

महाराष्ट्र शासन  
कामगार उप आयुक्त, यांचे कार्यलय,  
पुणे - मुंबई रस्ता, बंगला नं. ५, शिवाजी नगर पुणे-०५.

दुरध्वनी क्र.०२०-२५५४१६१७, २५५४१३१६

Email ID-dyclpune@gmail.com

जा.क्र./काउआ/ औविअ/२अ निवाडे/ ४०८७

दि. २ /०३/२०२१

अधिसूचना

क्र./काउआ/ औविअ/ २ अ निवाडा/१८/२०२१

औद्योगिक विवाद अधिनियम, १९४७ चा अधिनियम क्रमांक १४ च्या कलम ३९ अंतर्गत सदर अधिनियमा च्या कलम १७ अंतर्गत शासनाकडून प्रत्यायोजित करण्यात आलेल्या शक्तीचा वापर करून कामगार उप आयुक्त, पुणे, यानी आदेश क्रमांक- औविअ/ एडीए/२ अ संदर्भ/अ.रा.लाकसवार/१८३/२०१२ अन्वये

मे. एफ. पी. आय.,

गेट नं. १४७, चाकण, म्हाळंगे रोड,

खराबवाडी, ता. खेड, जि. पुणे-४१० ५०१

प्रथम पक्ष (नियोक्ता/उद्योग/आस्थापना)

आणि

श्रीमती. मंगला शिंदे,

द्वारा श्री. वागस्कर, बालाजीनगर,

पुणे-नाशिक रोड, चाकण,

ता. खेड, जि. पुणे-४१० ५०१.

द्वितीय पक्ष (कामगार)

यांच्यातील औद्योगिक विवाद मा. पिठासन अधिकारी, द्वितीय कामगार न्यायालय, पुणे यांचेकडे अभिनिर्णयासाठी सुपूर्द केला होता. सदर औद्योगिक विवादाबाबत कामगार न्यायालय, पुणे यांनी रेफरन्स आय डी ए नं. २९०/२०१६ दिनांक ०४/०२/२०२१ अन्वये दिलेला निवाडा प्रस्तुत अधिनियमाच्या कलम १७ अंतर्गत शासनाने प्रत्यायोजित केलेल्या शक्तीचा वापर करून कामगार उप आयुक्त, पुणे हे औद्योगिक विवाद (मुंबई) नियम, १९५७ च्या नियम ३१ (अ) (ब) नुसार प्रसिध्द करण्याकरीता सदर अधिसूचना कामगार न्यायालयाने सुचना फलकावर प्रसिध्द करावी म्हणून पाठवित आहे.

(व्ही. सी. पनवेलकर)

कामगार उप आयुक्त, पुणे जिल्हा, पुणे.

प्रत माहिती करीता रवाना

- १) सचिव मा. पिठासन अधिकारी, श्री. के. आर. देशपांडे, द्वितीय कामगार न्यायालय, पुणे यांचेकडे उपरोक्त अधिसूचना निवाड्याच्या प्रतीसह पाठविण्यात येत असून सदरहू अधिसूचना दि. १ /०३/२०२१ पूर्वी सूचना फलकावर प्रदर्शित करून संबंधित पक्षकारांना त्याची प्रत पाठवावी.
- २) मे. एफ. पी. आय., गेट नं. १४७, चाकण, म्हाळंगे रोड, खराबवाडी, ता. खेड, जि. पुणे-४१० ५०१.
- ३) श्रीमती. मंगला शिंदे, द्वारा श्री. वागस्कर, बालाजीनगर, पुणे-नाशिक रोड, चाकण, ता. खेड, जि. पुणे-४१० ५०१.

Award

--- 1 ---

**Reference(IDA) No. 290/2016**

Received on – 16/07/2016

Registered on-25/07/2016

Decided on – 04/02/2021

Duration – 04Y; 06M; 9D.

**CNR No. MHLC120015302015**

**IN THE LABOUR COURT NO.2, PUNE**

(Presided over by Kiran R. Deshpande, Presiding Officer)

**Reference(IDA) No. 290/2016.**

**Exh. No. O - 8.**

**Dispute between -**

M/s. F.P.I.,

Gat No. 147, Chakan, Mhalunge Road,

Kharabwadi, Tq. Khed, Dist. Pune-410 501. ..First party

**And -**

Smt. Mangala Shinde,

C/o. Shri. Wagaskar,

Balajinagar, Shankarnagar, Pune-Nashik

Road, Chakan, Tq. Khed, Dist. Pune-410501. .. Second party.

**Appearances :-** Adv. D.D. Shendge for First Party.

Adv. R.P. Shaligram for Second party.

**AWARD**

(Passed on 04/02/2021)

- 1) This is a reference under Section 12(4) of the Industrial Disputes Act, 1947 from Deputy Commissioner of Labour, Pune to decide the industrial dispute as to whether services of Second party – Smt. Mangala Shinde was terminated by First party illegally from 18/05/2015 and as to whether Second party is entitled for continuity of service and all other legal benefits.



Award

--- 2 ---

Reference(IDA) No. 290/2016

2) In view of statement of claim Exh. U-5, case of Second party is as under -

That, Second party claims that she joined First Party Company as an Operator on 01/06/2015 and she was made permanent, however, Second Party demanded wages, therefore, on 18/05/2015, First Party illegally orally terminated services of Second Party. No notice, no compensation for retrenchment was given and paid, therefore, she approached Labour Commissioner who refer the dispute for deciding it.

3) First Party filed Written Statement below Exh. 3 and resisted the Claim on the ground that Second Party has suppressed material facts from the Court as she was engaged through Contractor on 01/06/2013. It is further contended that as per the contractual appointment, Second Party was liable for transfer from one company to another, however, instead of making compliance of Lawful instructions of the contractor, Second Party insisted to retain in the same Company. The Contractor gave warning to Second party. Second Party filed complaint before the Assistant Commissioner of Labour when First Party explained fact that Second Party was appointed through Contractor Allied Resource Management Services Ltd., Bhosari, Pune, Second Party was directed to resume her duty. However, still Second Party insisted to work only in Future Pipes Ind. Ltd. Second Party misused process of Law, she is not entitled for any relief and therefore, prayed for rejection of the claim.

4) My learned predecessor has framed issues, I have reproduced it as below and recorded my findings thereon for the reasons stated below :-



Award

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Reference(IDA) No. 290/2016

**Sr.No.**

**Issues**

**Findings**

- 1) Does Second Party prove that First Party has illegally terminated her services w.e.f. 18/05/2015? ... In negative.
- 2) Does Second Party prove that there was employee-employer relationship between her and First Party? ... In negative.
- 3) Whether Second Party is entitled for reinstatement with continuity of service, back-wages and other consequential benefits? ... In negative.
- 4) What order? ... Reference is answered in negative.

**REASONS**

5) In order to prove the claim Second Party has filed her affidavit bellow Exh. U-13, produced documentary evidence and closed her evidence vide pursis below Exh. U-17. First Party did not lead oral evidence, accordingly, pursis below Exh. C-12 is filed.

**AS TO ISSUE NOS. 1 TO 3 :-**

6) All issues are interlinked with each other hence they are taken together for consideration.

7) Second party filed her affidavit in lieu of examination in chief and reiterated the same contents of the Statement of Claim. In support of oral evidence, she filed two documents below Exh. U-14 and Exh. U-15. First Party has filed photocopies of some documents along with Exh. C-11, however, those are not exhibited and proved in accordance with the



Award

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Reference(IDA) No. 290/2016

provisions of Law.

8) According to learned Counsel for Second Party, defence raised by First Party is not proved, nothing has come in cross-examination of Second Party. Document Exh. U-14 and Exh. U-15 issued by First Party whose old name was Protesa India Pvt. Ltd. and this fact is admitted by First Party. According to him First Party has not lead any evidence. Photocopies of the documents are filed, which are not proved and exhibited, therefore, they cannot be read in the evidence. Hence, prayed for allowing reference. As against this learned Counsel for First Party argued that, there was agreement between the Company and Contractor, Second Party was engaged through Contractor. According to him, muster register and other documents bearing signatures and photos of Second Party, however, in her cross-examination, she purposefully denied her signatures and photo, hence, he prayed for rejection of Reference.

9) After considering submissions of both learned counsels, I find that it is admitted fact that old name of First Party Company was Protesa India Pvt. Ltd.. The documents below Exh. U-14 and Exh. U-15 are issued by this Protesa India Pvt. Ltd. company which is First Party. Only these documents are produced in support of the claim. Though, it is pleaded in the Statement of Claim that she was working with First Party since 01/06/2013 as an Operator and she was made permanent, however, there is no documentary evidence in this regard. It is the preliminary duty of Second Party to establish the fact that she was appointed by First Party as per procedure and Rules. Of course, First Party raised the defence of contractual



employment and did not lead any oral and documentary evidence, still I find that as per the provisions of Law and as per the basic principle of the Evidence Act, person who approaches the Court of Law and ascertain any particular fact, the liability to prove the said fact lies on his or her shoulder. In the case, if no evidence is lead by either of side then the person who is claiming or ascertaining particular fact fails. Taking into account this basic principle of the Evidence Act, I find that Second Party has not absolutely lead any document regarding her initial appointment and regarding her alleged permanency in First Party Company.

10) I have gone through the cross-examination of Second Party and find that she was confronted with Forms and her educational certificates bearing her photographs and signatures. However, it was observed by the Court that inspite of showing and asking 3 to 4 times, she was not giving answer and lastly she by taking much more time denied, I find that behaviour of Second Party is very much doubtful and her conduct before the Court in avoiding true answers itself suggest and lead me to draw the adverse inference against her.

11) I have perused documents below Exh. U-14 and Exh. U-15 and find that these certificates are issued by First Party certifying that Second Party was awarded for activity for work area of the month. Both the certificates are in respect of activities for the work area. Even accepting these certificates as it is, still it does not show that she was initially appointed by First Party. I find that both these documents are not going to help to Second Party.

12) It is clear that First Party in its Written Statement



Award

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Reference(IDA) No. 290/2016

admits that Second Party had worked with it, however, it does not mean that Second Party was appointed by First Party. Had it been fact that Second Party was appointed by First Party and then she got permanency in the Company then definitely there could have been voluminous documents produced by Second Party before the Court. Even she has not filed her salary certificate, she has not filed any document to show that really she was working till alleged oral termination dated 18/05/2015. She has claimed in cross-examination that her salary was being paid in cash. I find that usually no payment of salary is being made in cash. It is through bank, the amount of salary is to be deposited in the account of concerned employee. She could have show the Court that payment was being made by First Party from the inception till the alleged oral termination.

13) I find that Second Party has not produced a single piece of document, therefore, I find that she has not proved that she was appointed by First Party Company and she was orally terminated on 18/05/2015. Having considered these aspect, I have no hesitation to hold that the claim of Second Party is not sustainable and as I found some probability in the defence of First Party, it can be inferred that the Second Party on her own abandoned the services because she was insisted same company whereas she was asked to go in another company. Therefore, fact of alleged oral termination dated 18/05/2015 is also not proved by her. It can be inferred that Second Party was employed through Contractor. Hence, I answer issue Nos. 1 to 3 in negative and proceed to pass following order.

**ORDER**

- 1) The award is answered in negative.



Award

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Reference(IDA) No. 290/2016

- 2) Parties to bear their own cost.
- 3) Inform accordingly to the appropriate Government for publication of award.

Kiran  
Rangarao  
Deshpande

Digitally signed  
by Kiran  
Rangarao  
Deshpande  
Date:  
2021.02.06  
11:03:19 +0530

Place :- Pune.

Date :- 04/02/2021.

Pune.

amj/-

( K. R. Deshpande )  
Presiding Officer,  
Labour Court No.2,

I/c. Secretary,  
Labour Court, Pune.

Argument on :- 02/02/2021.  
Award dictated on :- 04/02/2021.  
Award transcribed on:-05/02/2021.  
Award checked and signed on:-05/02/2021.



TRUE COPY  
  
Secretary  
Labour Court, Pune