
(2008) 03 BOM CK 0037
In the Bombay High Court
Case No : C.A.J.W.P. No. 1409 of 1997

Mohanlal Sharma

APPELLANT

Vs

Famous Cine Laboratories and Studios Ltd. and Others

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2008) 3 LLJ 119

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : R.S. Upadhyay, for the Appellant; T.S. Shetty and Santhosh Shetty for Respondent No. 1 and Vinod Tayade, instructed by Rajesh Gehani, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—This petition impugns the judgment and order rendered by the Industrial Court at Mumbai on October 25, 1996 thereby allowing partly Complaint (ULP) No. 686/1985. The petitioner had approached the Industrial Court seeking the benefit of permanency against the respondent No. 1 and by the impugned order the Industrial Court held that the complainant was the employee of the respondent No. 2 and the employer - employee relationship could not be proved between the respondent No. 1 and the complainant. Therefore, relief of permanency was granted to the complainant against the respondent No. 2 (permanent watchman) from October, 1986.

2. There is no dispute that the complainant was dismissed from service after conducting a departmental enquiry in October, 1994 and the order of dismissal which was the subject matter of challenge in another complaint filed before the Labour Court at Mumbai.

3. The respondent No. 1 as well as respondent No. 2 had filed Written Statement separately before the Industrial Court and averred that the complainant was

employed as a watchman under respondent No. 2. In support of the complaint, the complainant himself stepped in the witness box, where as for respondent No. 1 Mr. Jagmohan Roogntha and for respondent No. 2 Mr. Sitaram Thand were examined. The complainant admitted before the Labour Court that he was dismissed from service in October, 1994 when he was getting salary between Rs. 4000/- to Rs. 4500/- per month. In his cross-examination, by respondent No. 1, the complainant admitted that during the years 1983 to 1985 he was working as a temporary watchman and the muster rolls from October, 1985 to March, 1993 he had signed. Similarly, the document at Exhibit C-27 was the salary sheet maintained by the respondent No. 1 and he admitted that his name did not find place in the same. He was shown the settlement signed between the respondent No. 1 and the employees represented by the Union, he admitted that respondent No. 1 at the relevant: time had 110 workmen and in the list annexed to the said settlement of 110 workmen his name did not find place. He admitted that the document at Exhibit U-22 was signed by him which was his application addressed to; respondent No. 2. He also admitted that he had studied upto 8th standard and he had signed the document at Exhibit C-31. It was the receipt of payment and maintained by the respondent No.

4. On the application dated June 16, 1991 made by the complainant, the Industrial Court had ordered a Commission of three persons to go through the record of respondent No. 1 and accordingly on February 22, 1992 as per the, order passed by the Industrial Court on December 13, 1991 the inspection report was placed before the Industrial Court along with the pursis submitted by the learned advocate of the complainant at Exhibit U-11. The report clearly stated that in the salary sheets maintained by the respondent No. 1 for the period from August 1, 1983 to October 1985 complainant's name did not find place. Similarly, the attendance register for the period from July 1983 to February 1985 maintained by the respondent No. 1 was verified and the complainant's name was not found therein. Even in the Watch and Word Department salary sheets maintained by the respondent No. 1 for the period from October, 1983 to December, 1985 the complainant's name did not find place.

5. Mr. Sitaram Thand was an employee of the respondent No. 2 and from 1958 to 1991 he was working with respondent No. 1 as Accountant at Mumbai and thereafter he started working with respondent No. 2. Salary sheets from October, 1983 to September, 1984 and October, 1984 to September, 1985 maintained by the respondent No. 1 in respect of its employees and brought on record at Exhibit C-21 were shown to him and he did not find name of the complainant in the same. He stated that from October, 1985 the complainant was in the employment of respondent No. 2 and he referred to the document at Exhibit U-27 wherein the name of the complainant was found.

6. Regarding the E.S.I. record and more particularly the Identity Card of the complainant, it was noted that initially in the year 1983 the complainant was working under the contractor by name Shri Chaganlal engaged by respondent

No. 1 and, therefore, he was issued the ESI Identity Card. Said Mr. Chaganlal - contractor was discontinued and thereafter he was employed by respondent No. 2 and the record of the said company at Exhibit U-27 went to show that the complainant was its employee and not the employee of the respondent No. 1. The Labour Court on the basis of the evidence noted that from October 1985 to March, 1993 the name of the complainant appeared on the muster roll of respondent No. 2 and, therefore, he was entitled for the benefit of permanency as against respondent No. 2.

7. Having regards to the evidence that has been considered by the Industrial Court, it cannot be said that the reasoning set out in the impugned order is grossly erroneous or perverse and, therefore, no case has been made out to cause interference in the said order under Article 227 of the Constitution.

8. Hence, the petition fails and the same is hereby dismissed. Rule is discharged with no order as to costs.