

JPP

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

WRIT PETITION NO. 2334 OF 2015

M/s. Novallo BPO Pvt. Ltd.

... Petitioner.

V/s.

State of Maharashtra & Anr.

... Respondents.

Mr. J.M. D'silva for the Petitioner.

Mr. Anuraag Gokhale, AGP for Respondent 1.

Mr. Shafi I. Kazi, Mr. Aniruddha Lad & T.V. Louis i/b. B.J. Law
Offices LLP for Respondent 2.

CORAM : N.M. JAMDAR, J.

DATE : 05 OCTOBER, 2015.

P.C. :-

The Petitioner challenges the Award rendered by the Labour Court, Mumbai dated 22 April 2015 directing the Petitioner to pay full back wages from 19 March 2013 till August 2014 after declaring that Respondent No.2 was illegally terminated.

2. Pursuant to a Reference made by the Deputy Commissioner of Labour referring the dispute as to whether Respondent No.2 was entitled to reinstatement with full back

wages, the Respondent No.2 filed a statement of claim. According to him, he was appointed with the Petitioner since June 2005 as a “Senior Debt Negotiator”. Later on, it was changed to “Manager Settlement” to “Manager Operations”. According to him, the nature of duties, which were clerical in nature, continued. He completed 240 days in each calendar year. While on duty on 18 March 2013, he received an e-mail that he was suspended from work for 2-3 days till one Mr. Erb Avore would settle the issue. The Respondent was stopped from carrying out his duty. An amount of Rs.2,55,830/- was paid to Respondent No.2 which he received under protest. He challenged his termination and sought reinstatement. The Petitioner resisted the claim by contending that Respondent No.2 is not a workman and even assuming he is, he had voluntarily resigned from his service and collected all the dues. The Labour Court, after considering the evidence on record and rival contentions, held that Respondent No.2 was a workman and that he had not resigned but terminated from services illegally. The Labour Court took note of the fact that the operations of the Petitioner closed some time in August 2014 and therefore, directed payment to Respondent No.2 till August 2014.

3. The learned Counsel for the Petitioner raised two contentions, firstly that Respondent No.2 is not workman and secondly, Respondent No.2 voluntarily resigned from service. The learned Counsel for the Respondents supported the impugned order.

4. As regard the issue of workman, the learned Counsel for the Petitioner made a grievance that the Labour Court did not consider the evidence on record. He submitted that Respondent No.2 was carrying on managerial duties. He had appointed and terminated staff. He had made purchases on behalf of the Petitioner – Company. He attended seminars in Philippines as a trainer and was doing the work of a manager.

5. The Labour Court has taken note of the evidence of Mrs. Nanda Sawant, Director of the Petitioner. In the cross-examination, she has admitted that no documents have been produced on record to show that Respondent No.2 was negotiating with creditors in USA. The argument that Respondent No.2 was doing the work of negotiations, which is managerial nature, cannot be accepted on mere words of the Petitioner and it has rightly been rejected. As regard purchase of certain computer peripherals, they appeared to be mostly routine purchase required for functioning of the office. Merely because some memory cards, hard disks have been received by Respondent No.2 by paying money on behalf of the Petitioner and signing the vouchers does not mean that he had taken a decision regarding purchases. Any person can be deputed to collect the purchase and such person will sign the vouchers. In fact, the Director Mrs. Nanda Sawant has deposed that she also did not have authority to sanction of the payments and Mr. Erb Avore in USA had the authority. If the

Director herself did not have the authority, there was no question of Respondent No.2 having any financial authority. Respondent No.2 was sent to Philippines as a trainer but that aspect has been considered by the Labour Court holding that it was only a one time assignment and nothing is placed on record to show that the training of the candidate continued. Even as regard terminating the staff, the Director Mrs. Nanda Sawant has admitted that there are no documents to show that Respondent No.2 had any power to make recruitment and had done recruitments, as asserted in the examination-in-chief. The manner in which the replies have been given by this witness, the Labour Court has rightly observed, that they were evasive. Therefore, I do not find any perversity in the appreciation of evidence by the Labour Court holding that Respondent No.2 is a workman.

6. The second aspect is regarding the manner in which the association of the Respondent No.2 with the Petitioner came to an end. According to the Petitioner, Respondent No.2 had tendered a resignation, while it is the case of Respondent No.2 that he was not allowed to work and hence, terminated. There is neither a letter of termination nor any letter of resignation on record. According to the learned Counsel for the Petitioner, the Labour Court ought to have considered the oral evidence of the parties. It is rather surprising that the Petitioner, who has otherwise entered into correspondence with Respondent No.2 in respect of other matters will not even asked for a formal letter of

resignation. The Labour Court has rightly drawn an inference that the theory of resignation could not be accepted any normal course of business. An employee voluntarily resigning would place his resignation on record, thereafter the resignation letter will be accepted and the dues will be calculated. It is not the case of the Petitioner that Respondent No.2 abandoned the service and it was a misconduct. The fact that Respondent No.2 was directed to collect his legal dues and there is a correspondence of the parties in that regard is not disputed. The question is in what circumstances these events took place. The Director Mrs. Sawant has admitted that the Company has no document to show that Respondent No.2 had resigned from service. In the absence of any resignation letter, if the Labour Court has accepted the theory of Respondent No.2 that he was prevented from working pursuant to his suspension, it cannot be termed as perverse. No documentary evidence is shown by the Petitioner to substantiate the theory of resignation.

7. In the circumstances, there is no error in the impugned order.

8. The learned Counsel for the Petitioner then submitted that in paragraph 6 of the operative portion of the impugned Award, the Court has directed an amount of Rs.2,55,830/- to be paid in addition to the back wages. As it has been rightly pointed out by the learned Counsel for Respondents that this would be

misreading of the clauses and it is in fact in favour of the Petitioner. The Labour Court has directed that back wages be paid from 19 March 2013 till August 2014 after deducting the amount of Rs.2,55,830/- which is already paid. Therefore, there is no question of any additional amount.

9. The Writ Petition is 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.