

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

WRIT PETITION NO.10819 OF 2014

All Alu Engineering Co Petitioner

Vs

Shri Sanjay Popatrao Jadhav .. Respondent

WITH

WRIT PETITION NO.300 OF 2015

All Alu Engineering Co Petitioner

Vs

Shri Murlidhar Trimbakrao
Kankate .. Respondent

WITH

WRIT PETITION NO.301 OF 2015

All Alu Engineering Co Petitioner

Vs

Shri Suresh Kashinath Jopale .. Respondent

Mr. Avinash H. Fatangare, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.

DATE : 16/02/2015

PC:

1. Heard Mr. Avinash Fatangare, learned counsel for the petitioner in all the Petitions.

2. By these Petitions under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 10.6.2014 passed by the learned Presiding Officer, First Labour Court, Nashik. By that order, the Labour Court allowed References partly in the affirmative and held that the termination dated 15.3.2011 of the respondents, hereinafter referred to as 'second party', is illegal and unjustified within the meaning of Section 11-A of the Industrial Disputes Act, 1947 (for short, "Act"). Instead of ordering reinstatement with continuity of service and back wages, the petitioner was directed to pay a

lumpsum compensation amount of Rs. 50,000/- each to the second party. The lumpsum compensation included costs of the litigation of the second party-workmen.

3. In support of these Petitions, Mr. Fatangare submitted that prior to March 2011 the petitioner was a proprietary concern. Mr Rameshbhai Patel was the sole proprietor. He died. On 15.3.2011 closure notice was issued to the respondent, a copy whereof was forwarded to the Labour Officer. Along with the closure notice, compensation was paid to the second party. The second party encashed those cheques without raising any objection. The second party, however, raised industrial issue before the Government who, in turn, referred the matter to the Labour Court.

4. Mr. Fatangare submitted that in pursuance thereof, the second party filed statement of claim before the Labour Court. The second party suppressed termination/retrenchment as also receipt of compensation amount. He invited my attention to paragraph 2 of the statement of claim and paragraph 11 of Written Statement. In paragraph 11, the petitioner brought on record the factum of issuing closure notice as also sending it to the labour office and workman. In paragraph 11 it was also set out that the petitioner had paid all legal dues of the second party including retrenchment allowance and notice pay and that they had accepted the amount without any prejudice.

5. Mr. Fatangare submitted that during cross examination, the

second party admitted that after receipt of cheque he had deposited it in Bank and the same was encashed. He further submitted that the Labour Court wrongly interpreted the alleged admission of Darshan Rameshbhai Patel examined as witness by the petitioner. The said witness deposed that the work of producing powder coating and aluminum anodizing is carried on by tenants. In other words, the petitioner is not carrying on production of powder coating and aluminum anodizing.

6. Mr. Fatangare further submitted that basically the second party did not challenge the closure. Even otherwise, if the second party intended to challenge closure on malafide ground, the second party has to approach Industrial Court and not Labour Court. He submitted that even no issue was framed as regards closure of the petitioner. In absence of such issue being framed, it was not open to the second party to agitate the issue of closure. For all these reasons, he submitted that the impugned order deserves to be set aside.

7. I have considered the submissions advanced by Mr Fatangare. I have also perused the material on record. In paragraph 7 of the statement of claim, the second party specifically asserted that the petitioner is carrying on production. In other words, the second party came with the specific case that the factory is operating and production work is going on. It is in that context the second party challenged the order of termination. The Labour Court has considered this aspect from

paragraph 4 onwards. In paragraph 10 the Labour Court considered the evidence of Darshan Rameshbhai Patel. He deposed that the work of producing power coating and Aluminum Anodizing is going on but that work is done by tenants. He also admitted that he himself is doing his business on the same place of the ground floor in the same premises of the petitioner.

8. The Labour Court also considered Leave and Licence Agreements entered into by the petitioner and observed that the ownership of the premises and factory shed is with the petitioner. Though the petitioner had taken defence of permanent closure of all activities of the petitioner, the agreements were only for a limited period. The second party was employed for more than one year and the said contention was not opposed or resisted by the petitioner. In paragraph 16 the Labour Court noted that from the agreements produced by the petitioner reflected that none of the machinery or equipment is sold or disposed of or transferred with all rights of ownership. As such, the machinery, equipments and premises of the petitioner are still owned by the petitioner. The second party had contended that the petitioner is still functioning under different name. The Labour Court after considering the evidence on record, has recorded a categorical finding that when the petitioner has not transferred its ownership completely, it cannot be said that transfer took place partially or permanently. The petitioner has continued its business by changing its name and in the guise of showing the alleged

documents of leave and licence agreements. Even otherwise, taking over some business by another undertaking on licence to run and manage, it cannot be construed as closure but it continued in the hands of other person. The Labour Court has recorded these findings after appreciating the evidence on record. I do not find that the Labour Court has committed any error in arriving at this conclusion. The said finding cannot be said to be a perverse being based upon no evidence or contrary to evidence on record.

9. The Labour Court thereafter considered relief which the second party is entitled to. In paragraph 30, the Labour Court considered strained relationship between petitioner and second party-workmen and instead of ordering reinstatement with continuity of service and back wages, directed the petitioner to pay lumpsum compensation of Rs.50000/- each to the second party which included costs of the litigation. Having regard to totality of circumstances, I do not find that the Labour Court has committed any error in passing the impugned order. Hence, these Petitions fail and the same are dismissed. Order accordingly.

(R.G.KETKAR, J.)