(1919) 03 BOM CK 0008

Bombay High Court

Case No: None

Ramkrishna Haribhaoo Vadke	APPELLANT
Vs	
Emperor	RESPONDENT

Date of Decision: March 26, 1919

Citation: AIR 1919 Bom 96 : 52 Ind. Cas. 669

Hon'ble Judges: Shah, J; Heaton, J

Bench: Division Bench

Judgement

Heaton, J.

The main purpose of the con-tract is that the artificer shall work for ten years for his employer. One of its stated objects, and a most important one, is to prevent the artificer leaving his employer''s service during the period of ten years. I cannot believe that sash contracts as this were ever intended to come under Act XIII of 1859. To me the words taken with the declared object of the Act definitely suggest that they were not. Therefore, I think the Rule should be made absolute.

Shah J.

2. The question arising in this application is whether the contract between the parties falls within the purview of Act XIII of 1859. The applicant entered into a contract with his employer on the 17th January 1917, whereby he agreed to serve for a period of ten years on a salary of Rs. 40 per mensem as an artisan and not to go elsewhere leaving his service. The employer purported to advance Rs. 286; but it is found that Rs. 186 represented the previous advances and that Rs. 100 only were advanced in cash at the date of the contract. The advance is described as having been made in cash for the work to be done under the contract. The applicant agreed to re-pay this sum of Rs. 286 by deducting Rs. 5 out of his salary every month. He agreed to pay off the advance in ten years. The contract contemplates further advances, and also provides that if any part of the sum advanced or to be advanced remains unpaid at the expiry of the ten years he will serve on the same terms till the whole amount is paid off.

3. Taking the terms of the contract as a whole, it seems to me that the principal item is the undertaking on the part of the applicant to serve on a salary of Rs. 40 per mensem for ten years, and that the advance is really a subordinate thing intended to secure as far as possible a due fulfilment of the contract of service. The sum of Rs. 186 advanced from time to time prior to the contract cannot be treated as an advance of money on account of the work to be performed under the contract. The remaining sum of Rs. 100 advanced in cash has no doubt some relation to the work under the contract. But in effect it is nothing more than a loan, which the workman is bound to pay in any event, and which the contract provides may be paid off at the rate of Rs. 5 per month. The Act of 1859 relates to contracts in which workmen have received advances of money on account of the work which they have contracted to perform. I do not think that the advance in the present case fulfils that condition. I think that the present contract is in the main a contract of service for ten years, accompanied with an advance of money which may be paid off from the wages which the workman is to earn under the contract, but which cannot be said to have been made on account of the work which he has contracted to perform. In my opinion the Act does not apply to such a contract. I, therefore, agree that the Rule should he made absolute and the order of the lower Court set aside.