

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 7247 OF 2016**

**M/s BSES MG. Hospital & Ors.**

**..Petitioners**

**Vs.**

**Shri Subhash Gujar & Anr**

**..Respondents**

**Mr. Kiran Bapat a/w Mr. J. K. Desai i/b Desai & Desai for the Petitioners  
Ms Shilpa Bhatia for the Respondent No.1**

**CORAM : R. M. SAVANT, J.**

**DATE : 20<sup>th</sup> OCTOBER, 2016**

**P.C.**

1           The Writ Jurisdiction of this Court is invoked against the order dated 28-7-2015 passed by the Learned President of the Industrial Court, Maharashtra, Mumbai, by which order, the Revision Application filed by the Respondent being Complaint ULP No.3 pf 2015 came to be partly allowed, resultantly the judgment and order dated 3-9-2014 passed by the Learned Judge of the Labour Court, Mumbai in Complaint ULP No.201 of 2007 came to be set aside and the Complaint came to be remanded back to the Labour Court for a fresh decision on all the issues.

2           The cause for filing the said Complaint ULP No.201 of 2007 was the termination of the services of the Respondent. The Respondent it seems was initially appointed by letter dated 28-3-2004 issued by the Petitioner which inter alia contained the terms and conditions on which the Respondent

was appointed. It seems that the Respondent was suspended on 3-6-2005. Thereafter it seems that a separate contract of employment was entered into between the Petitioner and the Respondent on 1-5-2005. The services of the Respondent came to be terminated thereafter relying upon the said contract service agreement entered into between the Petitioner and the Respondent. Suffice it would be to state that the Complaint ULP No.201 of 2007 was adjudicated on the basis of the stipulation contained in the said contract of employment and the Learned Judge of the Labour Court did not even adverted to the earlier appointment letter dated 22-3-2004 as also the suspension order dated 3-6-2005 which were brought on record and on which in fact reliance was placed by the Respondent. It was the case of the Respondent that he had completed 3 years of continuous and unblemished service. It was his case that his services have been terminated without following the procedure. The Labour Court accordingly relying upon the said contract service agreement did not find fault with the termination of the Respondent and accordingly dismissed the Complaint ULP No.201 of 2007 by his order dated 3-9-2014.

3           The Respondent aggrieved by the said order dated 3-9-2014 invoked the Revisionary Jurisdiction of the Industrial Court under Section 44 and filed the Revision ULP No.3 of 2015. The Revisionary Court as indicated above has partly allowed the Revision and thereby set aside the order dated 3-9-2014 and remanded the matter back to the Labour Court for a denovo

consideration. The reasons for the said remand can be found in paragraph 16 of the impugned order which is reproduced hereinunder :

“16. I do not propose to ponder upon the issues which have been framed by the Labour Court since the impugned judgment and order is bereft of any reasoning and does not deal with the documentary evidence adduced by the Complainant viz letter of appointment dated 22-3-2004 and the order of suspension dated 3-6-2005. Had the Learned Labour Judge considered these two documents, he would have come to a different conclusion as far as interpretation of Exh. C-24 is concerned, which is a contract service agreement. The Learned Labour Judge, as it appears, has decided issue Nos.4, 5, 6 and 7 in one-go and has attached too much importance to the contract service agreement Exh.C-24 to uphold the defence taken by the Respondents and completely ignored the case of the Complainant when it speaks about the letter of appointment, the terms and conditions of appointment and his suspension immediately after the contract service agreement dated 1-5-2005.”

4           The gist of the reasoning of the Learned Member of the Industrial Court is was that the Labour Court has not dealt with the documentary evidence produced by the Complainant i.e. the Respondent herein, namely the letter of appointment dated 22-3-2004 and the order of suspension dated 3-6-2005. The Learned Member of the Industrial Court also found fault with the Learned Judge of the Labour Court having decided the issue Nos.4, 5, 6 and 7 together and by laying too much importance on the contract service agreement which was marked as Exhibit 24 and completely ignoring the case of the

Complainant based upon the letter of appointment and the terms and conditions contained therein. Hence the Industrial Court can be said to have arrived at a prima facie conclusion that the said letter of appointment dated 22-3-2004 would undoubtedly have a impact on the challenge raised by the Respondent as regards his termination as according to it there was nothing in the contract service agreement to indicate that the same superseded the terms and conditions as contained in the letter of appointment.

5           In my view having regard to the reasons which have weighed with the Learned Member of the Industrial Court in ordering a remand, the impugned order cannot be faulted with. However, in so far as the observations made by the Learned Member of the Industrial Court which is to the following effect :

“Had the Learned Labour Judge considered these two documents, he would have come to a different conclusion as far as interpretation of Exh. C-24 is concerned, which is a contract service agreement.”

In my view, it was not necessary for the Learned President of the Industrial Court to make the said observations considering the fact that he was ordering a remand. Hence it is clarified that on remand the Labour Court would try all issues as directed by the Industrial Court without being influenced by the observation extracted hereinabove. If the parties are desirous of leading any additional evidence they would be at liberty to do so

and that the filing of the pursis by the Respondent would not come in his way in leading additional evidence.

6           With the clarification as above and in view of the fact that interference of this court in its Writ Jurisdiction, is not warranted with the order of remand, the Writ Petition is dismissed.

**[R.M.SAVANT, J]**