

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

WRIT PETITION NO.4327 OF 2016

Jaibhim Maruti Daware : Petitioner.
versus
M/s. Dinshaw Shapporji and Company : Respondent.

Mr. Abhijeet A Desai for the Petitioner.
Mr. A V Lokhande i/by Mr. Robin Thomas for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 18th October 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 09/10/2015 passed by the learned Presiding Officer, 4th Labour Court, Pune by which order the Reference in question being Reference IDA No.484 of 2005 came to be dismissed, and imposed costs of the Reference on the Petitioner.

2 The Petitioner herein was working as a driver with the Respondent Company and was deputed for duty on a bus to carry the employees of the Companies which were the clients of the Respondent from various points in Pune to the factory premises of the said clients. The matter was precipitated with on account of the fact that on 27/12/2004 the officials from RTO Pune had checked the bus which was driven by the Petitioner herein and it was found that the Petitioner had for consideration allowed 16 persons to board the

bus and was therefore illegally carrying passengers to their destination. On account of the same, the RTO Pune levied a fine of Rs.5,700/- on the Respondent which was paid by the Respondent on 26/07/2005. It appears that the Petitioner after indulging in the said activity of carrying passengers illegally had confessed to the same. It has come on record through the Written Statement of the Respondent that the Petitioner had also illegally carried the passengers in the bus of the Respondent on the dates mentioned in paragraph 7 of the Written Statement. It appears that the Petitioner getting wind of the fact that on account of the bus being checked by the RTO, Pune on 27/12/2004 and it being found that the Petitioner was carrying the passengers illegally, some action would be taken by the Respondent against him, the Petitioner tendered his resignation under his signature on 05/03/2005 and by another letter of the same date gave reasons for his resigning from the Respondent Company. The reasons being that on account of family problems, he would not like to continue. It seems that immediately thereafter the Petitioner had collected his provident fund dues for which, a "No Objection" was given by the Respondent. Long thereafter the Petitioner raised an industrial dispute alleging that the Respondent had misused a blank paper signed by the Petitioner and thereby had obtained resignation from the Petitioner.

3 On the conciliation proceedings ending in failure, a Reference was made to the Labour Court, Pune which was numbered as Reference IDA

No.484 of 2005. The Petitioner filed his statement of claim wherein he reiterated his case of his resignation being illegally obtained by the Respondent.

4 The Respondent Company filed its Written Statement and as indicated herein above, adverted to the similar acts committed by the Petitioner on various dates which were mentioned in paragraph 7 of the Written Statement.

5 The parties led evidence in respect of their respective assertions. It seems that the Petitioner had privately obtained a hand writing expert's opinion which was produced before the Labour Court by the Petitioner. The Petitioner also in support of his case examined one of his co-workers whilst the Petitioner was working in the Pune Municipal Corporation Transport. Since the resignation of the Petitioner was in contention in the said Reference proceedings, the learned Presiding Officer of the Labour Court adjudicated the said Reference from the said angle. the learned Presiding Officer considered the said evidence on record. The learned Presiding Officer did not deem it appropriate to give any evidenciary value to the hand writing expert's opinion and held that the hand writing expert's opinion could not be relied upon. The learned Presiding Officer observed that the Petitioner has not produced any documentary evidence on record to substantiate the case of the Petitioner that

his resignation was obtained illegally and that a blank paper signed by the Petitioner was misused by the Respondent. The learned Presiding Officer also took into consideration the fact that the Petitioner has not disputed his signature on the resignation letter and has thereby impliedly admitted the said resignation letter. In the Reference in question evidence came on record vide the document Exhibit-28 i.e. the bio-data of the Petitioner, in terms of which document the Petitioner had reached the age of superannuation in the year 2012 itself. The learned Presiding Officer therefore observed that notwithstanding the same the Petitioner i.e. the Second Party in the Reference in question was claiming his reinstatement with back-wages. On behalf of the Petitioner judgments were sought to be relied upon in support of his case that his resignation was a forced resignation. The learned Presiding Officer held that the said judgments were not applicable in the facts of the present case as in the judgments cited the complaint made to the police was immediately after the resignation was obtained, however such was not the case in the instant Reference. The learned Presiding Officer therefore deemed it appropriate to dismiss the Reference; and considering the fact that the reliefs were sought to which the Petitioner was not entitled to and having regard to the fact that the Petitioner had reached the age of superannuation in the year 2012, deemed it appropriate to impose costs of the Reference on the Petitioner.

6 The learned counsel appearing for the Petitioner Shri Abhijeet

Desai would seek to draw this Court's attention to the evidence on record as also the opinion of the hand writing expert. It was the submission of the learned counsel for the Petitioner that the said oral and the documentary evidence has not been considered in its proper perspective.

7 In my view, it is not possible to accept the said contentions of the learned counsel for the Petitioner. This Court cannot be oblivious of the fact that it is exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India and is not exercising any appellate jurisdiction so as to re-appreciate the evidence on record. The findings recorded by the learned Presiding Officer cannot be said to be in any manner perverse having regard to the material on record. The view taken by the learned Presiding Officer cannot be said to be a view which could not be taken in the facts and circumstances of the present case. In that view of the matter, the interdiction of this Court in its writ jurisdiction is not warranted. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]