

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 594 OF 2015

M/S DATSON SHIPPING PVT. LTD.,
REPRESENTED THROUGH ITS MANAGER
SHRI DEVENDRA TUKARAM NAIK.

... Petitioner

Versus

SHRI AUGUSTINHO D'COSTA AND ANR.,

... Respondents

Shri Arunkumar V. Nigalye, Advocate for the Petitioner.
Shri P. Arolkar, Advocate for the Respondent No.1.

Coram:- C. V. BHADANG, J.

Date:- 12th October, 2015

ORAL ORDER:

Heard Shri A.V. Nigalye, the learned Counsel appearing for the petitioner and Shri P. Arolkar, the learned Counsel appearing for respondent no.1.

2. By this petition, the petitioner is challenging the order dated 30/10/2012 passed by the learned Labour Court at Panaji in LCC No.37/2001. By the impugned order, the application filed by the respondents under Section 33-C(2) of the Industrial Disputes Act, 1947 has been allowed thereby directing the petitioner (opponent before the Labour Court) to pay the respondent herein a sum of Rs.38,732/- along with interest, bonus, etc. It is undisputed that an amount of Rs.49,577/- has been deposited in this Court on 26/08/2015.

3. The only contention raised on behalf of the petitioner is that the Labour Court could not have gone into the question as to whether the respondent no.1 was a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, as that question cannot be gone into in a proceedings under Section 33-C(2) of the Industrial Disputes Act.

4. It appears that a reference at the instance of the respondent no.1 challenging his termination is pending before the Labour Court in IT No.95/2000 in which the parties have also led evidence. It is submitted by the learned Counsel for the petitioner that the defence set up by the petitioner is that the respondent no.1 has abandoned the service. It is submitted that the finding recorded by the learned Labour Court on the issue of the respondent no.1 being the 'workman' would come in the way of the petitioner in the reference. The learned Counsel submits that subject to this Court clarifying that the said finding shall not be binding in the reference, the petitioner has no objection in disposing of the petition.

5. The learned Counsel for the respondents has no objection for such a course of action being followed.

6. It appears that the parties have led evidence in the reference including on the nature of the duties and the work of the respondent no.1 which has a bearing on the question, as to whether respondent

no.1 is a 'workman' or not. The said issue can be appropriately decided in the reference pending before the learned Labour Court. In that view of the matter and the concession recorded at the Bar, the petition is disposed of. The Labour Court while deciding the reference IT No.95/2000 shall independently consider the issue as to whether the first respondent is a 'workman' and shall not be influenced by the finding recorded in the judgment and order dated 30/10/2012 passed in LCC No.37/2001. The amount deposited before this Court shall be paid to the first respondent on proper identification. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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