

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1546 OF 2024

Jerry Varghese International Ltd.

...Petitioner

Versus

Mathew Yohannan & Anr.

...Respondents

WITH

WRIT PETITION NO.3657 OF 2024

Jerry Varghese International Ltd.

...Petitioner

Versus

Victor Philip & Anr.

...Respondents

Mr. Mahesh Shukla a/w Mr. Niraj Prajapati, for the Petitioner in both Writ Petitions.

Mr. Jagdish Choudhary i/b Mr. Sunil K. Kharwal, for Respondent No.1 in both Writ Petitions.

CORAM: MADHAV J. JAMDAR, J.

DATED: 12 NOVEMBER 2024

JUDGMENT:

1. In Writ Petition No.1546 of 2024 the challenge is to the legality and validity of the Award dated 11th July 2022 passed by the learned Presiding Officer, 6th Labour Court, Mumbai in Reference (IDA) No.85 of 2019. In Writ Petition No.3657 of 2024 the challenge is to the legality and validity of the Award dated 11th July 2022 passed by the learned Presiding Officer, 6th Labour Court, Mumbai in Reference (IDA) No.86 of 2019.

2. Both, Reference (IDA) No.85 of 2019 and Reference (IDA) No.86 of 2019 are with respect to the Demand Letter dated 29th April 2018 sent by the respective second party workman for reinstatement with continuity of service and full back wages w.e.f. 14th October 2017.

3. By the impugned Award dated 11th July 2022 passed in Reference (IDA) No.85 of 2019 the Petitioner has been directed to pay full back wages to the second party workman from 15th October 2017 till the date of his superannuation with other incidental benefits. As far as Reference (IDA) No.86 of 2019 is concerned, the Petitioner has been directed to reinstate the second party i.e. Respondent in Jerry Varghese International Ltd. and to pay full back wages with other incidental benefits w.e.f. 15th October 2017. As the issues raised in both these Writ Petitions are identical, both the Writ Petitions are decided by common Judgment.

4. It is the submission of Mr. Shukla, learned Counsel for the Petitioner that the impugned Awards have been passed on the assumption that the Respondent has been primarily appointed by the Petitioner - Jerry Varghese International Ltd., and the Petitioner made him work with its division i.e. Shanti Publications and that the entire control and supervision of the said division was with the Petitioner. It is the case of the Respondent No.1 that his services were illegally terminated on 14th October 2017. Mr. Shukla, learned Counsel pointed

out findings recorded in the impugned Awards and submitted that learned Labour Court accepted the said case of the Respondents.

5. In view of the findings recorded in the impugned Awards, it is the submission of Mr. Shukla, learned Counsel for the Petitioner that Appointment Letter issued to the Respondent No.1 is by Shanti Publications, wherein it is specifically mentioned that it is a division of the Petitioner. The Confirmation Letter issued to the Respondent No.1 also confirms these facts. He submitted that the Petitioner – Jerry Varghese International Ltd. and Shanti Publications are in distinct businesses. The Petitioner - Jerry Varghese International Ltd. is engaged in the business of Overseas Recruitment whereas Shanti Publications - Respondent No.2 was engaged in Publication and circulation of Newspaper by name “Employment & NRI Times”. He submitted that the Respondent No.1 was working as DTP Operator and there is no work available for such employee with the Petitioner. He pointed out the Notice of Closure and supporting Resolution. He relied on certain admissions given by the Respondent during cross – examination. On the basis of said admissions, it is the submission of Mr. Shukla, learned Counsel for the Petitioner that, admittedly, said Shanti Publications has been permanently closed. He relied on the Award passed in Reference (IT) No.9 of 2016. He submitted that said Shanti Publications is a separate division having separate Bank Account, separate Trial Balance,

separate Balance Sheet and separate Profit and Loss Account. He submitted that in fact said Shanti Publications has closed the business. To substantiate the said contention, he relied on the Letter issued by the Registrar of Newspaper, declaring that said Shanti Publications ceases from the record of the Registrar of Newspaper of India. He submitted that as said the Shanti Publications has been closed, there cannot be any Order of reinstatement. He submitted that as the said Respondent No.2 was a loss making division and since it could not survive the losses, hence constrained to close down. He further submitted that as Respondent No.2 has only 11 employees and hence the provisions of Chapter V-B of the *Industrial Disputes Act, 1947* is not applicable. He submitted that the Petitioner intimated about the closure of its division to the Office of Labour Commissioner by Letter dated 25th October 2017. He relied on the decision of this Court in ***Saurashtra Trust Karmachari Sangh v. States' People (P) Ltd.***¹. He therefore submitted that the impugned Awards dated 11th July 2022 passed by the learned Presiding Officer, 6th Labour Court, Mumbai in Reference (IDA) No.85 of 2019 and Reference (IDA) No.86 of 2019 be quashed and set aside.

6. On the other hand, Mr. Kharwal, learned Counsel for the Respondent No.1 in both the Writ Petitions, submitted that the Appointment Letter clearly specifies the offer for employment with Jerry Varghese International Ltd. He points out the Confirmation Letter. He

1 1995 SCC OnLine Bom 510

submitted that said Appointment Letter as well as the Confirmation Letter are duly signed by the Managing Director of M/s. Jerry Varghese International Ltd. i.e. Petitioner Company. He pointed out certain admissions given by the Company's witness and submitted that it is clear that the respective Respondent No.1 were working with the said Jerry Varghese International Ltd. He submitted that the wages were paid by the said Jerry Varghese International Ltd. He submitted that the Respondent No.1 workman and his colleagues were not being given the minimum wages and other benefits. Therefore, the Respondent workman and other colleagues joined the Union i.e. Maharashtra General Kamgar Union in September 2014. Said Union filed the Complaint (ULP) No.286 of 2014 on 7th October 2014. He submitted that the learned Industrial Court by Order dated 10th October 2014 protected the services of the concerned employees. He submitted that in view of these developments although wages were paid since 2010 by the Petitioner – Jerry Varghese International Ltd. from 2015 onwards, wages which were paid to them have been shown as compensation and the same were shown to have been paid by said Shanti Publications. He therefore submitted that it is very clear that the respective Respondent No.1 were appointed by the Petitioner and they were working for the Petitioner as can be seen from the admissions given by the witnesses of the Company. He submitted that Shanti Publications is not a registered

Company, partnership firm or proprietorship and that it is the Petitioner Jerry Varghese International Ltd. who is looking after day to day working of the concerned employee. He also relied on Section 9A of the *Industrial Disputes Act, 1947* (“**I. D. Act**”) and submitted that no detrimental action should be taken against the employees without notice of change. He submitted that termination is totally illegal as the conditions as per the provisions of Section 25A of the I. D. Act have not been complied with and no workman employed in any industry who has been in continuous service not for less than one year under an employer shall be retrenched by the employer until the workman has been given retrenchment compensation. He therefore submitted that no interference in the impugned Awards is warranted.

7. In view of the rival submissions, the main point which is required to be decided is whether the respective Respondent No.1 have been appointed by the Petitioner i.e. Jerry Varghese International Ltd. or they were employees of Shanti Publications. As the issue in both the Writ Petitions is identical, the documents which are produced in Writ Petition No.1546 of 2024 are taken into consideration.

8. The Respondent No.1 was appointed by Appointment Letter dated 6th December 2010 (Pages 28-29). The said Appointment Letter specifically states as follows:-

“Offer for employment with Jerry Varghese International Ltd.”

Although the said Appointment Letter was issued on the letterhead of Shanti Publications, it is specifically mentioned in the said Letter that “Offer for employment with Jerry Varghese International Ltd.”. The said Letter dated 6th December 2010 has been signed by Varghese Mathew, Managing Director of the Petitioner, for Shanti Publications. At the bottom of the said letter it is mentioned as follows:-

“a division of Jerry Varghese International Ltd.”

9. Thereafter, Letter of Confirmation was issued on 6th June 2011 (Pages 30 – 32). The said Confirmation Letter is also signed by Varghese Mathew, Managing Director of the Petitioner. At the bottom of the said letter it is mentioned as follows:-

“a division of Jerry Varghese International Ltd.”

10. By Letter dated 22nd December 2014 (Page 3 of Compilation of Documents produced by Respondent No.1), the payment which was being paid to the Respondent No.1, came to be revised to Rs.14,400/- from 1st January 2015 in appreciation of the performance of Respondent No.1. Although the said Letter is also on the letterhead of said Shanti Publications, it is specifically mentioned in the said letter as follows:

“We wish you a successful career with JERRY VARGHESE.”

The said letter dated 22nd December 2014 is also signed by the Managing Director of the Petitioner.

11. Thereafter, further Letter dated 31st July 2015 (Page 4 of compilation of Respondent No.1) has been issued by which the payment made to the Petitioner is revised to Rs.15,000/- from 1st July 2015. The said Letter is also signed by the Managing Director of the Petitioner.

12. It is very significant to note that the salary slips which have been produced from Pages 5 to 26 of the Compilation of Documents, show that from 2011 - July 2015 salary slips were issued by the Petitioner - Jerry Varghese International Ltd. and after October 2015 the same were issued by Shanti Publications.

13. In this background of the matter, it is necessary to see the contentions raised in statement of claim and written statement. The second party workman has specifically stated in the statement of claim that the second party was employed with M/s. Jerry Varghese International Ltd. and division thereof M/s. Shanti Publications since 6th September 2010 as a Data Operator and his last drawn wages were Rs.17,097/- per month.

14. In the written statement of the first party i.e. the Petitioner, it is *inter alia* stated in Paragraph No.1 as follows:

“At the very outset, the first party states that it is engaged in the business of overseas recruitment whereas M/s Shanti Publication (a division of M/s Jerry Varghese International Ltd) is engaged in the business of publication and circulation relating to vacancy available abroad being weekly publication

in the name of “Employment & NRI Times”. The first party constitutes as a division/department of M/s Jerry Varghese International Ltd specifically for the limited purpose of advertising and circulating information relating to overseas vacancies for other similar establishments and public in general. As a matter of fact, M/s Shanti Publication was registered as a publication department under the competent authorities. The activities of the department named as Shanti Publication were distinctly separate and therefore, a separate name was given to it in view of its separate activity.”

15. In view of the above pleadings of the parties, it is necessary to consider the evidence on record. In the evidence Affidavit, the Respondent No.1 workman has stated in Paragraph No.2 as follows:

“2) I say that the I was employed with M/s. Jerry Varghese International Ltd, and they claim that I was in the so called division of the said Company, viz. M/s. Shanti Publications, 206, 704, Gateway, Plaza, Hiranandani Gardens, Powai-Mumbai 400 076 since 6/09/2010 as a Data Operator and my last drawn wages were Rs.17,097/- per month.”

(Emphasis added)

In cross-examination in Paragraph Nos.31 and 32, the Respondent No.1 has stated as follows:

“31. Shanti Publications was doing work of publication of news paper. It was also doing work of circulation relating to vacancy available abroad in the name of “Employment and NRI Times”. I was never transferred from Shanti Publications

to Jerry Varghese International Ltd. Witness voluntarily state that he was doing work of Shanti Publication and Jerry Varghese International Ltd. Nature of work of Jerry Varghese International Ltd. was overseas recruitment. It is not true to say that nature of work of Jerry Varghese International and Shanti Publications are different.

32. It is not true to say that I was appointed by Shanti Publications only. Appointment letter Exh. U-5 now shown to me. It was issued on Letter Head of Shanti Publications. Witness voluntarily state that Mr. Thomas Jorge was not in Shanti Publications. Appreciation letters Exh. U-6 & U-7 now shown to me. Those were issue don the letter head of Shanti Publications.”

Following question and answer are also relevant:

“Question: Are you aware that Shanti Publications was closed?

Answer :- Shanti Publications is closed but Jerry Varghese International is functioning.”

16. As far as the Petitioner Company is concerned, Cosmos Fernandes, working as the Manager in Jerry Varghese International Ltd. till the year 2010 and thereafter working as General Manager at the relevant time, filed Affidavit in lieu of examination in chief dated 25th March 2022. It is stated that he was working as a Consultant in the Company. It is stated in Paragraph Nos.2 and 4 of the Affidavit in lieu of examination in chief as follows:

“2. I say that M/s Jerry Varghese International Ltd is

engaged in the business of overseas manpower recruitment whereas M/s Shanti Publication (a division/department/branch of M/s Jerry Varghese International Ltd) is engaged in the business of publication and circulation relating to vacancies available abroad being weekly publication in the name and style of "Employment & NRI Times". The first party constitutes as a division/department of M/s Jerry Varghese International Ltd specifically for a limited purpose of advertising and circulating information relating to overseas vacancies for other similar establishments and public in general."

"4. I say that the activities of the Division/department named as Shanti Publication were distinctly separate, having separate books of account, Bank account etc and therefore, a separate name was given to is in view of its separate activity though it was a Division/department of M/s Jerry Varghese International Ltd."

The said witness has been cross-examined extensively and has given the following admissions:

- (i) It is true say that, **Jerry Varghese International Limited is looking after day to day working of concern employee.**
- (ii) **Shanti Publication was department of Jerry Varghese International. It was not division or branch. I have not produced any resolution of Board of directors that, Shanti Publication is separated from Jerry Varghese International. It is true to say that, contents in para 5 of my affidavit is in respect of event happened after termination of workman.**
- (iii) **Salary slips of workman (Exh.U-8) now shown to me. It is true to say that, these are issued by Jerry Varghese**

International Ltd. Salary slips to same workman was issued from the year 2015 in the name of Shanti Publication. No notice of change was given to second party for changing name on salary slip from Jerry Varghese to Shanti Publication. Earlier slips were issued as salary slips and subsequently it was issued as compensation sheets. No notice of change was given to workman about this change.

17. In the background of pleadings and evidence, it is necessary to consider the findings recorded by the learned Labour Court in Paragraph Nos.27, 28 and 31. The same are very relevant, which read as under:

*“27. Considered submission. Gone through the documents. Copy of **appointment letter** dtd.06/12/2010 (Exh. U-5) is an admitted document. It was printed on letter head of “SHANTI PUBLICATIONS”. At the bottom of letter head it was printed as “a division of JERRY VARGHESE INTERNATIONAL LTD.” It shows that Shanti Publications is not a separate company but it is a division of Jerry Varghese International Ltd. In appointment letter second party was given offer in the words which are reproduced as “Offer for employment with Jerry Varghese International Ltd.” In entire appointment letter there is no mention that, second party was offered employment in Shanti Publication. It means though the offer was given on letter head of Shanti Publications, second party was offered a job with Jerry Varghese International Ltd i.e. a main company.*

28. On perusal of letter dtd.22/12/2014 (Exh. U-6) salary of second party was increased and in last line it is mentioned “We wish you a successful career with JERRY VARGHESE”. Second party has produced salary slips intermittently from

*October-2011 to 2017 (Exh. U-8 colly). On its perusal it reveals that **from October – 2011 till July 2015 salary slips were issued by Jerry Varghese International Ltd.** Increment letter dtd.31/07/2015 (Exh. U-7) and salary slips from October-2015 onwards were issued under the titled of Shanti Publications. But the **seal of Jerry Varghese international is used on salary slips of Shanti Publications.** On perusal of this document it reveals that **though appointment letter was issued under the title of Shanti Publication, second party was paid from Jerry Varghese International (main company).**”*

*“31. **There is no material available on record to hold that Jerry Varghese International Ltd and Shanti Publication are different entities. Shanti publication is not a separate company but it is a division of Jerry Varghese International Ltd.** It is alleged that Shanti Publication is irrevocably closed. It is also come on record separate proceeding for challenging closure is initiated. There is reference in judgment in Complaint (ULP) No. 317/2017 about closure of Shanti Publication w.e.f. 23/10/2017. But unless the legality of closure is decided by competent authority it can not be inferred that Shanti Publications is closed.”*

(Emphasis added)

18. The material on record i.e. the pleadings of the parties, oral and documentary evidence laid by the parties, clearly show that the findings which have been recorded by the learned Labour Court are in accordance with the pleadings and evidence on record and are possible findings. The findings recorded are not perverse or illegal and are not contrary to the evidence on record.

19. The learned Presiding Officer, after considering the evidence on record, has observed that the Respondent No.1 has not lost employment

due to closure of his services but they were illegally terminated and at the time of termination there was no closure.

20. As far as Writ Petition No.1546 of 2024 is concerned, as the Respondent No.1 in that case has crossed the age of superannuation, the learned Presiding Officer directed the payment of full back wages to the Respondent No.1 workman from 15th October 2017 till the date of his superannuation with other incidental benefits. As far as Writ Petition No.3857 of 2024 is concerned, the learned Presiding Officer has directed the reinstatement with payment of full back wages with other incidental benefits w.e.f. 15th October 2017.

21. In this behalf, it is required to be noted that in the evidence it has come on record that the Respondent No.1 was not gainfully employed. Therefore, no illegality and perversity can be found in the impugned Awards.

22. The jurisdiction under Article 226 of the Constitution of India is extraordinary and discretionary. The jurisdiction is to be exercised to remedy injustice. The jurisdiction is to be exercised in case of abuse of power or neglect of a duty by the public authority. The factual position on record shows the findings which have been recorded by the learned Labour Court are in consonance with the pleadings and evidence on record. Thus, for the reasons set out herein above and on the touchstone of the principles for exercise of jurisdiction under Article

226 of the Constitution of India, no case is made out for interference. Accordingly, the Writ Petitions are dismissed, however, with no Order as to costs.

[MADHAV J. JAMDAR, J.]