

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

WRIT PETITION NO.5662 OF 2016

M/s. Eveready Industries India Ltd. : Petitioner.
versus
Shri S V Bhagat and anr. : Respondents.

Mr. Jayesh K Desai for the Petitioner.
Mr. P M Mokashi for the Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 19th September 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 17/03/2015 passed by the learned Presiding Officer, Third Labour Court, Mumbai by which order the Reference in question being Reference (IDA) No.48 of 2012 came to be answered partly in affirmative and resultantly the order dated 14/12/2009 striking of the name of the Respondent No.1 herein who was the 2nd party in the said Reference was declared as illegal and was quashed and set aside. The first party to the said Reference i.e. the Petitioner herein was directed to reinstate the Respondent No.1 herein with continuity of service and payment of 50% back-wages.

2 The Reference in question being Reference (IDA) No.48 of 2012 arose out of the implied termination of the services of the Respondent No.1 with effect from 01/04/2009. The Respondent No.1 was employed with the

Petitioner as a Quality Officer. He was working in the EMD Plant of the Petitioner at Navi Mumbai. On the said EMD Plant being closed by the Petitioner, the Respondent No.1 was transferred to the Head Office at Mumbai on 22/03/2006. It seems that no work could be assigned to the Respondent No.1 in the Head office of the Petitioner at Mumbai. The Respondent No.1 was therefore kept idle but was paid wages. It seems that the Respondent No.1 was thereafter transferred to Chennai with effect from 15/01/2009 vide order dated 31/12/2008. The Respondent No.1 made a representation that it would not be possible for him to accept the transfer order. It seems that the Respondent No.1 thereafter did not report at Chennai on account of which vide letter dated 16/02/2009, he was informed by the Petitioner that he should report at Chennai on or before 01/03/2009 failing which the Petitioner would be compelled to initiate action as it may deem fit. The Respondent No.1 was thereafter warned that action would be taken against him. The Respondent No.1 was thereafter informed by letter dated 09/03/2009 that it would be deemed that he is no longer interested in continuing in service with the Petitioner and has voluntarily abandoned the same.

3 In view of the fact that the Respondent No.1 did not report at Chennai, the Petitioner by letter dated 14/12/2009 informed the Respondent No.1 that the Petitioner has taken necessary action of recording his voluntarily abandonment of service and struck off his name from the company's muster roll

with effect from 01/04/2009. The Respondent No.1 was further directed to fill up necessary forms for provident fund, pension, gratuity so as to enable the Petitioner to expedite the matter and clear the payment of dues. The said striking of the name of the Respondent No.1 from the muster roll resulted in the Respondent No.1 raising an industrial dispute in view of the fact that the said striking of results in the termination of the services of the Respondent No.1. In view of the failure of the conciliation proceedings, the dispute was referred as and by way of a Reference to the Labour Court for adjudication under the provisions of Industrial Disputes Act. (In short “the said Act”).

4 The Respondent No.1 herein filed his statement of claim and in the said statement of claim stated the antecedent facts prior to his name being struck of from the muster roll on 01/04/2009. It was the case of the Respondent No.1 that the said striking of his name amounts to termination which termination according to him was without following the procedure contemplated by law i.e. without holding enquiry and without complying with the provisions of Section 25F of the said Act. The Respondent No.1 therefore sought setting aside of the striking of his name from the muster roll and for his reinstatement with back-wages.

5 The Petitioner herein filed its Written Statement and sought to justify the transfer of the Respondent No.1 to Chennai. The Petitioner

questioned the maintainability of the Reference on the ground that the Respondent No.1 was not a “workman” within the meaning of the said Act as the Respondent No.1 was working in a supervisory and managerial capacity. It was the case of the Petitioner that the Respondent No.1 had facilities which were extended to the managerial staff i.e. the inter-com phone connection on his table and was having lunch in the room meant for the managerial staff.

6 The learned Presiding Officer of the Labour Court on the basis of the pleadings of the parties, framed issues amongst which was the issue whether the Respondent No.1 was a “workman” within the meaning of the said Act and whether the Reference was maintainable. The parties led evidence in respect of their respective assertions. The Petitioner led the evidence of The Petitioner led the evidence of Shri Jananendra Nath Mohanty – Regional Commercial Manager, and Shri Harpalsingh Kalra – the Senior Manager-Production whereas the Respondent No.1 led his own evidence. The learned Presiding Officer on the basis of the material on record came to a conclusion that the Reference was maintainable and that the Respondent No.1 was a workman within the meaning of the said Act. The learned Presiding Officer held that the nature of the duties of the Quality Officer consists of testing raw material and finished products etc. The learned Member observed that no suggestion was put to the Respondent No.1 that he was not doing the aforesaid work. The learned Member held that there is nothing in the nature of duties

which can be said to be managerial or supervisory. The learned Presiding Officer observed that the witness of the Petitioner Shri Harpal Singh had deposed that the Quality Control Officer works under the Quality Control Inspector. The learned Presiding Officer therefore observed that nothing was brought on record by the Petitioner to show that the Respondent No.1 was working in a supervisory or managerial capacity. The learned Presiding Officer held that merely because the Respondent No.1 was having lunch in the room meant for the managerial staff would not exclude the Respondent No.1 from being a workman. The learned Presiding Officer held that the test to determine whether a person is a workman or not is the pre-dominant nature of duties that were being carried out by the said person. In the instant case the learned Presiding Officer observed that the Respondent No.1 was carrying out the work of a technical nature which was brought on record by the Respondent No.1 through his own evidence and which was also accepted by the witness of the Petitioner. The learned Presiding Officer concluded the said issue accordingly.

The learned Presiding Officer thereafter ventured to consider whether the services of the Respondent No.1 were terminated illegally by striking of his name from the muster roll. In so far as the said aspect is concerned, the learned Presiding Officer held that the Respondent No.1 though did not join at Chennai had remained present in the Head Office at Mumbai.

The learned Presiding Officer further held that even if it was the case of the Petitioner that the Respondent No.1 had abandoned his services, it was incumbent on the part of the Petitioner to hold an inquiry in that regard. That having not been done, the learned Presiding Officer held that striking of the name of the Respondent No.1 from the muster roll was illegal and that the same amounted to termination of service, for which the learned Presiding Officer has relied upon the judgment of the Apex Court. The learned Presiding Officer accordingly set aside the order dated 01/04/2009 striking of the name of the Respondent No.1 from the muster roll and directed his reinstatement. In the facts and circumstances of the present case, the learned Presiding Officer deemed it appropriate to grant 50% back-wages. As indicated above it is the said judgment and order dated 17/03/2015 which is taken exception to by way of the above Writ Petition.

7 The learned counsel for the Petitioner Mr. Jayesh Desai would seek to re-urge the case of the Petitioner which was urged before the Labour Court as regards the issue as to whether the Respondent No.1 was a workman as also as regards whether the services of the Respondent No.,1 could be terminated without holding an inquiry. It was the contention of the learned counsel that the evidence on record would indicate that the Respondent No.1 was discharging managerial and supervisory details.

8 In my view, it is not possible to accept the contentions urged by the learned counsel for the Petitioner in the light of the findings of fact recorded by the learned Presiding Officer of the Labour Court on the aspect as regards whether the Respondent No.1 is a workman as also as regards the manner in which the name of the Respondent No.1 was struck off from the muster roll which action the Labour Court has rightly held amounts to termination of the services of the Respondent No.1 without following the procedure. In my view, therefore the order passed by the learned Presiding Officer of the Labour Court, in the facts and circumstances of the present case, cannot be said to be suffering from any error of jurisdiction or any other illegality or infirmity for this Court to exercise its writ jurisdiction under Article 227 of the Constitution of India. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]