

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 5514 OF 2015

M/s. Smith and Nephew Healthcare Pvt. Ltd.
through its Head HR. Mr. Sanju Saha. ... Petitioner.

V/s.

Mr. Rajiv Panwar. ... Respondent.

Mr. Ravindra Vasant Paranjpe for the Petitioner.
Ms. Ketki Rege for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 18 NOVEMBER, 2015.

P.C. :-

Rule. Rule made returnable forthwith. The Respondent waives service. By consent, taken up for final disposal.

2. Perusal of the impugned order passed by the Industrial Court, Mumbai shows that it is necessary to remand the proceedings to the Labour Court, Mumbai. The Respondent had filed a Complaint (ULP) No.123 of 2002 challenging the order of his dismissal. The Labour Court, Mumbai, by order dated 15

September 2009 held that the enquiry held against the Respondent was fair and proper and thereafter, by order dated 24 February 2010, after holding that the punishment of the dismissal was proper, dismissed the complaint. Thereafter, the Respondent filed a Revision No. 240 of 2010 in the Industrial Court. The Industrial Court observed that the finding of the Labour Court that the enquiry was fair and proper, was not correct. The Industrial Court noted that in the circumstances, the remand and granting opportunities to the parties to prove the charges appeared to be proper, however, in view of the lapse of time, it is necessary to direct reinstatement of the Respondent and no remand is thus ordered.

3. The learned Counsel for the Petitioner submitted that the matter may be therefore remanded to the Labour Court where the Petitioner be given an opportunity to lead evidence. The learned Counsel for the Respondent tried to support the impugned order, however was unable to sustain the same.

4. This approach of the Industrial Court is not correct. The Petitioner had pleaded in the written statement that in case the enquiry is held to be not fair and proper and findings are held to be perverse, then an opportunity be given to the Petitioner to lead evidence. Therefore requisite pleadings by the Petitioner were made. It is settled law that the employer can lead evidence to support its action, if the enquiry is held to be not fair and

proper. Assuming this course of action can be deviated from, very cogent reasons will have to be given as to why the employer is deprived of its right. The Industrial Court has given no such reason except of delay by the time the Revision came up for hearing. There is bound to be some delay in judicial proceedings and if this is the sole reason, reinstatement would follow in almost every case.

5. In the circumstances the order passed by the Industrial Court cannot be sustained and will have to be quashed and set aside. Accordingly, the Petition is disposed of by the following order :-

- (1) The impugned order dated 10 February 2015 inasmuch as it sets aside the order passed by the Labour Court on 24 February 2010, it directs reinstatement of the Respondent with consequential benefits and continuity of service is quashed and set aside.
- (2) The finding rendered by the Industrial Court that the enquiry held by the Petitioner was not fair and proper and the findings were perverse, is confirmed.

(3) The Complaint (ULP) No. 123 of 2002 stands restored to file of the Labour Court, Mumbai.

(4) The Labour Court, Mumbai will give an opportunity to the parties to lead evidence as regard the aspect of termination of the Respondent and dispose off the complaint as per law.

(5) Parties will appear before the Labour Court on 8 December 2015.

(6) All contentions on merits on the above aspect are kept open.

6. Rule made absolute in the above terms.

(N.M. JAMDAR, J.)