

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

WRIT PETITION NO. 3358 OF 2016

M/s. Clearex Films	... Petitioner
V/s.	
Shri. Ram Yadav & Anr.	... Respondents

Mr. P. J. Thorat for the Petitioner.
Mr. Sanjay Prabhu for Respondent No.1
Mr. Sainand Chougule i/b S.S. Deshmukh for the Respondent No.2.

**CORAM : K. K. TATED, J.
DATED : 09/12/2016**

PC.:

1. Heard learned Counsel for the parties.
2. The matter was on board on 05.12.2016. On that date, after hearing for both the sides for some time, the learned counsel for the Respondent No.1 applied for adjournment on the ground that he wants to file a letter written by the Respondent to the Conciliation Officer showing his readiness and willingness to join his service. On his request, the matter was adjourned for today for final hearing at the stage of admission itself. Hence, matter is taken on board for final hearing at the stage of admission.
3. By this Petition under Articles 226 and 227 of the Constitution of India, the Petitioner opponent/1st party challenges the Judgment dated 31.08.2015 passed by the Labour Judge, Daman in IDA No. 4 of 2011 directing petitioner to reinstate the Respondent No.1 namely Shri. Ram

Yadav as helper w.e.f. 16.03.2006 with full back wages.

4. In the present proceeding, the Respondent No.1 was working with Petitioner as helper since 01.02.2000. On 14.03.2006, the Petitioner called all the workers to attend the factory for urgent work. On that date, the Respondent No.1 remained absent. Thereafter, the Respondent No.1 attended factory on 16.03.2006 and left the same without joining his duty. Thereafter, the Respondent filed complaint with Department of Labour & Employment, Daman. Pursuant to the said complaint, the Joint Secretary (Labour & Employment), Daman passed order on 22.07.2011 and made a reference as per the provision of Section 12(5) read with Section 10(1)(c) of the Industrial Dispute Act, 1947 (hereinafter will be called as 'the said Act') on following point:

“discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed.”

5. Thereafter, the Petitioner filed their written statement before the Labour Court at Daman denying the Respondent's claim. On the basis of written statement and evidence on record, the Labour Court, Daman passed the impugned Judgment on 31.08.2015. Hence, the present Writ Petition.

6. The learned counsel Mr. P. J. Thorat appearing on behalf of the Petitioner submits that the impugned judgment passed by the Labour Court is against justice, equity and good conscience and same is required to be set aside. He submits that the Labour Court erred in holding that the Management of the Petitioner has terminated the

services of Respondent No.1 wrongfully. He submits that the Labour Court failed to consider the fact that the Respondent No.1 on his own abandoned his job and never attended or joined the Petitioner's factory and therefore, there is no question of granting any relief to the Respondent No.1 as per the provision of the said Act.

7. The learned counsel for the Petitioner submits that the Court below failed to consider that Respondent No.1 has refused to join his duty in spite of repeated correspondence made by the Petitioner clearly stating that they have not terminated the services of the Respondent No.1. They have no objection if Respondent No.1 come and join their factory. Therefore, the Labour Court ought not to have directed reinstatement with full back wages. He submits that when the matter was before the Conciliation Officer, the Petitioner by letter dated 01.08.2006 placed on record that they have no objection if the Respondent No.1 can come and join his duty immediately. He further submits that thereafter, again the Petitioner placed on record before the Conciliation Officer by letter dated 19.09.2006 that Respondent No.1 may come and report for duty immediately. He submits that in spite of that offer, the Respondent No.1 failed and neglected to join the duty for more than 6 to 7 years. He submits that these facts were not taken into consideration by the Court below at the time of passing the impugned judgment.

8. The learned counsel for the Petitioner submits that the Court below failed to consider the fact that the Respondent No.1 on his own remained absent from 16.03.2006. This itself shows that Respondent No.1 on his own abandoned the job with the petitioner. Therefore,

there is no question of any termination on the part of the petitioner.

9. The learned counsel for the Petitioner submits that the Court below erred in holding that the petitioner failed to comply with the provision of Section 25-F of the said Act. He submits that when the Respondent on his own abandoned the services of the Petitioner without any reason, there is no question of complying the provision of Section 25-F of the said Act.

10. The learned counsel for the Petitioner submits that the court below at the time of passing the impugned order directed the petitioner to reinstate the Respondent No.1 with full back wages without considering the fact that the petitioner specifically made averments in the written statement that company was already closed since May, 2013. He submits that once the company is closed, there is no question of directing the petitioner to reinstate the Respondent on duty.

11. The learned counsel for the Petitioner submits that Respondent No.1 failed to place on record any documentary evidence to show that from 16.03.2006 when he left the job, he was not working with any other institution and/or company. He submits that the Court below failed to consider that the Respondent No.1 has not produced on record any material to show that he has not being working since 16.03.2006 with other establishment so as to entitle full back wages from 16.03.2006. In support of his contention, he relies on the judgment of the Apex Court in the matter of *Management of Narendra and Co. Pvt. Ltd. v/s. Workmen of Narendra and Co. reported in (2016)3 Supreme Court Cases, 340*. He relies on paragraphs 5 and 7 of this

authority which read thus :

“5. Once the learned Single Judge having seen the records and come to the conclusion that the industry was not functioning after January, 1995, there is no justification in entering a different finding without any further material before the Division Bench. The appellate bench ought to have noticed that the statement of MW-3 is itself part of the evidence before the Labour Court. Be that as it may, in an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.

7 Hence, the order for payment of back wages beyond January, 1995 is vacated, and in all the other aspects, the order passed by the Division Bench is retained. In case, the workmen have not been paid the benefits which they are entitled to, the same shall be paid within a period of three months from today, failing which, the respondent-workmen shall be entitled to interest at the rate of 10 per cent per annum.”

12. The learned counsel for the Petitioner submits that if the worker left the job on his own, there is no question of following the procedure as prescribed under Section 25-F of the said Act. In support of his contention, he relies on the Judgment of this Court, in the matter of ***Sub-Divisional Officer & Ors. V/s. Laxman Durgaji Borkar & Anr. reported in 2010(supp.) Bom.C.R.467.***

13. On the basis of these submissions, the learned counsel for the Petitioner submits that the impugned judgment passed by the Labour Court is required to be set aside.

14. On the other hand, the learned counsel Mr. Sanjay Prabhu appearing on behalf of Respondent No.1 vehemently opposed the present Writ Petition. He submits that after considering the evidence on record and documents, the Labour Court rightly held that Respondent No.1 is entitled to reinstate with full back wages w.e.f. 16.03.2006.

15. The learned counsel for the Respondent No.1 submits that though the Respondent No.1 on several occasion tried to join his service, the petitioner refused to allow him. Hence, the Respondent No.1 constrained to file complaint with the Labour Officer and on the basis of said complaint, the reference was made.

16. The learned counsel for the Respondent No.1 submits that the witness Mr. Premsingh Panwar, who filed Affidavit in lieu of Evidence under order 18 Rule 4 of Code of Civil Procedure, 1908 on behalf of Petitioner Company failed to place on record any material to show that the Respondent No.1 abandoned his services. He submits that the said witness on behalf of Petitioner specifically admitted that he joined the services of Petitioner since November, 2007. He submits that the witness did not know the name of the person and/or reason for the absent since 16.03.2006. These facts were considered by the Labour Court at the time of passing the impugned judgment.

17. The learned Counsel for the Respondent submits that the Court below rightly held that the Petitioner without following due process of law terminated the Respondent Workman's services wrongfully and therefore, they have to reinstate with full back wages. The Trial Court

also held that the Petitioner failed to comply the provisions of Section 25-F of the said Act at the time of terminating the respondent's services. Hence, there is no substance in the present Writ Petition and same is required to be dismissed with costs.

18. I heard both the sides at length. It is to be noted that in the present proceeding, the Respondent No.1 was working with the Petitioner since 01.02.2000 as helper. Thereafter, from 16.03.2006, he failed to remain present on his duty. Neither he made any application for leave nor intimated to the Petitioner about his intention to join the services. Apart from that, when the matter was pending before the Conciliation Officer, the Petitioner by their letter dated 01.08.2006 (Exh.39) and 19.09.2006 (Exh.40) called upon the Respondent No.1 to report on the duty immediately. He failed and neglected to do so. These two vital documents did not consider by the Labour Court at the time of passing the impugned order.

19. The Labour Court erred in coming to the conclusion that the Petitioner failed to comply the provisions of Section 25-F of the said Act. There is no question of compliance of the Section 25-F of the said Act, if the worker left the services on his own without giving any reason.

20. In the present proceeding, the Respondent No.1 abandoned his services on his own. Apart from that when the Petitioner in writing called upon the Respondent No.1 to join the duty immediately, he failed and neglected to do so. Therefore, there is no question of compliance the provisions of Section 25-F of the said Act.

21. In the present proceeding, the Petitioner filed written statement and categorically made statement that their company already closed since May, 2013. Same facts were narrated by the Petitioner's witnesses Mr. Presingh Panwar in his Affidavit-in-lieu of Evidence dated 10.11.2014. Though, these facts were on record before the Labour Court, the Labour Court directed the Petitioner to reinstate the Respondent with full back wages, which is contrary to the law. The Apex Court in the matter of Management of Narendra & Co. Pvt. Ltd. (supra) specifically held that if the Company is already closed, then there is no question of directing for reinstatement.

22. The Trial Court erred in coming to the conclusion to hold that the Petitioner failed to comply the provisions of said Act at the time of terminating the Respondent's services. Bare reading of the written statement as well as two letters dated 01.08.2006 (Exh.39) and 19.09.2006 (Exh. 40) show that the Respondent No.1 on his own abandoned the services. If there is abandonment of services on his own, there is no question of following any procedure as per the said Act. The same view is taken by this Court in the matter of Laxman Durgaji Borkar & Anr.(supra).

23. The Labour Court failed to consider the fact that the Respondent No.1 had not brought on record any documentary evidence to show that for last more than 8 years, he was unemployed and inspite of that the Labour Court directed the petitioner to pay full back wages w.e.f. 16.03.2006. Without any evidence, the Labour Court passed the order about the back wages and hence, it requires to be set aside.

24. In the above mentioned facts and circumstances and the Authorities in the matter of Management of Narendra & Co. Pvt. Ltd. (supra), I am satisfied that Petitioner has made out case for allowing this Writ Petition.

25. Hence, Writ Petition is allowed in terms of prayer clause (b), which reads thus:

b) That after the perusal of the same, this Hon'ble Court be pleased to quash and set aside the Order dated 31st August, 2014 passed by the Civil Judge, Senior Division, Daman in I.D.R. No.4 of 2011 filed by the Respondent No.1 and be pleased to dismiss the IDR No.04 of 2011.

23. No order as to costs.

(K.K.TATED, J.)