



**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**&**

**HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI**

**WRIT PETITION No. 4945 of 2016**

**SHANKAR**

*Versus*

**IPCA LABORATORY**

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**Appearance:**

*None present for the petitioner.*

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the respondent.*

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**WITH**

**WRIT PETITION No. 5449 of 2016**

**IPCA LABORATORIES LTD.**

*Versus*

**RAJESH TOPO AND OTHERS**

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*None were present for the respondents.*

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**WRIT PETITION No. 5450 of 2016**

**IPCA LABORATORIES LTD**

*Versus*

**SANDEEP AND OTHERS**

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**Appearance:**



*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*Shri Laakhan Singh Chandel – Advocate for the respondents.*

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**WRIT PETITION No. 5452 of 2016**

***IPCA LABORATORIES LTD***

*Versus*

***MAHESH AND OTHERS***

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*Shri Karpe Prakhar Mohan – Advocate for the respondents.*

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**WRIT PETITION No. 5453 of 2016**

***IPCA LABORATORIES LTD***

*Versus*

***HAMID KHAN AND OTHERS***

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*Shri Karpe Prakhar Mohan – Advocate for the respondents.*

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**WRIT PETITION No. 5455 of 2016**

***IPCA LABORATORIES LTD***

*Versus*

***SANT KUMAR AND OTHERS***

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*Shri Laakhan Singh Chandel – Advocate for the respondents.*

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**WRIT PETITION No. 5457 of 2016**

***IPCA LABORATORIES LTD***

*Versus*

***AMIT KUMAR AND OTHERS***

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*None were present for the respondents.*

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**WRIT PETITION No. 5458 of 2016**

***IPCA LABORATORIES LTD.***

*Versus*

***RAFIQ BEG AND OTHERS***

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*Shri Karpe Prakhar Mohan – Advocate for the respondents.*

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**WRIT PETITION No. 5464 of 2016**

***IPCA LABORATORIES LTD***

*Versus*

***DEVENDRA AND OTHERS***

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*None were present for the respondents.*

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**WRIT PETITION No. 5465 of 2016**

***IPCA LABORATORIES LTD.***

*Versus*

***JAIMAN AND OTHERS***



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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*Shri Laakhan Singh Chandel – Advocate for the respondents.*

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**WRIT PETITION No. 5468 of 2016**

***IPCA LABORATORIES LTD***

*Versus*

***YOGESH AND OTHERS***

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*Shri Laakhan Singh Chandel – Advocate for the respondents.*

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**WRIT PETITION No. 5469 of 2016**

***IPCA LABORATORIES LTD.***

*Versus*

***LAGHU UDYOG MAZDOOR UNION (CITU) AND OTHERS***

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*Shri Karpe Prakhar Mohan – Advocate for the respondents.*

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**WRIT PETITION No. 5470 of 2016**

***IPCA LABORATORIRES LTD***

*Versus*

***GOPAL AND OTHERS***

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*



*Shri Laakhan Singh Chandel – Advocate for the respondents.*

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**WRIT PETITION No. 5473 of 2016**

***IPCA LABORATORIES LTD.***

*Versus*

***PANCHAMLAL AND OTHERS***

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*Shri Karpe Prakhar Mohan – Advocate for the respondents.*

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**WRIT PETITION No. 5475 of 2016**

***IPCA LABORATORIES LTD***

*Versus*

***BRIKISHORE PANCHOLIA AND OTHERS***

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**Appearance:**

*Shri Brien D'silva learned Senior Advocate and Shri Shashank Sharma – Advocate for the petitioner.*

*Shri Karpe Prakhar Mohan – Advocate for the respondents.*

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***Reserved on*** : ***20.11.2024***

***Delivered on*** : ***18.12.2024***

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**ORDER**

***Per: Justice Vivek Rusia***

Regard being had to the similitude to the controversy involved in the present cases, with the joint request of the parties, all these petitions are finally heard and decided by this common order. Facts are being taken from Writ Petition No.5449 of 2016.

02. Petitioner has filed the present petition against the order dated 27.06.2016 passed by the President, Industrial Court Indore in various



civil appeals filed by respondents. Petitioner is a company registered under the Companies Act, 1956. The petitioner is engaged in the manufacturing of trucks from its unit situated at 89-A, B-90 Industrial Area, Polo Ground, Indore. The petitioner has a license under the Factories Act, 1948.

03. Laghu Udyog Majdoor Union (CITU) along with 17 workmen (hereinafter referred to as “**the workmen**”) raised an industrial dispute before the Industrial Court Indore under Section 31(3) r/w Section 61 and 62 of the Madhya Pradesh Industrial Relation Act, 1961 (hereinafter referred as “MPIR Act”) challenging the termination as illegal and sought written statement with full back wages. According to the workmen, they were appointed by the petitioner company, but after 4 – 5 years Kailash Narayan Dubey who was working as a Supervisor was malafidely declared as a contractor and they were shown his employee, with the intention to deny the benefits at par with the regular workmen. After the agitation by the Union, a settlement was arrived on 28.04.2003, but the settlement conditions were not complied with. The workmen approached the Labour Court claiming the benefit of equal pay, allowance, and bonus due to which the management became annoyed and they were terminated from service w.e.f. 01.04.2006 without complying with the provisions of Section 25(F) and 25(G) of the Industrial Dispute Act, 1947 therefore, the termination is illegal and they are entitled to reinstatement.

04. The petitioner appeared and filed a written statement denying the averments. The petitioner denied the employer-employee relationship with the respondent workmen and submitted that they are the employees of contractor Kailash Narayan Dubey. It was also submitted that the contract came to an end on 31.03.2006 hence they were removed by the contractor, therefore, they are not entitled to



reinstatement and back wages.

05. The contractor was also impleaded as a second party before the Labour Court and also filed a written statement in support of the petitioner. The Labour Court recovered the evidence of workmen and the witnesses of management. The contractor also entered into the witness box. After recording the evidence, vide award dated 10.09.2009, the Labour Court dismissed the application under Section 31(1) of the Workmen by holding that they were the employees of the contractor, not the petitioner.

06. Being aggrieved by the aforesaid order, workmen preferred civil appeals before the Industrial Court, Indore. Vide order dated 19.03.2010, the learned Industrial Court allowed the appeals concerning workmen and directed the petitioner to reinstate them in service with 50% back wages.

07. Being aggrieved by the aforesaid order, the petitioner approached this Court by way of Writ Petition No.6491 of 2010. The Writ Court has held that the learned Industrial Court has wrongly shifted the burden on the petitioner/employer to establish that they were not their employee before 2003 and at the time of termination. Vide order dated 16.01.2015, this Court set aside the impugned order of the Industrial Court and remanded the matter back for fresh adjudication in light of the law settled by the Supreme Court.

08. After remand, the learned Industrial Court re-appreciated the evidence and vide impugned award dated 27.06.2016 again held that the workmen are entitled to get reinstatement with 50% back wages except Somai who died during the pendency of this litigation hence, these petitions before this Court.

09. This Court issued notice to the respondents and thereafter admitted the writ petitions for final hearing at the motion stage.



However, this Court has not stayed the operation of the award. The petitioner did not give the benefit of the judgment except has been paying last wages drawn by them at the time of termination.

**Submissions of the petitioner:**

10. After hearing learned counsel for the parties at length, vide order dated 23.10.2024, we considered that only 28 workmen are left who are contesting these writ petitions in whose favour there is an award passed by the Industrial Court. They worked with the petitioner from the year 1997 till 2006 and thereafter they have languished before this Court for the last 18 years, hence we had hope and trust that this matter could be settled amicably between the parties by modifying the relief of reinstatement with 50% back wages by paying a lump-sum amount to the petitioner/employer to the respondent/workmen. We gave some time to the petitioner to consider our proposal of settlement. After that, these petitions were listed on 25.10.2024 and 08.11.2024, but the management of the petitioner did not submit any proposal for settlement hence, we heard these petitions finally. Hence we heard the writ petitions on merit.

11. Shri Brien D'silva, learned senior counsel appearing for the respondents/workmen submitted that this Court in the first round of litigation held that the learned Labour Court wrongly shifted the burden on the petitioner management to prove that the respondents/workmen were not their employee and were the employee of the contractor, therefore, after remand the Industrial court was only required to examine the evidence and material produced by the workmen to establish that they were the employee of the petitioner by re-appreciating the evidence.

12. It is therefore submitted by the learned senior advocate that the learned Labour Court wrongly held that the onus to prove the





relationship lies with the petitioner to prove that the workmen were not its employees. The learned Labour Court has wrongly ignored the contract agreement dated 26.05.2003 which conclusively established that the workmen were the employees of the contractor and not the management, therefore, the finding recorded by the Labour Court is perverse and liable to be set aside. According to Shri D'silva, learned senior counsel, workmen have failed to establish that they worked 240 days with the petitioner, as except for oral evidence no other documentary evidence has been produced by them. The learned Industrial Court has wrongly emphasized the deduction of PF and ESI contributions by the petitioner. The petitioner being a principal employer is liable to deduct the PF and ESI contribution of the employees engaged through a contractor, therefore, only based on this deduction of PF and ESI, the onus or burden has wrongly been shifted on the petitioner to prove that the workmen did not work 240 days. The contract came to an end on 30.03.2006 and thereafter the workmen were discontinued from the service.

13. It is further submitted that the workers claimed their reinstatement based on the deposition of ESI and PF contributions in the code of the principal employer. The principal employer is bound by the provision of both respective acts to deposit the contribution for employees either appointed by him directly or engaged through a contractor. The learned Trial Court in its judgment in para 11 considered this aspect with the aid of judgment passed by this Hon'ble Court in the cases of *BSP Contactors Association Vs. Steel Authority of India (1999(1) MPLSR 4)* and *Deccan Chronicle Vs. G. Pedda Reddy & others, 2004 SCC Online AP 387* and held that on the basis of deposition of contribution in the account of the principal employer, it cannot be held that he was an employee appointed by the principal



employer.

14. It is submitted that the employer contractor raised the plea of applicability of the MPIR Act on the account of schedule industry and employment of 100 workers but the question has not been dealt with and decided by the impugned order by the Industrial Court. The provisions of the MPIR Act did not apply to the establishment of both the contractors as held by the Division Bench of this Hon'ble Court in the case of *M/s Atofina Catalyst (India) Ltd. & another Vs. Yadav Prasad, 2010 MPLSR 169*. It is no more a *res-integra* of law after the pronouncement of judgment passed in the case of *NTPC Vs. Badri Singh Thakur, (2008) 9 SCC 377*.

15. It is submitted that Kailash Narayan Dubey a contractor closed his business at the time of termination of his employee whereas respondent No. 2 (Rakesh Vyas) contractor had transferred its worker to some other locations where respondent workers did not join. Respondent No.22 expired on 04.02.2023. Reliance has been placed by the petitioner/employer on the judgments of the Hon'ble Apex Court in the following cases: *Range Forest Officer v/s S.T. Hadimani, 2002 (3) SCC 25*, *R.M. Yellati V/s Assistant Executive Engineer, (2006) 1 SCC 106*, *Municipal Council Sujampur V/s Surinder Kumar, (2006) 5 SCC 697*, *Krishna Bhagya Jal Nigam Ltd. V/s Mohd. Rafi, (2006) 9 SCC 697*, *International Airport Authority of India V/s International Air Cargo Workers' Union, (2009) 13 SCC 374*, *Workmen of Nilgiri Coop. Mkt. Society Ltd. V/s State of Tamil Nadu, (2004) 3 SCC 514*, *Ram Singh V/s Union Territory, Chandigarh, (2004) 1 SCC 126*, *Kanpur Electricity Supply Co. Ltd. V/s Shamim Mirza, (2009) 1 SCC 20*, *Kirloskar Brothers Ltd. V/s Ramcharan, (2023) 1 SCC 463*, *Steel Authority of India Ltd. V/s Union of India, (2006) 12 SCC 233*, *Ishwar Dutt V/s Collector, (LA) (2005) 7 SCC 190*, *K.P. Dwivedi V/s State of*



*U.P., (2003) 12 SCC 572, Surendranagar District Panchayat V/s Dahyabhai Amarsinh, (2005) 8 SCC 750, Municipal Corpn., Faridabad V/s Siri Niwas, (2004) 8 SCC 195, RBI V/s S. Mani, (2005) 5 SCC 100 and Balwant Rai Saluja V/s Air India Ltd., (2014) 9 SCC 407.*

**Submissions of workmen:**

16. *Per contra*, Shri Laakhan Singh Chandel, learned counsel appearing for some of the respondents/workmen rebutted that Kailash Narayan Dubey was working as a Supervisor in the petitioner company. With a malafide intention, a bogus and camouflaged agreement was prepared to show the workmen as contract labour in order to deny their legitimate claim. Even if the contract is accepted, Shri Kailash Narayan Dubey was engaged as a contractor to provide the loader whereas these workmen were working in the factories as skilled labour. It is further submitted that Rakesh Vyas lodged an FIR No.867/2019 at police station Banganga on 15.07.2019 under Section 406, 420, 120-B of IPC against the petitioner/company.

17. Shri Karpe, learned counsel appearing for some of the workmen submitted that twice learned Industrial Court has passed the award of reinstatement with 50% back wages after appreciating the evidence came on record, therefore, the same is not liable to be interfered with under Article 227 of the Constitution of India. The petitioner came up with the agreement dated 01.05.2005 executed with Kailash Narayan Dubey for providing workers for the job of loading and unloading. There is no document to show that prior to 01.05.2005 any agreement was executed with the contractor, whereas the respondents/workmen were given a job in the production department. Hence the contract agreement has rightly been discarded by the Industrial court. Learned counsel prayed for the dismissal of the writ petitions.



**Appreciations and conclusion:**

18. After the remand of the appeals by the High Court, the only issue which was required to be considered by the learned Industrial Court was whether the workmen had duly discharged their burden to prove that they worked for 240 days as workmen of the petitioner. If they have successfully proved that then admittedly there was non-compliance of Section 25(f) and (g) of the Industrial Disputes Act before their termination hence the relief is bound to be given to them by a learned Industrial court. It is correct that the burden is always on workmen to prove that they were engaged by the petitioner and before termination, they completed 240 days in one preceding calendar year. The petitioner came up with the oral evidence that they were engaged by the petitioner and terminated by way of oral order. They did not produce any document in respect of appointment as well as termination, but they exhibited the document in respect of deduction and deposit of PF contribution by the petitioner, they have also produced the document to show that they were members of the ESI Corporation, and the petitioner used to deposit the contribution with the Corporation. So far as any other document which is relevant to establish that the respondents were employees of the petitioner and worked 240 days is concerned, admittedly, that crucial documents were with the petitioner. The petitioner witness admitted that the records i.e. muster roll, attendance register etc. of workmen and other employees were burned by Pramod Sharma and A.S. Bhandari, Manager and HR.

19. The petitioner argued before the Industrial Court that by virtue of the agreement dated 26.06.2003, the workmen were transferred to the contractor is unacceptable because the contribution of Employees Provident Fund and State Insurance was being made by the petitioner company not by the contractor. The respondent workmen produced the



record of ESI contribution made in the year 1997, 1998, 2000 and 2003 and during that period, no contractor was engaged by the petitioner company. The aforesaid fact has been admitted by the petitioner's witnesses Vasant K. (DW/1) and Vinod Dindolkar (DW/2) in their cross-examination. Nothing has been brought on record by the petitioner and contractors about the transfer of workmen from the establishment of the petitioner to the contractor. The contractor has also not produced his record pertaining to attendance and payment of salary to these workmen. Hence the oral evidence of the petitioner and contractors cannot be accepted.

20. The learned Industrial Court in para 24 has considered that the workmen filed an application before the Labour Court under Order IX Rule 12 and 14 r/w Section 151 of CPC and Rule 60 & 61 of the MPIR Act for summoning the record of PF and ESI since 1997 to 2006. The petitioner filed a reply that the record of ESI can be called from the ESI Office, and they can produce only records from the years 2005-06. Other records are so bulky they could not be produced without spending Rs.1,500/- as a charge of loading the auto on each date of hearing, but the Labour Court rejected the said application on 22.07.2009 by observing that such record is not relevant to the present case. The workmen who were out of employment and not getting any wages or salary could not challenge the said order before any Court, in our considered opinion the Labour Court ought to have allowed these such applications by directing them to produce these records before the Labour Court which could easily establish that they worked 240 days with the petitioner. Therefore, the adverse inference has rightly been drawn against the petitioner because they were under obligation to produce such record before the Labour Court as they denied the pleadings and the evidence given by the workmen.



21. The Industrial Court has further rightly said that there is a difference between the burden of proof and the onus of proof. The burden of proof never shifts, but the onus of proof shifts at various stages. Once the workmen have given the evidence that they worked with the petitioner for 240 days in one calendar year then the onus was shifted to the petitioner to controvert the same. The learned Labour Court has rightly placed reliance on a judgment passed by the Apex Court in the case of *R.M. Yellati V/s Assistant Executive Engineer, 2006 (1) SCC 106* that in the cases of termination of services of daily wager, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman can only call upon the employer to produce before the court the muster roll, attendance register, etc. In the present case, they specifically filed an application, but the same was wrongly rejected by the Labour Court, therefore, an adverse inference has rightly been drawn against the petitioner.

22. The learned Industrial Court re-appreciated the entire evidence that was recorded by the Labour Court. The petitioner examined Binod Dhindolkar (DW/1) who is an employee of the Regional Provident Fund Office and Vasant K. (DW/2). In cross-examination, DW/1 admitted that the document filed by the workmen in relation to ESI related to the years 1997, 1998, 2000 and 2003 and there is no such record which could show that any contractor was working in IPCA Laboratories Ltd. during the aforesaid period.

23. Apart from the above the scope of judicial review under Article 227 of the Constitution of India by the High Court is very limited. Twice the Industrial Court appreciated the evidence and came to the conclusion that there was an employee-employer relation between the petitioner and the workmen, the contract that was projected by the petitioner was



nothing but to deny the benefits to the workmen, therefore, even if such an agreement was produced by the petitioner, that is a sham and camouflage. The said agreement was in respect of providing loader and unloader not to the skilled workmen like respondents to work in the production unit.

24. These workmen before us have been out of employment since the year 2006, they immediately approached the Labour Court under the MPIR Act although, the Labour Court dismissed their application, but thereafter they preferred the appeal which was allowed in the year 2010. However in the year 2015, the Writ Court remanded the matter back to the Industrial Court and after remand again, in the year 2018, the Industrial Court passed an award in favour of workmen and since 2016 these writ petitions are pending awaiting final adjudication.

25. After the lapse of 18 years, most of the employees have crossed the age of superannuation and some of them have reached to nearby age of retirement and one employee expired. During these 16 years, the plant and machinery in the petitioner's unit must have undergone replacement due to the technology change, therefore, these workmen at this age cannot be expected to work with the existing employees/workmen in the unit. Hence, in the interest of justice, the relief of reinstatement with 50% back wages is liable to be altered to the compensation as a one-time measure. As per the order of the Labour Court, they are entitled to 50% back wages which was payable in the year 2006 till today. However, none of the parties have calculated the aforesaid amount. The petitioner despite giving the opportunity by this Court has not come up with any proposal for payment of compensation in lieu of reinstatement with 50% back wages.

26. In view of the above, we modify the relief by directing the petitioner to pay **Rs.15,00,000/- (Rupees Fifteen Lakhs Only)** to each



**workman** within a period of six weeks from today failing which same shall carry interest at the rate of 6% p.a. from the date of award passed by the Labour Court.

27. Accordingly, this Writ Petition stands **disposed of** to the extent indicated above. As a result, all the connected aforesaid writ petitions also stand **disposed of**.

28. Let a photocopy of this order be placed in the record of all the connected writ petitions.

**(VIVEK RUSIA)**  
**JUDGE**

**(BINOD KUMAR DWIVEDI)**  
**JUDGE**

Divyansh