

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 1907 OF 2015

M/s. R.N. Pharmaceuticals and Ors. ... Petitioners.

V/s.

Roselind Chettiar Noronha. ... Respondent.

Mr. Roshan D'souza a/w. Ms. Sonali Kochar for the Petitioners.
Ms. Rita K. Joshi for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 05 OCTOBER, 2015.

P.C. :-

By this Petition the Petitioners challenge the order passed by the Labour Court, Mumbai allowing the complaint filed by the Respondent and the Industrial Court, dismissing the Revision Application filed by the Petitioners.

2. The Respondent filed a Complaint (ULP) No. 307 of 2009 in the Labour Court, Mumbai. She contended that she had joined the services of the Petitioners on 2 September 2002. After she joins the services, the name of the Company was changed and according to her she continued to work till 10 August 2009 when her services were orally terminated. The Petitioners filed their say

and took up a preliminary objection that the Respondent was working as an Export Manager and was not a workman and therefore, the Court will not have jurisdiction. By order dated 8 October 2010, the Labour Court decided the preliminary issue and held that the Respondent is a workman. Thereafter, by order dated 26 August 2011, the Labour Court directed the Petitioners to reinstate the Respondent in her original post with continuity in service with effect from 10 August 2009 with 33% back wages. Thereafter, the Petitioners filed a Revision (ULP) No. 186 of 2011, before the Industrial Court, Mumbai which was rejected on 3 December 2014.

3. The fact that the Respondent was regularly appointed in services and continued to work for almost 7 years is not denied. Further, her termination is not proceeded by any disciplinary action and there is no inquiry. The learned Counsel for the Petitioners has raised two contentions, firstly, that the Respondent was not a workman and secondly, there has been a closure of establishment with effect from 1 September 2012 and any relief that is to be granted to the Respondent must be modified in view of the closure of the Petitioners' establishment.

4. As regard the issue of the Respondent being workman, a finding of fact has been recorded by the Labour Court which is confirmed by the Industrial Court. The Labour Court has relied upon the evidence of the witness examined by the Petitioners

themselves. The Labour Court has observed in paragraph 6 of the order as under :-

“6. Mr. Vinayak Patil the Store Manager of Respondent No.1 deposed at Exh.C-8 and stated that the complainant was working as a export manager and she used to negotiate and place orders with clients on behalf of the company and she used to confirm purchase indent sent by her and place the orders for raw material. He stated that the complainant used to negotiate with purchaser in respect of raw material, and it was her responsibility to get the raw material for production before time in order to comply with the deadline of export. However, from the cross examination of Mr. Vinayak Patil it appears that the complainant has not signed on any document as a manager. No evidence of appointment of complainant as export manager. This witness has no evidence to show that the complainant took decision in respect of export. On the contrary he admitted that the complainant was typing on computer and was doing clerical work. This fatal admission itself indicates that whatever he stated in his examination in chief about the decision making power vested in the complainant and she was working as an export manager is false one. This witness admitted that he has no documentary evidence to show that the complainant executed any export deal on behalf of the company. This witness do not know whether complainant was not signing cheque or financial budget and she has no authority to appoint any employee of her choice.”

This witness has categorically admitted that the appointment order of the Respondent did not specify that she was an export manager. The Office where she was working had a staff of 6, out of which,

staff, 3 were managers. He has also admitted that the Respondent has not signed any document as a manager. The Labour Court has observed that nothing was produced on record to show that she worked in a managerial capacity.

5. The learned Counsel for the Petitioner relied upon the signatures of the Respondent in the purchase orders and also correspondence signed by the Respondent addressed to the Bank. However, the purchase orders appear to be routine purchase orders wherein the Respondent has signed on behalf of the Petitioner. Even the correspondence with the Bank is not in respect of any major policy decision but correction of certain details. If the evidence of the witness examined by the Petitioners is considered, it cannot be said that the finding of fact recorded by both the Courts is perverse. Though there may be same documents, as sought to be contended by the Petitioners to indicate otherwise but as long as the Court has considered the entire evidence and has assessed the same in proper perspective, it is not possible to interfere in writ jurisdiction with a finding of the fact.

6. As far as the issue of closure is concerned, the learned Counsel for the Respondent has disputed the position that the Petitioner – Company is closed. The learned Counsel for the Petitioners has sought to place on record an application made by the Petitioners to the Industrial Court to take a document dated 31

August 2012 on record of the Industrial Court. This application was made on 2 December 2014. The application purports to annex a communication informing the Labour Commissioner that a Factory at Taloja is to be closed with effect from 1 September 2012. There is absolutely no explanation why it was tendered a day prior to the decision in the Revision on 3 December 2014 and why the said fact was not brought to the notice of the Industrial Court for 2 years when the matter was pending before the Industrial Court.

7. The learned Counsel for the Petitioners made a grievance that the Industrial Court has not dealt with the document. It is not expected for the Industrial Court to take into consideration a document without any explanation whatsoever that too a day prior to the decision is to be rendered, when the matter is being heard by it for period of 3 years. Prima-facie, factum of closure does not appear to be believable one. Even otherwise, it is not possible to consider this factual position which the Petitioners ought to have brought to the notice of the Industrial Court if it was correct. Even in this Court no explanation is offered as to why this fact which is now being asserted was not brought to the notice of the Industrial Court for period of 2 years. The litigation has been diligently prosecuted throughout by the Petitioners and it is not possible to believe that this omission was a mere oversight. Be that as it may, there is no cogent evidence to show that there has been closure much less

legal closure therefore, this argument cannot be accepted. The above observations are made in view of the failure of the Petitioners to successfully demonstrate the fact of closure, in the facts and circumstances of the present Petition.

8. In view of this position, no interference in writ jurisdiction is possible. The Writ Petition is accordingly rejected.

(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.