

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

WRIT PETITION NO. 206 OF 2000

The Manager,
M/s.Prakash cotton Mills Ltd.,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400 012.

... Petitioner

v/s

1. Smt.Nishadevi Gangasagar,
Formerly known as
Smt.Sitadevi Umeshprasad Tiwari,
C/o. Shri Gangasagar,
Village barestakala, Post. Shuklaka Fora,
Pargana,: Mah. Tahsil: Handia,
Dist. Allahabad, Uttar Pradesh.

2 Shri K.V. Wagh,
Judge, 11th Labour Court, Mumbai.

3 Shri D.M. Mantri,
Member, Industrial Court, Mumbai.

... Respondents

Mr.K.S. Bapat for the Petitioner.
None present for the respondents.

***CORAM: N.M. JAMDAR, J.
DATED : 20TH AUGUST, 2015***

ORAL JUDGMENT:

By this petition, the Petitioner challenges the orders passed by the Industrial Court, Mumbai and Labour Court, Mumbai, allowing the application filed by the husband of the respondent No.1-workman, under the Bombay Industrial Relations Act, 1946.

2 The workman joined the services of the Petitioner some time in the year 1973. He was confirmed in service in the year 1980. He was working on single machine in Blow Room Department of the Petitioner Company. Sometime in the year 1993, the Petitioner asked the concerned workman to work on a double machine. According to the Petitioner, the workman refused to work on the double machine and did not reply to any show cause notice and abandoned the service. According to the workman, since he refused to work on double machine, he was prevented from reporting to duty.

3 The concerned workman filed Application (BIR) No.168 of 1993 in the Labour Court, Mumbai under the provisions of Bombay Industrial Relations Act, 1946. He contended that, directing him to work on double machine was an illegal change and he was therefore justified in not accepting to work on double machine and the action of the Petitioner terminating him was illegal. Accordingly, the workman has prayed for reinstatement with full back wages.

4 The learned Labour Court Judge, by an order dated 30 July 1996 allowed the application and directed that the concerned workman be reinstated on his original post as Schutcher Tenter on single machine in Blow Room Department of the Petitioner mill with continuity of service and full back wages with effect from 19 April 1993.

5 The Petitioner therefore filed Appeal (IE) No.168 of 1996 in the Industrial Court, Mumbai. The Industrial Court did not interfere with the finding of the Labour Court and dismissed the appeal by an order dated 15 April 1999. The Industrial Court, however, took note of subsequent development that the machine on which the concerned workman was working was no longer available and directed that he be provided work as a Oiler. The Petitioner has therefore challenged these two orders in the present petition.

6 Learned counsel for the Petitioner submitted that the concerned workman could not have insisted on notice of change. He submitted that the fact that the workman did not even reply to the notices clearly shows that he had abandoned the service. He also submitted that the fact that the machine, on which the workman was working, is not available is admitted even by the workman.

7 I have considered the submissions made by the learned counsel for the Petitioner. The workman in his application has given specific details as to the day and time as to when he sought to reported to the work and he was prevented. The Labour Court, after assessing the evidence on record, came to the finding that the workman was prevented from reporting to duty. This finding of fact has been confirmed by the Industrial Court in the appeal. It is

not possible to re-appreciate the evidence and to come to a contrary conclusion. Once this fact stood established that the workman was prevented from reporting to duty, the action of the Petitioner in bringing an end to his services in such a manner will have to be held as illegal and it has rightly been so held by both the Courts below. Whether the insistence of the Petitioner that the workman should work on double machine is justified or not, is not the material question, but whether the Petitioner dispensed with services of the workman without following provisions of law is the main question and that has been answered against the Petitioner on a finding of fact. Merely because the workman did not respond to show cause notice, it cannot be inferred that he abandoned the service and this issue has also been considered in detail by the Labour Court. There is no perversity in this appreciation of evidence. The fact that the machine on which the workman was working is not available is a subsequent development and is of no consequence regarding merits of the matter is concerned.

8 In view of this position, no error can be found in the impugned decisions of the Labour Court and the Industrial Court. Accordingly, there is no merit in this writ petition and it is dismissed with no order as to costs. Rule discharged.

(N. M. JAMDAR, J.)