

MANU/MH/0113/1999

Equivalent Citation: 1999(1)ALLMR721, 1999(2)BomCR155, [1999(82)FLR544]

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 1987 of 1998

Decided On: 15.01.1999

Appellants:**A.D. Shelar**
Vs.

Respondent: **Package Gasket Products and others**

Hon'ble Judges/Coram:

N.J. Pandya, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Colin Gonsalves, Adv.

For Respondents/Defendant: H.C. Naidu, Adv., i/by C.R. Naidu and Co., Kuldip Singh and Kiran Bapat, Adv.

Case Note:

The case dealt with the maintainability of the complaint which was against the dismissal of seven employers who were made respondents - The Labor Court dismissed the complaint against respondent 2 to 7 and held that it could lie against respondent 1 only - It was held that since the complainant alleged that he was employed by all the 7 respondents though the payment was received through respondent 1 only, all the 7 had to be given the opportunity and complainant against some could not be dismissed even if the case might be weak against them - Appropriate interim relief should be also moulded looking to peculiar facts of the case.

ORDER

N.J. Pandya, J.

1. The respondents may have a very strong case to urge that on merits the petitioner has a very weak case when he has come out with a prayer that he be reinstated with full back wages and continuity of service by the respondents. Ordinarily, such a prayer is to be encountered in a complaint filed by a workman against his employer because the situation as to the relationship between the employer and employee would be quite clear and as per the current parlance it would be One-O-One.

2. In the instant case a peculiar situation is sought to be made out in the complaint, Exh. A, page 13 with relief Clause 9 at page 22 that though the petitioner was paid by respondent No. 1 he was employed by all the remaining respondent Nos. 2 to 7. In other words it was a convenient arrangement of payment through respondent No. 1 but the petitioner was supposed to work for all the respondents. He may or may not succeed in making out this case before the trial Court. I was shown certain documents by way of correspondence, notice, replies etc. where some of the averments may run counter to the claim made in the complaint. However, this will be the subject matter of the scrutiny by the trial Court when it takes up the complaint for disposal on merits. Straight away to reject the case of the petitioner against

respondent No. 2 to 7 on the basis that their is relationship of employer and employee between the petitioner and the respondent No. 1 alone would amount to denial of trial. In the complaint there is clear cut mention that according to the complainant the petitioner was employed by all.

3. On filing of the complaint the least that is to be done is to dispose it of on merits and before that is done, to give adequate opportunity to all the parties to the proceeding to lead evidence in support of their rival contentions. This may be either oral or documentary.

4. Unless this is done and the matter is gone into its entirety when the complaint itself is clear that the allegation of the aforesaid nature on the basis of (i) the payment of salary and (ii) some of the correspondence and reply to the notice etc. straightaway to come to the conclusion that rest of the respondents are not necessary parties as done by the trial Court would be against the basis of principles of "audi alterum partem". Another difficulty felt by the learned trial Judge was that the interim relief pressed for by way of Exh. U-2 if granted would create a peculiar situation as to who could be directed to reinstate the petitioner because admittedly the business of the respondent No. 1 is closed. That itself is one of the important controversy involved as to whether the alleged closure done by respondent No. 1 is a genuine closure or merely a closure to defeat the claim of the petitioner.

5. As noted above the petitioner may have a weakest case but he having filed the complaint under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 where he is claiming relationship of master and servant against all the respondents obviously their presence on record is a must then only the lis between the parties can be decided finally and conclusively. They all should get adequate opportunity. They may lead oral evidence or rely on the documentary evidence but that is left to their choice.

6. Only on the basis of the correspondence and documents on the filing of the complaint to grant the request of being dropped as party respondent in the Complaint No. 316/92 by the Industrial Court at Bombay as per order dated 4-2-1994 in my opinion would prejudice the case of both the sides.

7. On one hand the petitioner will be left to lead his case of multiple employer ship in absence of the affected party and on the other hand this very respondents will be left with an order passed in their absence creating totally an uncalled for situation especially when the complainant has joined all of them as party whereby they got an opportunity of opposing his claim and in the process defeating the same on merits.

8. In short all that I am saying is that in view of the submissions made in the complaint, the parties who are joined as respondents should be before the trial Court and both the sides should be given an opportunity for deciding the matter on merits.

9. So far as grant of interim relief is concerned, the difficulty expressed by the trial Court in my opinion is non existent because both at the Bar and Bench in a given case relief has to be molded to suit the circumstances of a given case. According to the facts and circumstances of the case, with the able assistance of the Bar the Court can certainly work out the situation presented before it of the nature indicated by the trial Court or any other situation that might arise in a given case.

10. The petition, is, therefore, allowed and the aforesaid order is set aside. Rule made absolute in terms of prayer Clause (a).

11. Petition allowed.

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