

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

WRIT PETITION NO. 2825 OF 2001

Ramdayal M. Prasad,
New Basti, Bhaskar Nagar,
Burapada – Ambernath, Dist. Thane. ... Petitioner

v/s

M/s.Swastik Surfactants Ltd.,
Industry Manor, 442, A Marathe Marg,
Prabhadevi, Mumbai – 400 025. ... Respondent

Mr.N.M. Ganguli along with Ms.Karuna Yadav for the petitioner.

None present for the respondent.

CORAM: N.M. JAMDAR, J.

DATED : 7 JANUARY 2016

ORAL JUDGMENT:

By this petition, the Petitioner challenges the orders dated 5 December 1994 , 20 February 1999 and 18 August 2000, passed by the Labour Court, Thane.

2. A Reference was made by the Government of Maharashtra to the Labour Court, Thane, in respect of termination of the Petitioner, effected on 2 March 1982. The Petitioner filed his statement of claim. He contended that, while terminating the services of the Petitioner orally, the Respondent Company did not pay him notice

pay or retrenchment compensation. The Respondent Company retained the services of the juniors. No permission from the State Government was sought. Though a charge-sheet was served, no further steps were taken and the order of dismissal was wholly illegal.

3. The Respondents filed their written statement and contested the claim. It was stated that the Respondent Company was forced to suspend its manufacturing activities followed by lock-out on 21 January 1982. Said lock-out was lifted on 2 March 1982. After lifting of lock-out, various notices were sent to the workman to resume duty. It was contended that, after the charge-sheet was issued and dates of enquiry were communicated, the Petitioner did not appear and his services were terminated. By an order dated 5 December 1994, the Labour Court, Thane, disposed of the Reference as the Petitioner remained continuously absent since the year 1987, coming to the conclusion that the Petitioner was not interested. The Petitioner thereafter filed a restoration application i.e. Misc. Application No.8 of 1995. By an order dated 20 February 1999, the application for restoration was dismissed. Thereafter the Petitioner filed a review application which was dismissed on 10 August 2000. Thereafter the present petition is filed.

4. I have heard learned counsel for the petitioner.

5. While disposing of Reference (IDA) No.35 of 1985, the Labour Court noted that, since the Reference was posted for

hearing the Petitioner did not appear. The representative appearing for the Petitioner also made a statement that he has no instructions from the Petitioner. The Labour Court noted that from 1987 the Petitioner remained absent. In the application for restoration, the Petitioner did not deny that he did not remain present and only stated that due to financial condition it was not possible for him to attend. The Petitioner has given his address at Thane. The Labour Court is also situated at Thane. Therefore, this cannot be accepted as a reason for not appearing in the Reference for seven years. The Labour Court therefore rightly drew a conclusion that the Petitioner was not interested. The restoration application filed on this basis was rejected with an additional ground that it was not filed within 30 days on publication of the Award. As far as the rejection of the review application is concerned, the Labour Court rightly observed that it was not maintainable. In the written statement, the Respondent Company has categorically stated that the Petitioner did not appear in the enquiry inspite of publication in the newspaper. Nothing is shown as to why this could not be done by the Petitioner. In view of this conduct of the Petitioner, it is not possible to interfere with the impugned order and restore a Reference of the year 1985 in respect of termination of the Petitioner in the year 1982. It is also informed that the Respondent Company has ceased its operation.

6. Learned counsel for the Petitioner seeks to contend that the nomenclature is used by the Labour Court in passing the order dated 5 December 1984 styling it as an Award is incorrect. In view

of the above factual position as it exists as on today, nothing is achieved in examining the issue any further due to the passage of 30 years since the date of termination and the conduct of the Petitioner as indicated above, to restore the Reference of the year 1985 to be tried on merits.

7. In the circumstances, no case is made out for interference in writ jurisdiction. The writ petition is accordingly dismissed. Rule discharged. No costs.

(N. M. JAMDAR, J.)