

JPP

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

WRIT PETITION NO. 424 OF 2016

M/s. Della Tecnica Office Systems Pvt. Ltd. ... Petitioner.

V/s.

Radheshyam Gupta. ... Respondent.

Mr. Rajesh Patil i/b. Sutapa Saha for the Petitioner.
None for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 10 FEBRUARY, 2016.

P.C. :-

The Petitioner challenges the order passed by the Civil Judge Senior Division, Daman allowing the reference in respect of termination of the Respondent.

2. The Respondent who was working with the Petitioner as a packing worker in the Petitioner's factory at Dabhel, Daman was terminated from service on 22 March 2013. Reference (IDR) No. 2 of 2013 was made by the appropriate Government to the Court at Daman. In the statement of claim, the Respondent

contended that he was wrongfully terminated from service and sought reinstatement in the services of the Petitioner. In the written statement the Petitioner took a stand that the Respondent himself left the services of the Petitioner because he was found having committed misconduct in respect of property of the Petitioner – company.

3. The learned Counsel for the Petitioner submitted that the Respondent had committed grave misconduct and that he left the services on his own accord. He submitted that the Petitioner was not allowed to cross-examine the Respondent and there has been a failure of justice.

4. The submissions advanced by the learned Counsel for the Petitioner cannot be accepted in view of clear admissions given by the Petitioner in the cross-examination. The Petitioner has asserted that there was a disciplinary action taken against the Respondent. It was stated that the notes were prepared at the time of disciplinary action and the Respondent was kept under suspension during disciplinary action. When a specific question was asked to the Petitioner that record was not produced because no such disciplinary action was taken, that suggestion has been refuted by the Petitioner. In view of the clear stand on oath by the Petitioner that the disciplinary action was taken against the Respondent it was upon the Petitioner to produce the papers of the disciplinary enquiry, which have admittedly not been produced.

The Petitioner has also not sought leave to lead evidence to prove the misconduct of the Respondent.

5. In the circumstances, no fault can be found with the order passed by the Labour Court, Daman. The Writ Petition is accordingly rejected.

(N.M. JAMDAR, J.)