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

CIVIL WRIT PETITION NO. 5407 OF 1999

Nashik Super Tools Co. Pvt. Ltd.
Sathpur, Nashik.

... Petitioner.

V/s.

Mr. Baburao Namdeo Patil & Ors.

... Respondents.

Mr. V. P. Vaidya for the Petitioner.

Mr. P.N. Joshi a/w. Ms. V.R. Raje for Respondents 1 to 6 , 8 and 10.

CORAM : N.M. JAMDAR, J.

DATE : 3 SEPTEMBER, 2015.

P.C. :-

This Petition, which is pending since the year 1999, was heard for final hearing on various dates and on each dates possibility of putting to an end of the dispute amicably was considered. Even a mediator was appointed. However, the mediation to resolve the dispute, which now primarily concerns payment of back wages to the Respondents, was not successful.

2. Today, the matter again was heard on merits. The learned Counsel for the parties have put forth their arguments on merits. During the hearing it transpired that pursuant to the orders of reinstatements of the Respondents passed by the Labour

Court, Nashik, confirmed by the Industrial Court, Nashik, the Respondents were taken back in service some time in the year 1998, during the pendency of the Revision Application itself. Thereafter, these Respondents have been removed from service on some or other count and all of them have now crossed the age of superannuation. In the circumstances, the learned Counsel for the parties have agreed that there is no question of reinstatement of the Respondents and they submit that only question arises is regarding payment of back wages.

3. Even otherwise on merits I find that there is a concurrent finding of the fact by the Courts below that the Respondents did not instigate the other workmen to participate in go slow, which is foundation of the charge to dismiss the Respondents from service. Once this factual position was not proved in the Courts below, I do not find any perversity in the approach adopted by the Courts below in passing the impugned orders of reinstatement.

4. Mr. Vaidya, learned Counsel for the Petitioner, however, has seriously pressed the Petitions in respect of grant of 100 percent back wages to the Respondents. He submitted that though the Respondents have incorrectly asserted in the Labour Court that they were not gainfully employed, in fact they were employed elsewhere during the relevant period. Mr. Vaidya also submitted that the chart giving details of the gainful employment

of the Respondents was placed on record before the Industrial Court in the Revision Application, however, the Industrial Court has not considered the same only on the ground that the litigation is pending for several years.

5. I am in agreement with the arguments advanced by Mr. Vaidya that whether the Respondents were gainfully employed during the period for which they ask back wages, is a relevant factor to be considered. When the Industrial Court was confirming the order of the Labour Court regarding grant of back wages, the Industrial Court ought to have considered the aspect put forth by the Petitioner. Mr. Joshi, the learned Counsel for the Respondents has submitted that the data placed on record by the Petitioner is not correct.

6. There are ten Respondents involved in this Petition, each with holding different posts, for which different data has been placed on record by the Petitioner. It will not be possible to ascertain the factual position as regards the gainful employment of these Respondents merely on the basis of the affidavits placed on record by the parties in this Court in limited jurisdiction under Article 227 of the Constitution of India. Attempts were made to provide for a fixed amount or formula to put an end to the dispute, but the learned Counsel for the parties expressed their inability to agree. The issue therefore now will have to be decided by the court process, unless the parties agree. It will be

therefore appropriate to remand the proceedings to the Labour Court, Nashik only on a limited issue of payment of back wages to the Respondents. Mr. Vaidya and Mr. Joshi, after arguing for some time, also accepted that this would be the correct approach to be adopted in the present case.

7. Since no other aspect is urged and put in contest, the Writ Petition is disposed off with the following directions :-

- (a) The orders passed by the Labour Court, Nashik dated 6 December 1994 and Industrial Court, Nashik dated 23 August 1999 are confirmed. However, there shall be no implementation of directions to reinstate the Respondents, which does not survive due to passage of time.
- (b) The complaints filed by the Respondent Nos.1 to Nos.1 to 10 shall be restored to the file of the Labour Court, Nashik. The Labour Court, Nashik shall, on remand, hold an enquiry only as regard to ascertain the quantum of back wages payable to each of the Respondents, after giving an opportunity to the parties to lead the evidence, if they so desire.

- (c) Considering the fact that the complaints were filed in the year 1986 and most of the Respondents are of an advanced age, the Labour Court, Nashik will endeavor to give priority to the disposal of this proceedings and dispose off the same preferably within period of eight months from the date the parties appear before it.
- (d) The parties shall appear before the Labour Court, Nashik on 12 October 2015, whereupon the Labour Court, Nashik will issue further directions.
- (e) Learned Counsel for the parties assure that they will co-operate with the learned Judge for early disposal of the complaint on this limited issue.

8. Rule made absolute in the above terms. No order as to costs.

(N.M. JAMDAR, J.)

C E R T I F I C A T E

Certified to be true and correct copy
of the original signed Order.