to contend that the respondents are not the employees of the concerned Contractor. As such, the contention that the respondent nos.2 to 55 are not the employees of the Contractors is without substance and is rejected. In view of the same, the review application is dismissed.

8] List the application for withdrawal of the amount on 22.10.2024.

[ARUN R. PEDNEKER]
JUDGE

