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

CIVIL WRIT PETITION NO. 9129 OF 2012

M/s. Enzo-Ehem Laboratories Pvt. Ltd. ... Petitioner.

V/s.

Mr. Balu Madhav Rothe and Ors. ... Respondents.

Mr. Piyush Shah for the Petitioner.

Mr. Vijayprakash Yadav for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : 28 SEPTEMBER, 2015.

P.C. :-

By consent the Petition is taken up for final disposal.
Rule. Rule made returnable forthwith. Respondents waive service.

2. By this Petition the Petitioner challenges the order passed by the Industrial Court, Nasik dated 2 August 2012 allowing the Revision filed by the Respondent – workmen. By the impugned order the Industrial Court set aside the action of the Petitioner of terminating the services of the Respondents – workmen on 23 August 2000 and has directed reinstatement with 50% back wages.

3. The Respondent Nos.1 to 3 have been reinstated in service. Respondent No.4 is the widow of the workman who has expired. The learned Counsel for the parties agree that the issue in this Petition therefore pertains only to quantum of back wages. Notice was issued on 3 October 2012. Thereafter, the matter has been adjourned from time to time since the year 2013, at the request of the learned Counsels to settle the issue. The learned Counsel submitted that the settlement talks have failed, even though the margin of difference is low.

4. The Respondent – workmen were working as helpers with the Petitioner – Company. According to them they had rendered services of about 10 to 17 years. Charge-sheets were issued to them on 27 September 1999. The charges leveled against them were that they were taking leave in excess. After the enquiry was concluded and they were found guilty of the charge, they were terminated from service. Thereafter, the Respondents – workmen filed a Complaint (ULP) No. 275 of 2000, which was dismissed by the Labour Court, Nasik on 19 May 2009. The Respondents thereafter filed a Revision (ULP) No. 74 of 2010 in the Industrial Court, Nasik. The Industrial Court found that the charge against the Respondents of habitual absence was not proved even assuming the leave taken by them. Considering the facts and circumstances, the Industrial Court found that the punishment was shocking disproportionate. Accordingly, the

Industrial Court has passed the impugned order.

5. The charges leveled against the Respondents were under Order 24(f) of the Industrial Employment (Standing Orders) Act, 1946 of habitual absence. The Order 24(f) of the Act makes habitual absence a misconduct. However, the explanation to the Standing Order clarifies that if the absence is for less than three occasions within span of one year, it shall not be treated as habitual. The Industrial Court has relied upon the explanation and has also found that nothing is placed on record that the Respondents have remained absent for more than three occasions in a year.

6. The learned Counsel for the Petitioner submitted that in earlier years also the Respondents have remained absent and this fact has not been considered by the Industrial Court, Nasik. The learned Counsel for the Respondents has drawn my attention to the deposition of the Petitioner's witness. In this deposition it is stated by the Petitioner's witness that it is a practice followed by the Petitioner to deduct the amount towards excess leave from the salary within the relevant year. The Industrial Court has further found that apart from this allegation, there are no other serious allegations against the Respondents. Considering these facts, I do not find that the view taken by the Industrial Court that the dismissal is shocking disproportionate, is perverse.

7. The question therefore now arises regarding 50% back wages. The learned Counsel for the Respondents submitted that to put to an end to the dispute he will leave the quantum of back wages to the Court to be decided. The learned Counsel for the Petitioner submitted that during the negotiations the Petitioner had given an offer of maximum Rs.3,50,000/- *in toto*. The learned Counsel for the Respondents submitted that considering the order of the Industrial Court, Nasik which is being confirmed by this Court, the amount be enhanced. Considering the facts and circumstances therefore, I am of the opinion that an amount of Rs.4,00,000/- *in toto* towards the claim of these four Respondents be paid to them by the Petitioner. The learned Counsel for the Respondents submits that he has agreeable to this amount being fixed. As far as the Petitioner is concerned, the amount of 50% of back wages, it is stated, is more than the amount of Rs.4,00,000/- and therefore, the Petitioner cannot have any grievance.

8. In the circumstances, the Writ Petition is disposed off by the following order :-

(i) The order passed by the Industrial Court, Nasik dated 2 August 2012 is confirmed with following modification.

(ii) The Petitioner shall deposit the amount of Rs.4,00,000/- within period of eight weeks from today in the Registry of this Court alongwith calculations regarding the proportionate amount payable to each of the Respondents. The copy of the calculations be given in advance to the learned Counsel for the Respondents.

(iii) After this amount is deposited, the Respondents will be entitled to withdraw the amount.

(iv) If the Petitioner fails to pay the amount of Rs.4,00,000/- within the time period stipulated above, then the Petitioner will be liable to pay the entire 50% back wages/salary as directed by the Industrial Court, Nasik.

9. Rule made absolute in 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.