



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

WRIT PETITION NO. 9621 OF 2015

Kisan Hari Karle

VERSUS

The Kinetic Engineering Limited Through Its General Manager

Mr. P. V. Barde, Advocate for petitioner

Mr. V. S. Bedre, Advocate for respondent

CORAM : R. M. JOSHI, J.

DATE : 29th NOVEMBER, 2024

PER COURT :-

1. This petition takes exception to award dated 30.01.2015 passed by 2nd Labour Court in reference IDA No. 02/2011, whereby the prayer of the workman for reinstatement in service is refused.

2. Parties are referred to as "workman" and "employer" for the sake of brevity.

3. The facts which led to the filing of this petition can be narrated in brief as under.

It is a case of the workman that he was appointed on daily wages as an unskilled labour in Maintenance Division since 20.05.1990.

He claims to have continuously worked with the employer till 31.05.1991. Thereafter, he was shown as a "Contractor". It is claimed that he is not a Contractor and this is a sham arrangement shown. Workman further claims that on 31.05.1991 name of the workman was struck out from the Muster Roll which amounts to termination of his services. With these averments, termination is sought to be set aside, seeking relief of reinstatement in service with backwages and continuity.

4. Employer filed written statement opposing the statement of claim, contending that there is no privity of contract of employment i.e., employee employer relationship between the parties. It is claimed that the Complaint (ULP) No. 146/1993 filed by the workman before the Industrial Court came to be dismissed. With those amongst order contentions, it is thus claimed that there is no merit in the reference and employer sought dismissal thereof.

5. Learned counsel for the workman submits that two different issues were raised by the workman by filing statement of claim before the reference Court, i.e., issue of non compliance of Sec 25(F) of the Industrial Disputes Act, 1947 (for short "the Act") but also another specific plea was raised in Para 4 of the statement of claim that the employer has retained Junior employees in service and has also

appointed new employees and thereby there is non compliance of Section 25(G) of the Act. Thus, it is his contention that there are sufficient pleadings as well as evidence to indicate that there is violation of both these provisions. However, learned Labour Court while passing impugned award failed to record findings on the point/issue of the termination of the services of workman by striking out his name from the Muster Roll on 31.05.1991. It is thus his submission that since such act on the part of the employer amounts to termination of services as well as it was obligatory on the part of the Labour Court to record findings thereon and to hold that termination is illegal. He further contends that the issue with regard to the application of Section 25G of the Act is also ignored by the Labour Court and hence order impugned deserves interference and matter needs relegation back to the trial Court.

6. Learned counsel for the employer supported the impugned award by contending that the Industrial Court in the previous complaint filed by the workman bearing Complaint (ULP) No. 146/1993 has recorded finding that though initially workman had worked as a daily wager with the employer, however later on he worked on contract basis. According to him, this finding is not challenged by the workman and as such, the same having attained finality is binding on him. He drew attention of the Court to the written statement filed before the reference

Court wherein the employee employer relationship is denied. With these amongst other submissions, petition is sought to be dismissed.

7. There is no dispute about the fact that in Complaint (ULP) No. 146/1993, Industrial Court has recorded following findings,

“from the above evidence it is evident that initially for some period, the complainant has worked as a daily wager but later on he worked on contract basis”.

There is no challenge either by the workman or by the employer to this judgment and finding. It, therefore, can safely be said now that initially workman has worked as a daily wager but later on he has been working on contract basis. If it is so, it was absolutely necessary for the learned Labour Court to consider the issue raised by the workman with regard to termination of his services by removing his name from the Muster Roll, since termination is claimed from date prior to he being shown on contract basis. Perusal of the entire award passed by the Labour Court, does not indicate any discussion or decision on this issue. Apart from this, when the workman has come with a specific case that junior to retain were retained him in the service and the fresh employees were also employed, and in such circumstances, issue of compliance of Section 25(G) of Act, fell to the consideration of the Labour Court and it ought to have been decided as to whether there is

termination of his services by removal of his name from the Muster Roll and the said termination, is in compliance of Section 25G or not.

8. Having gone through pleadings and evidences on record, this Court though finds that the observations of the learned trial Court with regard to the non completion of 240 days of service and non application of Section 25 F is not perverse, however, since, the learned Labour Court has failed to record any finding on these two issues, this Court finds it appropriate to set aside the impugned order and relegate reference IDA back to the the reference Court for decision on these two points. i.e.,

(I) Whether the act of employer of striking out name of workman amounts to termination of his services?

(II) Whether termination of the workman is illegal for non compliance of provisions of Section 25(G) of the Act.

Accordingly impugned order is set aside and reference IDA No. 02/2011 is relegated back. Needless to say that parties are at liberty to lead evidence in support of their contentions on above points. Parties to appear before the Labour Court on 10th January, 2025. Since the date of appearance before the Court is determined, by consent of parties, Labour Court is not required to issue notices. Learned Labour Court to decide

said reference within a period of 6 months from today.

9. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

bsj