

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8836 OF 2016

M/s Garware Polyesters Ltd.
Naygaon, Waluj, Aurangabad
through its Manager.

..Petitioner

Versus

Shri Nandram Abaji Mandge,
Age 62 years, R/o Waluj,
Tq. Gangapur, Dist. Aurangabad.

..Respondent

...
Advocate for Petitioner : Shri T.K.Prabhakaran
Advocate for Respondents : Shri R.B.Muley
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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 30, 2016
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the order dated 29.6.2016, delivered by the Labour Court below application Exhibit - 19 by which, the petitioner has been directed to produce the documents

mentioned in the notice for production filed by the respondent / employee. The petitioner is also aggrieved by the judgment and order dated 30.7.2016, passed by the Industrial Court, by which Revision (ULP) No.24 of 2016, filed by the respondent has been dismissed.

5. I have heard the learned Advocates for the respective sides at length.

6. Issue pertains to the production of documents. The following documents have been asked for by the respondent through his notice Exhibit U-19. The eight documents at issue are as under:-

- A. Appointment order of complainant.
- B. Alleged promotion order of complainant issued in the year 1987.
- C. Alleged Promotion order of complainant issued in the year 1995.
- D. Production report of Silvasa Plant for the year 2000.
- E. Production report of Pondicherry Plant from 2001 to 2005.
- F. Certified Standing Orders of the respondent company.

G. Muster roll of Silvasa Plant for the year 2000.

H. Muster roll of Pondicherry plant from 2001 to 2005.

7. It is trite law, in the light of the judgments delivered by this Court in the matter of The 20Th Century-Fox Corporation Versus F.H. Lala And Ors. [(1974) II LLJ 156 Bom.] and in the matter of Mackinon Mackenzie Ltd. Versus G.S.Baj and others [2006 (4) Mh.L.J. 492], that the documents must be established to be in the exclusive custody of a party and the said documents must be relevant and germane to the cause of action, which would assist the Court in properly adjudicating the matter.

8. In the light of the law as is settled, it is relevant to consider the pleadings of the respondent in the Complaint (ULP) filed by him before the Labour Court, for challenging his termination dated 12.4.2005.

9. In paragraph No.2 of the Complaint, the respondent has pleaded that he was appointed in 1987, he was performing the duty of a Junior Supervisor at the Aurangabad plant and thereafter, was promoted as Senior Supervisor in 1995.

10. The respondent was transferred to Silvasa from Aurangabad on

21.10.2000. There is no dispute that he has not challenged the said transfer. Subsequently, he was transferred on 20.12.2001 from Silvasa to Pondicherry. It is not in dispute that the respondent did not challenge this transfer.

11. In paragraph no.5 of the Complaint, the respondent has pleaded that though he was working as a Senior Supervisor, the nature of his duties were of a skilled labourer.

12. On the point of jurisdiction, this litigation had travelled upto the Supreme Court. By an order dated 16.2.2016 in Civil Appeal No.1409 of 2016, the Honourable Apex Court allowed the appeal filed by the respondent and directed the Labour Court, Aurangabad to consider the Complaint filed by the respondent on its merits. The judgment of this Court and the Industrial Court was, therefore, set aside and after restoring the complaint to the Labour Court, the parties were directed to appear on 8.3.2016.

13. It is the case of the petitioner / management that the respondent is not a 'workman' under Section 2(s) of the Industrial Disputes Act and is not an 'employee' under Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act "). Naturally, the onus and burden lies on the petitioner to prove that the respondent is not a

'workman'.

14. The respondent has challenged his termination w.e.f. 15.4.2005, which is said to be illegal as it was under the garb of a closure of the Pondicherry plant. The age of retirement, according to the management, is 62 years and the respondent has attained the age of superannuation in 2013. The complaint, on the basis of its pleadings indicates that the respondent has challenged his termination on the ground that the circumstances at the Pondicherry plant did not warrant a closure. It is conceded by the petitioner that there are about three employees at the Pondicherry plant, including the respondent.

15. The demand for production of documents will, therefore, have to be scrutinized in the light of the pleadings of the parties. Needless to state, admitted facts are not required to be proved and hence the documents in connection with the same, may not be necessary.

16. As such, since the date of appointment of the respondent is admitted, his promotion as Junior Supervisor in 1987 and Senior Supervisor in 1995 has been admitted by both the sides, the documents at Sr. No. A, B and C, below Exhibit U-19, are not required to be produced.

17. In so far as the document at Clause D, pertaining to the production report of the Silvasa plant is concerned, as the respondent was transferred to Silvasa and thereafter was shifted to Pondicherry and as both the transfer orders are not challenged, the production reports from Silvasa are not necessary.

18. The notice of closure of establishment, dated 12.4.2005, issued by the petitioner to the respondent indicate that there were only three employees affected by the said closure. It is not stated in the said notice that the said closure is on account of fall in business or losses or any other reason of the kind. Nevertheless, the onus and burden would lie on the petitioner to indicate reasons for the closure, considering the pleadings of the respondent.

19. On this count, the defense taken by the petitioner that the production report of the Pondicherry plant is not available, cannot be believed for the reason that the respondent had filed his complaint in June 2005 before the Labour Court and since then the litigating sides are in litigation. Considering the pending litigation, it is expected that the petitioner would preserve its records and would refrain from destroying them as the said documents could be relevant to the pending litigation. In this backdrop, I find that the order of the Labour Court and Industrial Court, directing the production of

documents under Clause 6E deserves to be sustained. As such, the petitioner shall produce the said documents.

20. For the reasons assigned with regard to the production of documents 6E, the same reasons are required to be assigned for the production of the document at 6H, which is the muster roll of the Pondicherry plant. The petitioner will, therefore, have to produce the said documents, since it would indicate the number of employees engaged notwithstanding that the petitioner contends that there were only three aggrieved / affected employees. This document is required since the applicability of Chapters V-A and V-B of the Industrial Disputes Act, 1947 would be germane to the cause of action.

21. In so far as the Certified Standing Orders of the Company are concerned, the petitioner contends that the Pondicherry plant did not have Certified Standing Orders. It is stated across the Bar, that since there were only three employees, even the Model Standing Orders would not apply. The closure notice has used the term “You are one of the three employees affected by such notice.” It is not the case of the petitioner that there were only three employees. Contention is that only three employees are affected. It cannot be ruled out that there could be some more employees and there could be a possibility that they may be adjusted or accommodated

elsewhere. As such, the petitioner shall produce its Service Conditions, as may be applicable to its employees, at the Pondicherry plant, which can be borne out by the appointment order or any settlement or agreement. As such, the petitioner shall produce such service conditions before the Labour Court.

22. The Muster Roll of the Silvasa plant, under Clause 6G, would not be relevant to the pending complaint and hence, the said document is not required to be produced.

23. With the above directions, this petition is partly allowed and the impugned orders of the Labour Court as well as of the Industrial Court shall stand modified accordingly. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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