

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3335 OF 2014

M/s. Avati Textiles

.....Petitioner

: V/S :

Shri. Bandu Bauso Chougule

.....Respondent

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Mr. M.S. Topkar, Advocate for the petitioner.

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Coram :- Smt. R.P. SondurBaldota, J.

28th July, 2015.

P.C. :-

1). The petitioner, employer challenges the order dated 29th May, 2013 by which the Reference initiated by the respondent was allowed by the Labour Court and the petitioner was directed to reinstate the respondent with continuity of service. The petitioner was further directed to pay 50% of the backwages payable to the respondent until he attained the age of 60 years i.e. the age of super-annuation. The respondent had, in his statement of claim dated 19th May, 2006 alleged that his services were terminated orally and sought reinstatement in service with continuity and backwages. The respondent claimed that he had been working with the petitioner since 1st April, 2004 as a Weaver in power loom factory. On 18th May, 2005 when he went for duty, he was

orally terminated from service. Thereafter, he sent notice dated 15th July, 2005 to the petitioner and later Reference at his instance came to be made by the Conciliation Officer.

2). The petitioner contested the Reference by denying the entire case of the respondent. It was denied that the respondent had ever worked with the petitioner at any point of time.

3). The evidence led before the Labour Court was of the respondent and the proprietor of the petitioner.

4). The respondent, stated in terms that, he was working as a weaver with the petitioner since 1st April, 2004 on the monthly wages of Rs.2,000/-. According to him, he alongwith five other workers were working for about 12 hours a day but were not paid even the minimum wages. They were paid on the basis of piece rate. Therefore, the respondent and others made a demand to the petitioner that, they be paid minimum wages. The petitioner disliked the demand and orally terminated the respondent from service. Thereafter, the respondent sent notice to the petitioner on 17th August, 2005. In his cross-examination, it was suggested to the respondent that the business of the petitioner started for the first time in the month of January, 2005. The respondent denied the suggestion and stated that the business had started in the month of January, 2004.

5). The petitioner in his evidence reiterated his statement in the written statement that, the respondent never worked with him, claiming that his business had commenced in January, 2005. He produced the first electricity bill received by him from Maharashtra State Electricity Board (MSEB) in support of this claim. There was no positive evidence on the part of the petitioner to establish the date as to which it started the business. The witness admitted that on 18th May, 2005, six of the workers had complained against him to the Conciliation Officer. In his cross-examination then, the witness of the petitioner was asked several questions about his business, the people working with him, the number of looms that he has. He evaded to answer each question. The witness of the petitioner, therefore, is seen to be not a reliable witness.

6). The Labour Court, on appreciation of the above evidence, held that the respondent has succeeded in establishing his service with the petitioner, the date of his joining, the length of his service and allowed the Reference.

7). Mr. Topkar, the learned Advocate appearing for the petitioner relying upon the decision of the Apex Court in **General Manager, Bharat Sanchar Nigam Ltd & Ors. v. Mahesh Chand, reported in 2008 (I) CLR page 784** submits that, the trial Court could not have placed upon the petitioner, the onus of establishing that the

respondent had not worked with it for 240 days and that his service had been terminated without paying him the retrenchment compensation to the petitioner. He submits that, it has been held by the Apex Court in the decision cited, as well as, in the decisions referred to in the decision cited, that the onus was upon the workman making the claim and hence it was necessary for the workman to produce some proof either of receipt of salary or wages for 240 days or order of appointment or record engagement for the period.

8). Undoubtedly, the onus of establishing the fact of continuous work of 240 days is upon the workman. The fact, however, can be established in diverse ways. There is no fixed way or manner of the proof. In my opinion, considering the facts and circumstances of the present case, a probable view would be that the fact stands proved. While denying the employment of the respondent, it is claimed by the petitioner that the respondent could not have been appointed on 1st April, 2004 since the business of the petitioner was not even started on the day. The petitioner produced, letter dated 30th July, 2008 received from Electricity Municipal Corporation, Kolhapur sanctioning exemption from payment of electricity from 1st January, 2005 for a period of 15 years in support of its claim. Mr. Topkar, submits that since the looms run on electricity, there could be no question of the business being carried out prior to

grant of electricity connection. The letter produced does not disclose the date on which the electricity connection was granted to the petitioner. There is no evidence whatsoever produced by it to support its claim. The witness of the petitioner did not depose about the date of commencement of business. The petitioner also did not produce several documents that would naturally be in its possession which documents would indicate the date of commencement of business. In that case, adverse inference can be drawn against the petitioner, that if it were to produce the documents the same would not have supported its case. Since it is the word of the respondent against the word of the witness of the petitioner, it must be held that the respondent is a more reliable witness. Hence, there is no infirmity whatsoever in the impugned order. The petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)