

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1374 OF 2006

Tukaram Umana Patil,
R/o. Ramchandra Palsamkar,
Chawl, Room No.9, Vikas Nagar
Kandivali (West), Mumbai-400 067.Petitioner

V/s.

1. Mahalaxmi Silk Mills
Shankbhai Patel Compound,
Goregaon (East),
Mumbai-400 063
2. Deputy Commissioner of Labour
(Conciliation), Commerce Centre,
Tardeo, Mumbai-400 034Respondent

* * * * *

Mr. N.M. Ganguli a/w. Ms. Karuna Yadav,
Advocate for the petitioner.

Respondent no.1 and advocate absent.

Mr. J.S. Saluja, Government Pleader, Advocate for respondent
no.2.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 8th MAY, 2015.

JUDGMENT :-

1). This petition filed by the worker challenges the legality and propriety of the Award dated 10th June, 2005 passed by the Labour Court, Mumbai in Reference I.D.A. No. 912 of 1992. Respondent no.1 to the petition, is the employer and respondent no.2 is Deputy Commissioner of Labour (Conciliation). The Reference before the Labour Court was, made under Section 10(1) and 12(5) of the Industrial Disputes Act for adjudication of the claim made by the petitioner for reinstatement in service with full backwages and continuity of service w.e.f. 3rd November, 1991. In the facts and circumstances of the case, the only question to be considered in the present petition is, the question of maintainability of the reference to the Labour Court under the provisions of the Industrial Disputes Act.

2). The petitioner claims that, he joined the services of respondent no.1 in the year 1987 and worked as Machine Operator over 5 years until 3rd November, 1991. His initial wages were Rs.1,200/- per month which was later increased to Rs.1,400/- per month. It was his allegation that, on 3rd November, 1991 when he reported for work as usual, he was not allowed to resume duties and one, Pradeep who was in-charge of the factory of respondent no.1 orally terminated his services without stating any reasons. He was never given any notice for termination nor termination dues including

retrenchment compensation. The petitioner alleged that, the termination was a colourable exercise on the part of respondent no.1 and therefore approached the Government authorities under the office of the Commissioner of Labour. The State Government being the appropriate Government, both under the Bombay Industrial Relations Act and the Industrial Disputes Act took cognizance of the dispute and called the parties were to join for preliminary discussions. On 26th August, 1992 the Conciliation Officer admitted the dispute in conciliation and held further discussions to arrive at the settlement. Respondent no.1, however, did not appear before the Conciliation Officer. The conciliation, having failed, the Deputy Commissioner of Labour (Conciliation) by his order dated 4th August, 1992 referred the dispute to adjudication by the Labour Court.

3). Respondent no.1, denied that, the petitioner was working with it for 5 years as Machine Operator. It denied having issued any appointment letter to the petitioner. According to respondent no.1, it had closed down its entire Undertaking in the year 1988 and thereafter has not employed any person. After closing down its Undertaking, by the lease agreement dated 19th July, 1989 respondent no.1 had leased its factory premises together with the machinery to M/s. Kothari Industries. Respondent no.1, also denied that a person by name, Pradeep was in-charge of its factory. It also contended

that, the Reference as made was not maintainable since it was covered by the Bombay Industrial Relations Act ("BIR Act" for short).

4). The petitioner examined himself and two witnesses in support of his claim of his employment with respondent no.1. The witnesses were, (1)Jagdish Prakash Tripathi, Insurance Inspector and (2)Jaysingh Kamble. The documentary evidence produced by the petitioner before the Labour Court were ledger sheet of cash benefit and other information relating to Employees State Insurance Corporation record, Identity Card issued by Employees State Insurance Corporation Authority, the Provident Fund Code Number from Regional Provident Fund Commissioner in support of his claim. Respondent no.1 examined, one witness, Pradeep Kothari and produced copy of the lease agreement dated 19th July, 1989. On appreciation of the documents from the Employees State Insurance Corporation record, the Labour Court was pleased to hold that the petitioner was in service of respondent no.1. It, however, held that respondent no.1 was governed by the BIR Act and dismissed the Reference.

5). The petitioner being a Textile Industry, the Labour Court accepted the argument of respondent no.1 that, as per Section 42(4) of the Bombay Industrial Relations Act read with Rule 53, the petitioner was required to sent the approach letter to respondent no.1 within three months from the date of his

termination and the delay in respect thereof cannot be condoned under Section 79 of the Bombay Industrial Relations Act. Since the petitioner had not sent any approach letter, the claim made under reference was not maintainable. There is no dispute that, the petitioner had not send any such approach letter to respondent no.1. The Labour Court, by referring to Chapter-XI of the Industrial Relations Act, 1946 and Section 73AA read with Government Notification No. 3296/34 issued under the Bombay Industrial Disputes Act, 1938 held that the State Government has powers to refer industrial dispute to the Labour Court under specific conditions. However, the reference was required to be made under the specific conditions. The reference in respect of the petitioner was made not under the provisions of the Bombay Industrial Relations Act but under the provisions of the Industrial Disputes Act. Therefore, the Reference was held not maintainable. In view of the undisputed position that, respondent no.1, a Textile Industry was covered by the Bombay Industrial Relations Act and in view of the fact that the reference made was not in accordance with the provisions of that Act, there could be no infirmity in the order passed by the Labour Court. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)