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(2014) 02 BOM CK 0153

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 1575 of 2013

Smt. Nirtubai	APPELLANT
Vs	
Head Master, Higher Grade Marathi Girls School, Gondia, Zilla Parishad, Gondia and Judge, Labour Court, Gondia	RESPONDENT

Date of Decision: Feb. 20, 2014

Citation: (2014) 4 ALLMR 834 : (2014) 6 BomCR 425 : (2014) 141 FLR 169 : (2014) 2 MhLj 861

Hon'ble Judges: R.K. Deshpande, J

Bench: Single Bench

Advocate: M.P. Jaiswal, for the Appellant; A.Y. Kapgate, Advocate for Respondent Nos. 1 and 2 and Shri A.M. Deshpande, AGP, for the Respondent

Final Decision: Allowed

Judgement

R.K. Deshpande, J.
Rule, made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties. The challenge in this petition is to the Award dated 7-12-2011 passed by the Labour Court in Reference (IDA) No. 02 of 2001. The Reference has been answered in the negative. Hence, the employee is before this Court in this petition.

3. The Labour Court has framed Issue No. 1 as under :

Whether the Party No. 1 employer proves that there is no relation of "employer and employee" in between Party No. 1 and Party No. 2 ?

The issue has been answered in the affirmative, holding that it has been established. Perusal of the issue shows that the burden is cast upon the employer.

3. The question of burden of proof in respect of an issue regarding existence of relationship of "employer and employee" has been dealt with by the Apex Court in its decision in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others, . Paras 47 to 50 of the said decision being relevant, are reproduced below :

Burden of proof

47. It is a well-settled principle of law and the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. Secy., Thodupuzha Taluk Shop and Commercial Establishment Workers" Union the Kerala High Court held: (LAB IC 402, para 9)

The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship.

49. In Swapan Das Gupta v. First Labour Court of W.B. it has been held: (LAB IC para 10)

Where a person asserts that he was a workman of the company and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

50. The question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse.

In the decision of this Court in the case of Northcote Nursing Home Pvt. Ltd. and Another Vs. Dr. (Ms) Zarine H. Rahina and Another, , this Court has held in para 8 as under :

8. There is much substance in the contention of the learned counsel that the respondent employee had filed the complaint in the capacity of an employee and she asserted positively that she was a workman as contemplated under the I.D. Act and therefore, she was entitled to file the complaint filed by her. In my opinion and on the general principles of civil law it is for the party to lead evidence to prove the positive facts and it is not for the other side to prove the negative facts. If the Respondent had pleaded positively that she was a workman as contemplated by law in that case it was for her to step in the witness box to prove her positive assertion that the duties performed by her fell within the parameters of the definition of workman. It is not for the other side to prove how the respondent was not a workman. It is an admitted fact that the Respondent was employed as a Resident Medical Officer in a Managerial and Administrative capacity by a contract of service.

4. In view of the aforesaid two decisions, it is apparent that the burden to establish the fact as to whether the relationship of "employer and employee" has been established or not, lies upon the employee. It is not for the employer to prove negative fact that there was no relation of "employer and employee". The defect in framing of the issue, has deprived the petitioner-employee of a right to lead evidence. The Labour Court has held that the petitioner-employee has not led any evidence to establish this fact. In view of this, the impugned Award cannot be sustained and the same will have to be quashed and set aside with an order of remand.

5. In the result, the petition is allowed. The impugned Award dated 7-12-2011 passed by the Labour Court in Reference (IDA) No. 02 of 2001, is hereby quashed and set aside. The matter is remitted back to the Labour Court to afford the petitioner-employee an opportunity to lead evidence to discharge the burden of proof in respect of existence of relationship of "employer and employee", and the Labour Court thereafter to decide the matter in accordance with law. The parties to appear before the Labour Court on 1-3-2014. The Labour Court is directed to decide the matter within a period of six months from the date of first appearance of the parties before it. Rule is made absolute in above terms. No order as to costs.