

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9364 OF 2014**

M/s Packswell Combine Pvt. Ltd. Petitioner

Vs.

Shri. Dhansukh Maganbhai Patel Respondent

**WITH
WRIT PETITION NO.9365 OF 2014**

M/s Polynova Packers Petitioner

Vs.

Shri. Dhansukh Maganbhai Patel Respondent

Ms. Suchitra Kamble, Advocate for the Petitioner.
None for the respondent.

Coram : Smt. R.P. SondurBaldota, J.
Date : 6th July, 2015

P.C.

1 These two petitions challenge the orders passed by the Labour Court directing the petitioners to pay compensation to the respondent in lieu of reinstatement in service. The parties

to the petitions are same and the issue involved in the petitions is also same. Therefore, the petitions are being disposed off by a common order.

2 The first petition being Writ Petition No.9364 of 2014 is by M/s Packswell Combine Pvt. Ltd. ("Packswell" for short) and the second petition being Writ Petition No.9365 of 2014 is by M/s Polynova Packers ("Polynova" for short). According to the petitioners, the business of Packswell was closed down, after which the same business was started in the name and style of M/s Polynova. The respondent was admittedly working with Packswell since 1st November, 2003. He alleged that the Packswell illegally terminated his services and filed Reference being I.D. Reference No.10 of 2006 under Section 10 of Industrial Disputes Act. The defence taken by the petitioners to the Reference was that after it closed down its activities, the respondent was given an offer to join Polynova on the same terms. Therefore, it cannot be said that the services of the respondent had been terminated by Packswell. It was also claimed that Packswell had paid compensation to him while relieving him from service for the purpose of joining Polynova. As has been rightly noted by the Labour Court that there is no evidence whatsoever of any payment made by the petitioner to the respondent. The only document which is relied upon by the

petitioners is the receipt dated 14th June, 2004 allegedly written by the respondent. A copy of the receipt is annexed to the petition. The same is written in Gujarati language and is seen to bear thumb impression as well as signature of the respondent. The document merely says that his account has been settled by the Company and there are no dues remaining to be received from the Company. The document neither mentions the quantum of the payment made nor the date of the payment and the manner of payment. Therefore, the Labour Court was correct in holding that there is no evidence of payment of compensation. In view of the claim of Packswell that it is closed down and is no more carrying on business, the Labour Court awarded the respondent compensation of Rs.53,815/- in lieu of reinstatement in service and back-wages.

3 It appears that the respondent joined Polynova on 1st April, 2004 and he worked there until 27th August, 2004, thereafter, his services were terminated. Therefore, he filed Reference being I.D. Reference No. 10 of 2006 under Industrial Disputes Act seeking various dues from the employer. The defence taken by Polynova was that he had left the services without prior intimation and that he had actually been called upon to resume duty by the letter dtd. 27th August, 2004. The petitioner also claimed to have made payment to the

respondent. The Labour Court held that there was termination from service of the respondent and the termination was not legal. It then noted that the respondent in his statement of claim had claimed only various legal dues and not reinstatement and awarded compensation to him in lieu of reinstatement. It directed Polynova to pay him compensation of Rs.58,050/- alongwith interest @Rs.8% per annum.

4 Ms. Kamble, the learned advocate appearing for the petitioners submits that the material on record in-fact establishes payment of compensation by Packswell to the respondent. In any case, according to her, the compensation awarded under both the References could not have been the same. She points out that the respondent had worked with M/s Packswell for a period much longer than with Polynova. But, compensation awarded against Packswell is of Rs.53,850/-, whereas Polynova has been directed to pay compensation of Rs.58,050/-.

5 I find no merit in the submissions advanced. Firstly the finding of the Labour Court about non-payment of compensation is supported by the evidence on record. The petitioners have not even given details of the extent of the amount paid, the date of the payment and the manner in which

the same was paid. The only document relied upon is the receipt dtd.14th June, 2004. That document also can be of no assistance because that also does not state the details of the payment made. As regards the comparison sought to be made by the petitioners about the quantum of compensation awarded by the impugned orders except for the duration of service, no other argument is advanced. The record shows that there was marked difference in the salary received by the respondent in the two companies. In the first company, the salary was paid to the respondent was Rs.3,000/- per month and in the second company, the salary was paid to him was Rs.3,870/- per month. Besides the first company i.e. Packswell is closed down, whereas Polynova is a running company. It is obvious that the compensation has been fixed by taking into consideration all these facts. Hence, the petitions are dismissed.

(Smt. R.P. SondurBaldota, J)