

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.389 OF 2007

Diwakar Pathak
12/928, M.H.B. Colony,
Gorai Road, Borivali (West),
Mumbai-400 091.

.. Petitioner

Versus

1. M/s The Indian Textiles Co. Ltd.,
Block No.3, 1st Floor, Embassy Centre,
Nariman Point,
Mumbai-400 021.

2. M.M. Sayyed,
Presiding Officer, 10th Labour Court,
New Administrative Building,
Opposite Chetana College,
Bandra (East),
Mumbai-400 051.

.. Respondents

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Ms. Rita K. Joshi a/w Mr. Ashok D. Shetty and Mr. Swapnil Kamble for the
Petitioner.

Mr. Ankit R. Tripathi i/b Mr. Girish S. Pikale for Respondent No.1.

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CORAM : S.C.GUPTE, J.

DATE : 9 JUNE 2016.

P.C. :

. Heard Learned Counsel for the Petitioner. The Petition challenges an
order passed by the 10th Labour Court, at Mumbai on a Reference made by
the State Government through its Deputy Commissioner of Labour

(Conciliation), Mumbai u/s 10 and 12 of the Industrial Disputes Act, 1947.

2 The Petitioner joined Respondent No.1-Company on 3 August 1981. On 1 April 1993, he was transferred from the Retail Division to the Export Division of Respondent No.1-Company. The Export Division appears to have been closed by Respondent No.1-Company with effect from 1 July 1996 and all workmen working in it terminated. The Petitioner challenges the termination of his service on the ground that the service was terminated illegally under the guise of closure. The Industrial Court in the impugned order held that the entire Export Division of Respondent No.1-Company was closed and all employees working in the Export Division were terminated on account of closure; that all these workmen, including the Petitioner herein, accepted all terminal dues; and that, thus, there was no case of illegal termination of the Petitioner.

3 The only submissions advanced at the hearing of the Petition by Learned Counsel for the Petitioner are that, firstly, the closure of the Export Division was illegal for want of a permission in accordance with Section 25-O; secondly, the Petitioner was transferred to the Export Division mala fide only with a view to terminate his service. There is no challenge to the closure as such. In fact, the Union had originally challenged the closure, but that challenge was subsequently withdrawn. The Petitioner's statement of claims does not refer to any challenge to the closure on the ground for want of permission under Section 25-O. In so far as the challenge on the ground that the Petitioner was transferred mala fide to Export Division only with a view to terminate his service is concerned, there is hardly any material on record to support this contention. The Petitioner has been

transferred from the Retail Division to Export Division as far back on 1 April 1993. The closure of the Export Division came more than three years later, i.e. on 1 July 1996. The Petitioner appears to have clearly accepted his transfer from the Retail Division to Export Division and worked in the Export Division till 1996 without any protest. It is too late in the day now to make a grievance of malafide or illegal transfer.

4 The only other submission advanced by learned Counsel for the Petitioner is that Respondent No.1-Company has been running its Retail Division and that the work originally carried out by the Petitioner in the Retail Division is still being carried on by others in that Division. Even this ground is neither here and there. The definition of 'closure' under the Industrial Disputes Act, 1947, defines closure to mean permanent closing down of a place of employment or part thereof. If the Company is carrying on more than one undertaking and closes down one of its undertakings, it is closure within the meaning of Section 2(cc) of the Industrial Disputes Act, 1947. In any event, as I have observed above, there is no challenge per se to the closure of the Division in the present petition.

5 Hence, there is no merit in the writ petition. **Rule** is discharged and the Petition dismissed. No order as to costs.

6 If there are any dues owed by Respondent No.1-Company to the Petitioner on account of closure of the Division, including any payment towards Provident Fund dues, the Petitioner will be at liberty to apply for such payment.

(S.C.GUPTE, J.)