

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3349 OF 2001

The Executive Engineer,
Nashik Irrigation Division,
Nashik & Anr.

: Petitioners

V/s.

Shri Radhakisan Deoram Khairnar

: Respondent

...

WITH

WRIT PETITION NOS.3354/2001, 3367/2001, 3369/2001, 3371/2001,
5332/2001 & 5341/2001.

....

Mr.S.R.Nargolkar, Asstt. Govt. Pleader for petitioners in Writ Petition
Nos.3349/2001, 3354/2001, 3367/2001, 3369/2001 & 3371/2001.

Mr.Nitin Jamdar for petitioners in W.P. Nos.5332/2001 & 5341/2001.

Mr.C.T.Chandratre for respondent in W.P.No.3349/2001.

Mr.D.S.Patil i/b. Mr.G.S.Godbole for respondents in W.P.No.3367/2001,
3371/2001 & 5332/2001.

Mr.Shrikant Chavan i/b. Mr.Umesh R. Mankapure for respondent in W.P.
No.5341/2001.

...

CORAM : D.D. SINHA & A.R.JOSHI,JJ.

DATE : SEPTEMBER 16, 2010.

P.C.:

Heard the learned counsel for the petitioners and the learned counsel appearing for the respective respondents.

2. The learned single Judge, in view of the conflicting views expressed by the learned single Judges of this Court, made a reference vide order dated 12.9.2005 to the larger Bench to decide the following issues:-

- “(i) Whether the employees working as muster assistants are working in an industry as defined under section 2(j) of the Industrial Disputes Act?
- (ii) Whether these persons who were employed to oversee the work of unskilled workmen, employed through the Employment Guarantee Scheme on various works like irrigation, road construction, building of canals, etc. are workmen within the meaning of section 2(s) of the ID Act?”

3. In view of the order of reference, the matter was placed before the Division Bench presided over by the Hon’ble Shri Justice D.K.Deshmukh on 10.6.2008. The respective learned counsel for the parties argued the matter before the Division Bench and after hearing the parties, the

Division Bench has passed the following order on 10.6.2008 which reads thus:-

“Learned counsel appearing for both sides submit that the Supreme Court by its Judgement in case of State of U.P. v/s. Jai Bir Singh (2005) 5 SCC 1 has referred the judgement of Supreme Court in case of Bangalore Water Supply & Sewerage Board v/s. A. Rajappa 1978 (2) SCC 213 to the larger Bench for re-consideration. In our opinion, it would not be appropriate for this Court to take up the matter for consideration at this juncture. The appropriate time would be to take up the matter after the Supreme Court decides the case in case of Bangalore Water Supply & Sewerage Board.

Petition is adjourned sine-die with liberty to the parties to mention the matter after the judgement of the Supreme Court becomes available.”

4. It is not in dispute that the larger Bench of the apex Court till this date has not decided the issue referred vide decision in the case of State of

U.P. v. Jai Bir Singh. It appears that the Registry failed to apprise the then Acting Chief Justice about the order dated 10.6.2008 passed by the Division Bench of this Court in the present reference and, therefore, the Registry was directed to place the present reference before the Division Bench and, hence, the matters are once again listed before us for hearing. It is not in dispute that the order dated 10.6.2008 was passed by the Division Bench after hearing all the parties to the petitions as well as after taking into consideration the pendency of reference before the larger Bench of the Supreme Court. Since the issue/s has/have not yet been decided by the larger Bench of the Supreme Court and in view of the order dated 10.6.2008 passed by the Division Bench of this Court in the present reference as well as considering the judicial propriety, it will be appropriate to adjourn these matters sine die.

5. In the circumstances, the present Writ Petitions are adjourned sine die for the reasons mentioned in the order dated 10.6.2008 passed by the earlier Division Bench with liberty to the parties accordingly.

(D.D. SINHA, J.)

(A.R. JOSHI, J.)