



eta Sawant

1/18

WP-10439-2019-FC
WP-17-2021-FC
30 January 2024

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10436 OF 2019**

M/s. Chalet Hotels Ltd.Petitioner

V/s.

Mr. Bhikan Laxman Deokar
And anr. ...Respondents

AND

**ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 17 OF 2021**

Mr. Bhikan Laxman DeokarPetitioner

V/s.

M/s. Chalet Hotels Ltd.Respondent

Mr. R.V. Paranjpe with Mr. T.R. Yadav, for Petitioner in WP-10436-2019 and for Respondent in WP-17 of 2021.

Mr. Shafi Kazi with Mr. Anirudha Lad i/by. KLT Law Associates, for Respondent No.1 in WP-10436 of 2019.

Mr. I.A. Saiyad, for Petitioner in WP-17 of 2021.

Ms. Divya Wadekar i/by. Mr. Avinash Jalisatgi, for Respondent No.2 in WP-10436 of 2019.

CORAM : SANDEEP V. MARNE, J.

Judg.Resd. On : 19 January 2024

Judg.Pron. On : 30 January 2024.

JUDGMENT :

1. These cross petitions are filed by the employer- Chalet Hotels Ltd. and workman-Bhikan Laxman Deokar challenging the Award dated 29 January 2019 passed by the Presiding Officer, 7th Labour Court, Mumbai in Reference (IDA) No. 20 of 2012. The Labour Court has answered the Reference partly in affirmative and has set aside the termination order dated 28 December 2010 with further direction to the employer to reinstate the workman with continuity and 50% backwages to be computed on the basis of last wages drawn by him.

2. Chalet Hotels Ltd. operates a star category hotel under the brand name, 'Renaissance Mumbai Hotel & Convention Centre', which is referred to in the judgment as '**the Hotel**'. It is the case of the Hotel that it provides transportation services for catering to the needs of its patrons by engaging services of third party vendors on profit sharing business. That the transportation facility was earlier run and managed by M/s. Hertz Carzon Rent and thereafter by M/s. K S Enterprises and thereafter by M/s. Karma Management Consultant Pvt. Ltd and lastly M/s. Orix

Auto Infrastructure Services Ltd. was engaged by the Hotel. That those agencies provided for transportation services to the patrons of the hotel by deputing its own resources like chauffeurs, drivers as well as vehicles. Additionally, the Hotel also has its own vehicles which were also used by the agencies.

3. Mr. Bhikan Laxman Deokar (**Workman**) has worked as Driver for catering transportation services to the patrons of the Hotel. There is some degree of debate between the parties about the nature of his initial engagement. The workman claims that he was initially recruited directly by the Hotel on 2 February 2002 and that he worked as direct employee of the Hotel till 3 February 2003. Thereafter, he was engaged through the Contractor M/s. K.S. Enterprises from 4 February 2003 to 6 February 2005 and through M/s. Karma Management Consultants Pvt. Ltd from 7 February 2005 to 1 July 2007. From 2 July 2007 onwards, he was engaged through the Contractor- M/s. Orix Auto Infrastructure Services Ltd. (**Orix**). Based on the show cause notice, services of the Workman came to be terminated by Orix vide letter dated 28 December 2010 with immediate effect by paying one month's salary in lieu of notice. Aggrieved by his termination, the Workman raised a demand for reinstatement, which led to an order of Reference made by the Deputy Labour Commissioner, Conciliation, Mumbai. The Reference was for reinstatement of the Workman with continuity and backwages from 5 August 2010. The Workman filed

his Statement of Claim before the Labour Court against the Hotel, as well as the Contractor-Orix and challenged termination order dated 28 December 2010 and sought reinstatement in service with full backwages, permanency and continuity of service with the Hotel w.e.f. 5 August 2010. He also sought a declaration that the contract between the Hotel and Orix was sham and bogus. The claim was resisted by the Hotel as well as by Orix by filing their respective written statements. Based on the pleadings, issues were raised by the Labour Court on 22 October 2012 as under:

- (1) *Whether second party is a workman ?*
- (2) *Whether the enquiry conducted by the enquiry officer is fair and proper ?*
- (3) *Whether the findings recorded by the enquiry officer are perverse ?*
- (4) *Whether the services of the second party workman is illegally terminated ?*
- (5) *Whether second party is entitled to relief claimed as sought ?*
- (6) *What order ?*

4. The parties led evidence before the Labour Court. At the time of delivering the judgment, the Labour Court felt that Issues Nos. 2 and 3 were not relevant and required to be deleted. Accordingly, issues were recast as under :

1) Whether second party proves that there was existence of employer-employee relationship in between him and first party no.1?

2) Whether the services of the second party workman is illegally terminated?

3) Whether second party is entitled to relief as sought?

4) What award?

5. The Labour Court delivered the Award dated 29 January 2019 answering the Reference partly in the affirmative by setting aside the termination order dated 28 December 2010. The Hotel was directed to reinstate the Workman with continuity and 50% backwages to be computed on the basis of the last drawn wages. The Hotel is aggrieved by the Award of the Labour Court and has filed Writ Petition No. 10436 of 2019, whereas the Workman is also aggrieved by the Award to the extent of denial of full backwages and has filed Writ Petition No. 17 of 2021.

6. Mr. Paranjpe, the learned counsel appearing for the Hotel in both the Petitions would submit that the Labour Court has erred in directing reinstatement of the Workmen in services of the Hotel by ignoring the fact that he was never employed by the Hotel and that his services are terminated by the Contractor-Orix. Mr. Paranjpe would further submit that the reference made to the Labour Court did not involve the issue of employer-employee relationship between the Hotel and Workman. That the Reference was limited to reinstatement of the Workman who was admittedly

terminated by Orix. Therefore, if reinstatement was to be granted, the same ought to have been directed against Orix and not against the Hotel. Thus the scope of Reference was restricted to reinstatement of services of the Workman by Orix. Accordingly, the issues that were originally framed on 22 October 2012 restricted the scope of enquiry of Labour Court to the correctness of termination of services of the Workman by the Contractor. That the Labour Court has committed twin errors while setting aside the final Award. Firstly, it has erroneously travelled beyond the scope of Reference by going into the issue of employer-employee relationship. Secondly, it has erroneously recast the issue directly at the time of delivery of the Award and has unnecessarily framed the issue of existence of employer-employee relationship. In support of his submission that the Labour Court cannot travel beyond the scope of reference, Mr. Paranjpe has relied upon the Judgment of the Apex Court in ***Gouri Sankar Chatterjee and Ors. V/s. Texmaco Ltd. And Ors.*** (2001) 2 SCC 257. Mr. Paranjpe would further submit that mere non-registration of Contractor does not lead to automatic presumption of existence of employer-employee relationship between a workman and his principal employer. In support of his contention, he would rely upon the judgment of the Apex Court in ***Dena Nath and Ors. V/s. National Fertilisers Ltd. And Ors.*** 1992 (I) LLJ 284. He would submit that as per the Judgment of the Apex Court in ***Balwant Rai Saluja V/s. Air India Ltd.*** (2014) 9 SCC 407 and in ***Bharat Heavy***

Electricals Limited Vs. Mahendra Prasad Jakhmola and Ors. (2019) 13 SCC 82, the Workman must satisfy six tests prescribed by the Apex Court for establishing employer-employee relationship. That the Labour Court has failed to take into consideration six tests and that no evidence was led by the Workman to satisfy any of the said six tests.

7. Mr. Paranjpe would further submit that the Workman specifically admitted in his evidence that he is appointed by the Orix. The disciplinary action in the present case has been taken by Orix, who has terminated the Workman's services. That stray warning given on couple of occasions by the Hotel cannot lead to presumption of existence of employer-employee relationship. Mr. Paranjpe would therefore submit that no order could have been passed by the Labour Court against the Workman since the Workman was in the employment of Orix, who took the decision to terminate his services. Mr. Paranjpe would submit that as per the judgment of the Apex Court in ***North-East Karnataka Road Transport Corporation Vs. M. Nagangouda*** (2007) 10 SCC 765 self-employment is a form of gainful employment. That the Respondent has admitted in the evidence about earning wages while working as Badli Driver. That therefore the award of backwages by the Labour Court is erroneous.

8. So far as Writ Petition No. 17 of 2021 filed by the Workman is concerned, Mr. Paranjpe would submit that the

Workman is not entitled to any backwages from the Hotel and that the direction to pay 50% backwages is erroneously granted by enlargement of scope of reference. That in the event of this Court not setting aside the Award, the order of 50% backwages needs no interference.

9. Mr. Kazi, the learned counsel appearing for the Workman in Writ Petition No. 10436 of 2019, would oppose the petition and support the Award passed by the Labour Court. He would invite my attention to various agreements executed between the Hotel to demonstrate that the same is not a pure contract but a sort of partnership between the two entities. That there is specific arrangement in the contract for profit sharing between the parties. Thus the Hotel also has participated in the transportation activities, thereby raising a presumption that there exists a employer-employee relationship. He would submit that the Labour Court has rightly framed the issue of existence of employer-employee relationship as the Hotel denied such relationship. That the arrangement of showing the Workman as employee through Contractor is a camouflage as he continued to be in the employment of the Hotel through successive contractors. That the Hotel is a seven star hotel which employs more than 1000 employees and therefore unceremonious termination of the Workman by Orix at the behest of the Hotel has rightly been set aside by the Labour Court. That backwages must be computed on the basis of the

minimum wages and not on the basis of last wages drawn. In support of his contentions, he would rely upon the following judgments:

- (i) ***Secretary, Haryana State Electricity Board V/ s. Suresh and Ors.*** MANU/SC/0215/1999.
- (ii) ***Hindalco Industries Ltd. Vs. Association of Engineering Workers*** MANU/SC/7343/2008.
- (iii) ***The Workmen of Best and Crompton Industries Ltd. V/s. The Management of Best and Crompton Engineering Ltd.*** MANU/TN/0149/1984.
- (iv) ***V.Annamalai Vs. Union of India*** MANU/TN/5307/2011
- (v) ***Indo-European Breweries Ltd. Vs. Dnyaneshwar and Ors.*** MANU/MH/0466/2019

10. Mr. Sayed, the learned counsel appearing for the Workman in Writ Petition No. 17 of 2021 would submit that the Labour Court ought to have awarded 100% backwages to the Workman as award of full backwages is a natural corollary of setting aside the termination order. That there is no evidence of gainful employment and therefore the Labour Court has erred in restricting the backwages to 50%.

11. Rival contentions of the parties now fall for my consideration.

12. The first issue that arises for determination is the propriety on the part of the Labour Court in recasting the issues and framing the issue of existence of employer-employee relationship. In my view, the issues earlier framed by the Labour Court on 22 October 2012 relating to fairness in enquiry and perversity in the findings of the Enquiry Officer were totally erroneous. It is an admitted fact that no enquiry has been conducted before terminating the services of the Workman. Therefore, Issue No.2 and 3 have rightly been deleted by the Labour Court. The first issue earlier framed was about status as Workman. Instead of that issue, the Labour Court has subsequently recast the same by framing issue about existence of employer-employee relationship. In my view framing of first issue about existence of employer-employee relationship was warranted on account of denial of such relationship by the Hotel in its Written Statement. I therefore do not find any impropriety being committed by the Labour Court in recasting the issues or in framing the issue about existence of employer-employee relationship.

13. The next issue is about enlarging the scope of reference made to the Labour Court. No doubt the order of Reference was

about termination of services of Workman. The exact reference made to the Labour Court was as under :

श्री. भिकान लक्ष्मण देवकर यांना त्यांची मागील सेवा अखंड धरून मधल्या काळातील वेतनासह चदिनांक ०५/०८/१० पासून पूर्णवत कामावर घेण्यात यावे.

14. The Reference was directed against both Hotel as well as Orix. The Reference was not restricted only to Contractor-Orix. Infact, it was the claim of the Workman that his services were terminated by Hotel and that he was in service of the Hotel. In his Statement of Claim, the Workman raised prayer clause (viii) as under :

To declare the Contract between the First Party No.1 and First Party No.2 as sham and bogus.

15. Furthermore, though the relief with regard to termination was addressed against the Contractor-Orix, the reinstatement was sought in services of the Hotel. The claim was resisted by the Hotel by filing Written Statement in which in prayer (a), the Hotel contended as under:

(a) *That, there was and is no employer-employee relationship between the First Party No.1 and the second party during the material time or for that matter at any point of time.*

16. It is an account of the denial of employer-employee relationship by the Hotel in its Written Statement that Issue No.1 was required to be framed. The issue is incidental to the issue of termination, reinstatement and backwages. In my view, therefore it cannot be said that the Labour Court has travelled beyond the scope of reference. Therefore reliance by Mr. Paranjpe on the judgment in the case of **Gouri Sankar Chatterjee** (supra) is misplaced.

17. Now I proceed to examine the correctness of finding recorded by the Labour Court about existence of employer-employee relationship between the Hotel and the Workman. The Apex Court, in its judgment in **Balwant Rai Saluja** has prescribed six tests for determination of issue of existence of employer-employee relationship. Para-65 of the judgment in **Balwant Rai Saluja** is reproduced by the Apex Court in its judgment in **Bharat Heavy Electricals Ltd.** (supra). In para-24 and 25, the Apex Court has held as under :

24. We may hasten to add that this view of the law has been reiterated in **Bahwani Rai Saluja v. Air India Ltd.**, as follows: (SCC pp. 437-38, para 65)

“65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;

- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case, International Airport Authority of India case and Nalco case”

25. However, Ms Jain has pointed out that contractors were frequently changed, as a result of which, it can be inferred that the workmen are direct employees of BHEL. There is no such finding of the Labour Court or any reference to the same by the High Court. Consequently, this argument made for the first time in this Court together with judgments that support the same, is of no consequence.

18. Mr. Paranjpe has relied upon the judgment in ***Bharat Heavy Electricals Ltd*** in support of the contention that none of the tests specified by the Apex Court are satisfied in the present case so as to establish employer-employee relationship. Before I proceed to go into the issue of satisfaction of the said six tests, it must be observed that in the case of ***Bharat Heavy Electricals Ltd***, the issue of change of Contractor was sought to be raised for the first time directly before the Apex Court in absence of any finding by the Labour Court or High Court in that regard. This is the reason why the Apex Court reversed the finding of the Labour Court and High Court about existence of employer-employee relationship. In the present case, the Workman pleaded in his

Statement of Claim about change of contractors and continuance of his services.

19. In the present case, it is established that the Workman has continued in service without any break despite change of several contractors. He has worked in M/s. K.S. Enterprises from 4 February 2003 to 6 February 2005, in Karma Management Consultant Pvt. Ltd. from 7 February 2005 to 1 July 2007 and in Orix from 2 July 2007 till the date of his termination. Therefore, the test of continuity of service despite change of contractors is satisfied.

20. It has also come on record that the initial appointment of the Workman was made by the Hotel itself on 2 February 2002 and that he continued to work as direct employee of the Hotel till 3 February 2003 whereafter he was shown to be the employee of various contractors. Thus it is established that the initial appointment of the Workman was by the Hotel and not by the Contractor.

21. Two warning letters issued by the Hotel to the Workman on 11 May 2004 and 18 February 2006 are produced in evidence. Both warning letters are issued during Workman's contractual employment. The show cause notice dated 18 February 2006 accused the workman of remaining absent without getting the leave approved from the Department Head. From contents of the

show cause notices, in my view, three more tests are satisfied. The show cause notices show that (i) hotel used to take disciplinary action against the Workman, (ii) they show supervision and control over the activities of Workman by the hotel, (iii) the Workman was being granted leave by the hotel.

22. After considering the above factors, it is clear that except the test of actual payment of salary, all other tests prescribed by the Apex Court in *Balwant Rai Saluja* are satisfied in the present case. In my view, therefore no serious error can be traced in the finding recorded by the Labour Court that there existed employer-employee relationship between the Hotel and the workman. It must however be clarified here that this finding is based on peculiar facts of the present case and the same would not imply that every employee of various contractors would become direct employees of the Hotel.

23. Another factor to be taken into consideration by the Labour Court for establishing employer-employee relationship is non- registration of agreement with the Contractor and non-issuance of license to the Contractor. Though Mr. Paranjpe has relied upon the judgment of the Apex Court in *Dena Nath* (supra) in support of the contention that mere absence of registration or license does not give rise to automatic presumption of employer-employee relationship, in subsequent judgments in *Haryana State*

Electricity Board (supra) and ***Hindalco Industries Ltd.*** (supra), the Apex Court has held that absence of registration of contract and non-procurement of license by the Contractors can be relevant factors for presuming employer-employee relationship. In the present case, the contractor's agreement is not registered and Orix did not procure license for engagement of contract workers. Through these are the factors for deciding the existence of employer-employee relationship, the same is not presumed in the present case only on account of non-registration of contract or absence of license to the Contractor. The presumption is raised on the basis of satisfaction of various tests prescribed by the Apex Court in the case of ***Balwant Rai Saluja***.

24. The services of the workman have been terminated by mere issuance of show cause notice without holding any disciplinary enquiry. He was not paid retrenchment compensation at the time of termination of his services. The termination is thus clearly erroneous and no interference is warranted in the order of the Labour Court in that regard.

25. Writ Petition No. 17 of 2021 is filed by the Workmen claiming full backwages, I do not see any reason why full backwages should be granted in the present case. It has come in evidence that the Workman was earning Rs.400/- per day while working as Badli Driver. Considering the skill of the Workman, it is difficult to be

believe that he would have remained unemployed throughout the intervening period. There is specific admission of earning wages while working as Badli Driver. In that view of the matter, grant of 100% backwages to the Workman is not at all warranted.

26. Having held that there existed employer-employee relationship between the hotel and the workman and that his services were wrongfully terminated, the next issue is about nature of relief that can be granted in the facts and circumstances of the case. By now period of 13 long years has lapsed from the date of termination of services of the Workman. He has reached slightly advanced age of 52 years and may find it bit difficult to work as a Driver to serve the patrons of a star category hotel. In that view of the matter and considering unsavory relationship between the parties, grant of lumpsum compensation would offer adequate solace to the Workman in the facts and circumstances of the case. Turning to the issue of compensation, it is seen that the last wages drawn by the workmen was Rs.10,140/-. The Labour Court has awarded 50% backwages to be computed on the basis of last drawn wages. The Workman was directed to be reinstated by the Labour Court on 29 January 2019, after which we would be entitled to full backwages as were payable to other similarly placed drivers. Considering the amount of 50% backwages upto 29 January 2019, full backwages after 29 January 2019 and his balance service, gratuity, etc, in my view, award of compensation of Rs.25,00,000/-

to the Workman would meet the ends of justice in the facts and circumstances of the present case. The package of lumpsum compensation of Rs.25,00,000/- would be towards full and final settlement and the Workman shall not be entitled to any further monetary benefits from the Hotel.

27. I accordingly proceed to pass the following order:

(i) *The Award passed by the Labour Court on 29 January 2019 in Reference (IDA) No. 20 of 2012 is modified to the extent that the employer-M/s. Chalet Hotels Ltd. shall pay to the Workman-Bhikan Laxman Deokar lumpsum compensation of Rs. 25,00,000/- in lieu of reinstatement and backwages.*

(ii) *Except the lumpsum compensation so awarded, the Workman shall not be entitled to any further monetary benefits from the hotel.*

28. With the above directions, both the Writ Petitions are disposed of.

SANDEEP V. MARNE, J.