

JPP

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

WRIT PETITION NO. 320 OF 2016

M/s. Pragati Enterprises.

... Petitioner.

V/s.

Mr. Mahesh Balbhim Sakat and Anr.

... Respondents.

Mr. Aumkar Joshi for the Petitioner.

CORAM : N.M. JAMDAR, J.

DATE : 15 FEBRUARY, 2016.

P.C. :-

By this Petition the Petitioner challenges the Award passed by the Labour Court dated 23 April 2015 directing reinstatement of the Respondent in the services of the Petitioner with 75% back wages at the rate of Rs.1,400/- p.m. from the date of his termination till his actual reinstatement.

2. Reference was made to the Labour Court, Pune being (IDA) No. 99 of 2004 in respect of termination of the Respondent dated 12 October 1999. The Respondent filed statement of claim and contended that he was working as Gas Mechanic with the Petitioner since December 1988. He was unwell some time in October 1999 and when he went to resume duty on 12 October

1999 with a Medical Certificate, the owner of the Petitioner did not allow him to join duty and orally terminated his service. Thereafter, the Respondent tried to resume duties on various occasions but did not succeed. A written statement was filed by the Petitioner wherein it was contended that the Respondent was not the employee of the Petitioner and that being the position there was no question of any relief in favour of the Respondent. Both the Petitioner and the Respondent examined themselves on oath and were cross-examined.

3. The learned Counsel for the Petitioner reiterated his stand that the Respondent was never the employee of the Petitioner. This stand is specific. It is based on an assertion that the Respondent had absolutely no connection with the Petitioner. The Respondent has, in his evidence asserted that he was given a letter on 22 February 1997 for the purpose of taking loan from a bank. He was not given any written appointment order. At that time the Petitioner was not maintaining must-cum-wage register. This position was stated by the Respondent himself and therefore, there is no gain saying in stressing on this fact as he sought to be urged by the learned Counsel for the Petitioner that there was no appointment order.

4. The Respondent had produced on record seven photographs with the employees of the Petitioner with uniforms, identity cards under the banner of the Petitioner

5. The Respondent had asserted that he was present in these photographs as a part of the activity/safety clinic conducted by the Petitioner. The stand taken by the Petitioner in respect of these photographs is most material for the purpose of ascertaining the truthfulness of the Petitioner's case. In the cross-examination, the owner of the Petitioner has gone to the extent of stating that the persons in the photographs are not the employees of the Petitioner, the photographs are not taken outside the premises of the Petitioner. These photographs have been produced on record and marked as Article 'G'. The Labour Court has examined these photographs in detail and has found that persons appearing in these photographs are wearing uniform and identity card on their uniform of the Petitioner. Stand taken by the Petitioner therefore is of total falsehood, going to the extent of denying even the basic position. If it is case of the Petitioner that the Respondent was complete stranger, then at least an explanation had to be given by the Petitioner as how he appeared in a group photograph of the employees. In spite of doing so, the Petitioner has recklessly sought to deny even basic things in the photographs. The Labour Court, upon assessment of evidence, has found that the Respondent was the employee of the Petitioner. This is essentially a finding of fact and it is not possible to re-appreciate the evidence. It is also not that for every error a writ of certiorari should issue, unless it leads to failure of justice. Conduct of the parties invoking this equity jurisdiction also needs to be considered. In view of the complete dishonest stand taken by the

Petitioner, I am not inclined to interfere with the impugned order, as the Petitioner deserves no such indulgence. The learned Counsel for the Petitioner sought to argue the position of law regarding burden of proof. However, in my opinion once the Respondent himself had stated that he was not given any appointment orders, then the question remained of oral evidence and the documents produced on record.

6. The learned Counsel then submitted that there is no finding about the gainful employment of the Respondent. The Labour Court has taken note that the Respondent had specifically pleaded that he was unemployed. The Petitioner had failed to adduce any evidence to show that the Respondent was gainfully employed. The Labour Court upon an assessment held that the Respondent might have worked elsewhere deprived the Respondent of 25% back wages. In view of the law laid down by the Apex Court in the case of *Deepali Gundu Surwase v/s. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. [(2014) II CLR 813 S.C.]*, upon reinstatement having been found illegal, generally grant of back wages follow, unless shown by the employer that the employee was gainfully employed during the relevant period. No such evidence is led. The order passed by the Labour Court cannot be faulted on that count as well.

7. The Writ Petition is rejected.

(N.M. JAMDAR, J.)