
(2010) 06 BOM CK 0147
In the Bombay High Court
Case No : Writ Petition No. 5043 of 2009

Shri Ramniklal Dave

APPELLANT

Vs

Sterling Agency and Another

RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2011) 4 BomCR 200 : (2010) 126 FLR 1027 : (2010) 4 LLJ 402

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : V.P. Vaidya, for the Appellant; G.D. Talreja, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The Labour Court has dismissed the application filed by the petitioner u/s 33C(2) of the Industrial Disputes Act prompting the petitioner to file the present petition.

2. According to the petitioner, he was employed in M/s. Tandur and Shahabaz Stone Co. Respondent No. 1 was a sister concern of the aforesaid company. The petitioner contends that he was asked to work in the respondent company as well for the period from 1983 to 1989. According to the Petitioner, he has not been paid any remuneration for working in the respondent company and therefore he claimed Rs. 47,125/- as the amount payable @ Rs. 500/- per month for the period from 1983 to 1989.

3. The Application was contested by the respondent employer by contending that the petitioner was paid his contractual wages by Tandur and Shahabaz Stone Company and his retiral dues were also paid to by by the Company. The respondent further contended that it had no employer-employee relationship with the petitioner and therefore was not liable to pay any amount to him.

4. Evidence was led before the Labour Court by the workman. He deposed that he was employed in the Tandur and Shahabaz Stone Company from 1945 to

1989 as a clerk. He stated that the Manager of Respondent No. 1 promised him wages for the work done by him for Respondent No. 1. He further stated that in view of this promise, he has claimed Rs. 500/- per month from Respondent No. 1. Respondent No. 1 examined one of the partners of the firm. He has deposed that the Petitioner was working with a sister concern. He has further stated that several firms were working under the name and style of Ladhiwala group of companies and that the petitioner was working as an employee of that group. He has admitted that benefits of a settlement had been extended to the petitioner and that he had been paid his wages by Tandur & Shahabaz Stone Company.

5. Taking into account the evidence on record the Labour Court dismissed the application. The Labour Court has, in my opinion in a well reasoned order, held that the petitioner workman was unable to prove that there was any contractual relationship between him and the respondent firm. The Labour Court also observed that the Petitioner was unable to prove his claim against the respondent. The Labour Court considered the several judgments of the Supreme Court including the case of Central Bank of India v. Rajagopalan and Ors. 1963 II LLJ 12. The Labour Court has rightly dismissed the application.

6. On a perusal of the evidence on record, it is evident that there is no contract between the petitioner and the respondent firm. No amount had been agreed to be paid between the parties to the petitioner for performing the extra work in the respondent firm. Therefore, the petitioner's claim that he is entitled to Rs. 500/- per month is without any basis. There was no existing right which the petitioner could establish in order to claim the amount of Rs. 500/- per month. It cannot be gainsaid that an application u/s 33C(2) is maintainable when a workman claims certain benefits on the basis of an existing right. The petitioner has failed to prove that he had any existing right to the amount. The Petition is therefore dismissed.

7. Rule discharged. No costs.