

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

WRIT PETITION NO.3680 OF 2001

Babulal Amichand Jain	.. Petitioner
Versus	
Balaram Hari Shelar And Another	.. Respondents

**WITH
WRIT PETITION NO.866 OF 2006**

Balaram Hari Shelar	.. Petitioner
Versus	
Babulal Amirchand Jain And Another	.. Respondents

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Mr. S.M. Katkar for the Petitioner in Writ Petition No.3680 of 2001 and for the Respondents in Writ Petition No.866 of 2006.

Mr. Yogendra M. Pendse for the Respondents in Writ Petition No.3680 of 2001 and for the Petitioner in Writ Petition No.866 of 2006.

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CORAM : S.C.GUPTE, J.

DATE : 14 JULY 2016.

Order :

. Heard learned Counsel for the parties.

2 Writ Petition No.3680 of 2001 challenges an award passed by the Third Labour Court, Thane, in a reference under the Industrial Disputes Act, 1947. The reference was in respect of the Respondent-workman's claim for reinstatement with full back wages and continuity of service.

3 It is case of the Respondent-workman that he joined the services of the Petitioner, who was running a powerloom in the name of Chandrika Textile. He was earning a salary of Rs.2,500/- per month. It is his grievance that he was not allowed to report for duty on and from 29 February 1994. He accordingly raised a dispute which was referred by the appropriate Government to the Labour Court for adjudication. The Petitioner defended the reference on the ground that he was not the employer of the Respondent-workman. The Petitioner disowned the factory in the name and style as Chandrika Textile. It was his case that this unit did not exist at the address given in the title. He also denied that the services of the Respondent were terminated illegally with effect from 29 February 1994.

4 Evidence was led before the Labour Court by the parties. The Labour Court noted the admission of the Petitioner in his cross-examination that the unit by the name of Chandrika Silk Mill did stand in his name. The Labour Court also took into account a letter of Shops & Establishments Inspector dated 17 June 1999, which was placed on record, giving the name of the Petitioner's factory as Chandrika Silk Mill. The Labour Court noted that the Petitioner had failed to produce any record in respect of his unit as per the Shops & Establishments Act, though he admitted that he was maintaining such record since 1985, and expressed his inability to produce such record including wage registers, etc. on the ground that his factory was flooded and the record was lost. He did rely on the photographs in support of his case that the factory was flooded, but these were not proved in evidence. Even otherwise, the Labour Court noted that the important aspect of loss of record of Chandrika Silk Mill due to

flooding, was not even pleaded in the written statement of the Petitioner. In the premises, the Labour Court came to the conclusion that the Petitioner had suppressed the record and on the basis of material available on record, accepted the Respondent-workman's case that he was in the employment of the Petitioner since November 1991 and his services were terminated in February 1994. Since the termination was without following due process of law and thus, illegal, the Petitioner was directed to reinstate the Respondent-workman with full back wages and continuity of service.

5 There is nothing on record to counter the Respondent-workman's claim of employment with the Petitioner. Merely because the name of 'Chandrika Silk Mill' is mentioned as 'Chandrika Textile' in the Respondent-workman's application and reference, it cannot be suggested that the Petitioner was not employing the Respondent-workman. After all the Petitioner did run a powerloom unit. His only plea before the Court was that he did not have any unit by the name of Chandrika Textile Mill. That was the only basis of denying the Respondent-workman's claim of an employer and employee relationship between the parties.

6 Considering the material available on record before the Court and also considering the fact that no contrary record was produced by the Petitioner, the conclusion drawn by the Labour Court that the Respondent-workman was employed by the Petitioner, cannot be termed as perverse or impermissible. There is, thus, no merit in the Petition.

7 Writ Petition No.866 of 2006 is filed by the Respondent-workman. This Petition challenges an order dated 17 August 2005 passed by the

Industrial Court at Thane on his complaint of unfair labour practice under Section 28 read with Item 9 and 10 of Schedule IV of the MRTU & PULP Act, on the ground that the award of the Labour Court referred to above (subject matter of Writ Petition No.3680 of 2001) was not implemented by the Petitioner. The complaint was opposed by the Petitioner herein on two grounds. Firstly, it was submitted that the award being stayed by this Court in his own petition (Writ Petition No.3680 of 2001), the Industrial Court could not have entertained any complaint of non-implementation of the award. Secondly, it was submitted that the Petitioner herein was ready to allow the Respondent-workman to report on work. The Industrial Court, in its impugned order, accepted the first contention concerning stay of the award and dismissed the complaint on that basis. The Industrial Court, however, did not accept the second ground raised by the Petitioner herein, namely, that he had offered to allow the Respondent-workman to report on work. The Industrial Court has given detailed reasons, why the particular plea was not accepted by it. This part of the order has attained finality and is not objected to by the Petitioner herein. Even at the hearing of the Petitions, no arguments were advanced by learned Counsel for the Petitioner challenging this conclusion.

8 The resulting position is that the impugned award dated 21 September 2000 does not suffer from any infirmity, and there is no merit in the Petitioner's case that he had offered to re-employ the Respondent-workman. Nothing is placed on record either to show that the Respondent-workman was gainfully employed for the relevant period.

9 In the premises, the Petitioner in Writ Petition No.3680 of 2001 is

directed to reinstate the Respondent-workman with full back wages and continuity of service in accordance with the award dated 21 September 2000.

10 **Rule** issued in Writ Petition No.3680 of 2001 is accordingly discharged and the Petition is dismissed, whilst Writ Petition No.866 of 2006 is disposed of in terms of the above order. No order as to costs.

(S.C.GUPTE, J.)