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

WRIT PETITION NO.12349 OF 2021 WITH CA/4643/2024

**INDIAN HOTELS CO. LTD TAJ VIVANTA, (EARSTWHILE HOTEL
TAJ RESIDENCY) PLOT NO. 8, N-12, CIDCO, JALGAON ROAD,
AURANGABAD
VS
RAMESH BHAUSAHEB TATHE AND OTHERS**

Mr. Kiran Bapat, Senior Advocate h/f Mr. Y. R. Marlapalle,
Advocate for the petitioner
Mr. T. K. Prabhakaran, Advocate for the respondent Nos. 1 to 8,
4-a to 4-c

CORAM : KISHORE C. SANT, J.

RESERVED ON : 11th MARCH, 2025

PRONOUNCED ON : 06th May, 2025

P. C.

1. This petition is directed against the judgment and award in Reference (IDA 25/2006) passed by the learned Judge, Labour Court (II), Aurangabad dated 27-03-2015. By way of impugned judgment and award, the learned Judge has set aside the oral termination order dated 15-12-2001 terminating the service of the respondents. It is further directed to reinstate the second party workmen with continuity in service and full

backwages from 15-12-2001 and also to pay Rs.20,000/- to the second party towards cost of the reference.

2. The petitioner is the first party in the said reference. The respondents are the second party Workmen.

3. The facts in short are that, the petitioner is in the hotel business and runs hotel at Chhatrapati Sambhajanagar [Aurangabad]. The respondents were working in the said establishment. It is alleged by the respondents that though they were enlisted by the petitioner, their services were orally terminated by the petitioner and thus they had to approach the authorities. The government thereafter referred the dispute by order dated 09-05-2006.

4. It is the case of the petitioner that all these workmen were engaged through contractor. They were never employed by the petitioner, and as such they do not have any right to claim permanency and to challenge alleged termination. The learned

trial Judge however held that the workmen proved relationship as employer and employee. It is held that the petitioner failed to prove that workmen were employed by the contractor, the said issue was answered in negative. Consequently it is held that oral termination was illegal and therefore, workmen are entitled to reinstatement with full backwages and continuity of service with consequential benefits.

5. The main argument of the petitioner is that there is no employer employee relationship between the petitioner and workmen-respondents. The respondents were employed through contractors. Since there is no relationship, there is no question of termination. The award passed by the learned judge, is thus, not legal and correct. The question in view of rival submissions made before this court is thus, mainly as to whether the respondents workmen are employees of the petitioner or whether they were contract labours as contended by the petitioner. The parties mainly argued on this point.

6. The learned Senior Advocate Mr. Bapat h/f Mr. Marlapalle, learned advocate for the petitioner vehemently argued that all the workmen were supplied by the Labour Contractor namely M/s. Sagar Enterprises and M/s Aurangabd Multi Services. Both the contractors are not joined as respondents. The reference was thus bad for non-rejoinder of the necessary parties. The evidence of the parties was not properly appreciated. There was no direct evidence showing that the respondents were appointed by the petitioner. Though there is muster-roll/ duty register on record, it is maintained only for the purpose of convenience by the petitioner. That itself is not sufficient to come to conclusion that there is relationship of employer and employee between the parties. The learned reference court has wrongly put burden to prove the negative fact on the petitioner to prove that respondents are not employees of the petitioner while referring the parties to the Labour court / it was necessary to even add the contractor as party. Finding that contract was camouflage and bogus is without any material /evidence on record. He, thus, submits that

the impugned judgment and award deserves to be quashed and set aside. He submits that basic question was not considered by the court.

7. Learned advocate for the respondents Mr. Prabhakaran vehemently argued that there is delay and latches in filing the writ petition. The petition be dismissed on that count alone. He further submits that trial court has rightly come to a conclusion and held that relationship between the parties is established. He further submits that maintaining the record like muster-roll, duty chart, etc clearly shows that workmen were direct employees of the petitioner. He took this court through the definition in section 2-a and 2-k of the Industrial Dispute Act.

8. Both the parties have taken this court through the evidence. Judgments cited will be discussed in forgoing paragraphs.

9. There is no dispute that the present respondents were working in the hotel run by the petitioner. Their duty chart and other record is maintained by the hotel and same is produced on record. This fact is also not disputed that contractor was examined by the petitioner and his evidence is also on record. It is, therefore, the case of the petitioner that record was maintained only for the purpose of hotel. Work was given by the hotel as per requirement. Duty of the contractor is only to supply the labours. How to get the work from the said workmen is for the management. The court has clearly held that the contractor was shown as camouflages by considering the evidence. So far as not making contractor as party depends upon the answer, as to whether it is established that the workmen were engaged through the contractor.

10. So far as delay and latches are concerned, this court need not go into the said question as the court is considering the matter on merits. The respondents during the course of the trial have produced on record logbooks. In the logbook the names of

employees working in the hotel are mentioned which including the names of the respondents. From the examination of the witness for the petitioner, it is tried to be shown i.e. Ramesh Tathe was working with the petitioner. In the cross by the respondents, he has stated the procedure of his selection. He also stated that work was of similar in nature of regular employees. He has specifically stated that the persons from the management of the petitioner interviewed the employees. In the cross, it is only asked about the ESIC Contribution etc to which this witness shown ignorance. He denied resignation letter as alleged by the petitioner. He admitted a letter dated 31-03-2001. This is allegedly a resignation letter. This court finds that this evidence is sufficient to hold that the employees were working in the hotel and doing the work of regular and permanent nature. His evidence coupled with the logbook would clearly establish that the respondents were directly working under control of petition. This court does not find any substance in the submission that the logbook would only show that work done by the persons. So far as license with the contractor is concerned, it

is shown that he was not possessing the valid license. So far as the argument of the Mr. Prabhakaran for the respondents are concerned this court has considered the definition given in section 2 (a) and 2(k) of the Industrial Dispute Act.

11. This court further finds that other submissions to be correct that employees would go to the conciliation officer and it is thereafter for said authority to refer the dispute. It is also established from the record that employees were working even prior to engaging the contractor. It is seen that contractor could not answer various questions. no contract between contractor and the hotel and the petitioner is on record. When this is the position, this court finds that it is difficult to accept that respondents were contract labours. From the cross-examination of the witness Patil it is seen that he could not state anything.

12. This court proceeded to consider the judgments relied upon by the parties.

13. The learned Senior Advocate Mr. Bapat for the petitioner relied upon the judgment in the case of Tata Iron and Steel Company Ltd Vs State of Jharkhand and others¹. In the said case it is stated that the employees were initially employed by the company in its cement division. Said cement division was thereafter sold to another company. It is submitted that the workmen thereafter would become workmen of the subsequent company. In the said matter notices were issued to participate in the conciliation proceedings. No settlement could take place resulting conciliation proceeding into failure. A report was therefore sent to the labour department. The reference had arisen out of that and dispute was referred to the labour court under section 10(1) of the Industrial Dispute Act by referring dispute. The petitioner approached the High Court by filing the writ petition under Article 226 of the Constitution of India and challenged the notification of the reference. It was pre-taken that the real dispute about existence or otherwise of the had not been referred. It is held that jurisdiction of the tribunal would be limited to the extent of what is referred to it. As the Industrial

¹ (2014) 1 SCC 536

Dispute/Labour Court constituted under the Act are the creatures of the statute. They acquired jurisdiction on the basis of reference made to it and therefore, courts have to confined itself within the scope of the subject matter of the reference. Ultimately, it was held that reference in that matter was clearly defective, as it was without taking care of the correct and precise nature. This court finds that no such case is made out and it is admitted fact that the employees were interviewed by the Chief Engineer of the petitioner and were given the work. In view of above factual position, this court is of the opinion that this judgment is not applicable to the present case.

14. In the case of Municipal Corporation of Greater Mumbai VS K. V. Shramik Sangh and others² the Hon'ble Apex Court considered that it is the duty of the Municipal Corporation to keep the city clean, free of garbage and rubbish, refuse etc. The High Court in that case also took a view if the corporation chooses to employ some other agencies to discharge its obligation, it could do so provided it is consistent with the

² (2002) 2 HCC (Bom) 196

applicable legal provisions. High Court had held contract to be camouflage. On this background the Hon'ble Apex court considered the validity and correctness of the judgment of the High court. In that case The Hon'ble Apex Court considered that the High Court did not go into the question and no findings were recorded that the labour contract was sham or camouflage.

15. Considering the material on record it was taken to the serious and disputed facts in terms of the constitution when the judgment in the case of Steel Authority of India Ltd. and others Vs National Union Waterfront Workers and others³. However, these observations were made in the facts of that case.

16. In the case of Balwant Rai Saluja VS Air India Ltd.⁴ the question was of employer employees relationship and determination of the existence of the said relationship. The Hon'ble Apex Court considered the tests to be applied to ascertain the complete administrative control over the

3 (2001) 7 SCC 1

4 (2014) 9 SCC 407

employees. Such tests were discussed as to who appoints the workers and who pays the salary, who has the authority to dismiss, who can take disciplinary action, whether there is continuity of service and the extent of control and supervision. From the facts in the present case on record during the trial, it is seen that for all practical purposes the complete control on the employees was of the petitioner as said is clear from the facts that the register is maintained by the petitioner. The work was assigned by the petitioner. The employees were selected by the engineer of the petitioner company. It has specifically come on record that the contractor who was shown to have been engaged had no knowledge of the exact nature. The trial court has rightly inferred from the evidence that the contractor was only camouflage. This finding is recorded on the basis of material before the court. This court does not find any perversity in the findings recorded on that issue.

17. In the case of General Manager (OSD), Bengal, Nagpur Cotton Mills, Rajnandgaon Vs Bharat Lal and another⁵ it

⁵ (2011) 1 SCC 635

was held that negative onus cannot be put on the employer to prove the fact as to who paid the salary. It is for the employee to prove that the salary was directly paid by the principal employer and not by the contractor. In that case employees failed to discharge this onus. In that case employees could not establish that he was working under the direct control of the Principal employer. In the present case there is sufficient evidence to show that employees were controlled by the petitioner employer. No perversity is seen in the findings recorded by the trial court. In view of the clear finding on the issue of the direct control and supervision by the petitioner this judgment is of no use.

18. The learned advocate for the respondents relies upon the judgment in the case of Hussainbhai Calicut Vs Alath Factory Thezhilali Union⁶. In the said case the Hon'ble Apex Court considered the relationship of the employer and employee. It is held that absence of direct relationship or the presence of dubious intermediaries cannot snap the real life bond. It is held that liability of the employer cannot be shaken off. In the

6 1978 (7) CPSC 176

judgment of the Secretary HSEB Vs Suresh⁷ also question of relationship was considered. The Hon'ble Apex Court considered that the purpose of the social and beneficial piece of legislation. In the case of Dina Nath Vs National Fertilizers Ltd⁸ it was held that the contractor was a mere name lender and it procure the labour from the open market. The contractor in that case was held to be broker or agent of the employer.

19. In the case of General Manager (P & A) Hindustan Petroleum Corporation Ltd Vs General Secretary General Employees Association⁹, the Hon'ble Apex Court considered that the witness admitted that the after completion of the work of the workers certificate to that effect was issued by the Managerial persons of the company. In that case also responsibility to make payment of wages, PF, contribution and etc was upon the contractors. That the management was in control and was supervising work of the workmen. Ultimately it was held that it is the management who was making the payment. Though there was change in the contractors, like in the present case, workmen were not replaced nor fresh appointment were made. It was thus held that there was direct

7 2010 (3) CPMH 386

8 (1992) 1 SCC 695

9 2010 (3) CPMH 38

relationship. The workers were working for very long period in the establishment of the petitioner. Thus looking from this angle this court finds that case of the General Manager (P & A) Hindustan Petroleum Corporation Ltd (supra) covers the present case. There is no doubt that the petitioner was controlling and supervising the work of the petitioner. Contractor was nominal for making only payment through him. Thus, it is clear that for all the purposes it is the petitioner who had employed the respondents as workmen. Workers were working for long period.

20. Considering all above, the responsibility of the contractor was only to make the payment. Thus, this court has no hesitation in holding that case is established by the respondents. This court does not find any perversity or illegality in the judgment passed by the trial court. Hence, the petition deserves to be dismissed and same is hereby dismissed. No order as to costs.

21. In view of dismissal of the writ petition, the civil application stands disposed off.

[KISHORE C. SANT, J.]

Later on:

1. 1. At this stage, the learned advocate for the petitioner prays for continuation of interim relief for a period of six weeks from today.
2. The learned advocate for the respondent has strong objection for continuation of interim relief.
3. However, since already there is interim relief, same shall be continued for a period of six weeks from today.

[KISHORE C. SANT, J.]