

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2032 OF 2019

WITH

IA/17023/2023 IN WP/2032/2019

WITH

WRIT PETITION NO.8728 OF 2021

WITH

WRIT PETITION NO.13017 OF 2018

WITH

WRIT PETITION NO.416 OF 2019

WITH

WRIT PETITION NO.419 OF 2019

WITH

WRIT PETITION NO.415 OF 2019

WITH

WRIT PETITION NO.13007 OF 2018

WITH

WRIT PETITION NO.418 OF 2019

WITH

WRIT PETITION NO.414 OF 2019

WITH

WRIT PETITION NO.13181 OF 2018

WITH

WRIT PETITION NO.417 OF 2019

WITH
WRIT PETITION NO.413 OF 2019

Mah.Rajya Pathyapustak Nirmiti Va
Abhyaskrama Mahamandal,
Balbharati And Anr. Petitioner

Versus
Shri. Rajendra Jayram Kamble And Ors. ...

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Mr. Nitin Arvind Kulkarni, a/w. Mr. Avinash Belge, for Petitioner.

Mr. K. S. Bapat, Sr. Advocate a/w. Mr. Yashodeep Deshmukh, Mr. Gaurav Gawande & Mr. Ameya Tawde, Ms. Vaidehi Pradeep Deshmukh, for Respondent.

Mr. C. M. Kokesh, for Respondent No.5.

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CORAM : SANDEEP V. MARNE, J.

DATED : 22 JANUARY 2024.

P.C. :

The challenge in these petitions is to various awards passed by the Labour Court, Kolhapur in various References raised at the instance of Respondent-Employees. The references made by the appropriate government was about termination of Respondents by the Petitioner Board on 23 September 2014. For answering the Reference, the Labour Court framed an issue *inter alia* about existence of employer-employee relationship between the Petitioner and Respondent-Employees. While it was the contention of the Petitioner-Board that Respondents are employees of the contractors,

Respondents contended that the contracts are purely bogus and sham and that they are *in fact* direct employees of the Petitioner-Board.

2. The issue of existence of employer-employee relationship has been answered by the Labour Court by recording various findings relying upon the Judgment of the Apex Court in **Steel Authority of India Ltd. Vs. National Union Water Front Workrs & Anr.**, 2001 III CLR 349. However it appears that the Labour Court has not taken into consideration Judgment of Apex Court in **Balwant Rai Saluja and Ors. Vs. Air India Ltd. & Ors.**, (2014) 9 SCC 407 which lays down 06 tests for the purpose establishing the employer-employee relationship between the parties. In this regard it would be apposite to reproduce paragraph No.65 of the Judgment in **Balwant Rai** (supra) which reads thus :

65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in *Bengal Nagpur Cotton Mills case*, *International Airport Authroty of India case* and *Nalco case*.

3. It appears that the Judgment of the Apex Court in *Balwant Rai* was not cited before the Labour Court which did not have the advantage of considering the 06 tests prescribed by the Apex Court in paragraph 65 of its

Judgment. Consequently Labour Court has not examined the issue as to whether Respondents satisfied the said 06 tests for the purpose of establishment of employer-employee relationship between the parties. In my view therefore the proceedings are required to be remanded to the Labour Court for the purpose of re-determination of the issue of existence of employer-employee relationship in the light of Judgment of the Apex Court in *Balanwant Rai Saluja*.

4. Accordingly impugned awards dated 05 May 2018 are set aside and the proceedings are remanded before the Labour Court for the purpose of re-determination of issue of employer-employee relationship in the light of law laid down by the Apex Court in its Judgment in *Balwant Rai Saluja*. In the remanded proceedings, it would not be necessary for the parties to lead additional evidence. The issue can be decided on the evidence and documents available on record. Considering narrow scope of remit to Labour Court, it shall proceed to decide the remanded proceedings as expeditiously as possible preferably within a period of 06 weeks from today. With the above directions, Writ Petitions are disposed of. Since the Writ Petitions are disposed of, nothing survives in the Interim Applications and those are also disposed of.

SANDEEP V. MARNE, J.

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