

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

WRIT PETITION NO.1732 OF 2016

Shri Ramjeet Rambaran Yadav

..Petitioner

Versus

M/s. Century Textile & Industries Ltd.

..Respondent

Mr. R. D. Bhat for the Petitioner.

**Mr. S. K. Talsania, Senior Advocate a/w Mr. R. S. Singh, T. R. Yadav
for the Respondent.**

CORAM : R. M. SAVANT, J.

DATE : 27th SEPTEMBER, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 16.11.2015 passed by the Learned Member of the Industrial Court, Mumbai, by which order, the Review filed by the Petitioner being Review Application (MIR) No.01 of 2014 came to be allowed and the directions as contained in the operative part of the impugned order came to be issued which directions are reproduced hereinunder for the sake of ready reference :-

“1. The review application stands allowed.

2. The impugned order dated 27.4.2012 passed by the 9th Labour Court in the Application (BIR) No.120/2006 is modified to the extent of reinstatement of the respondent employee in the service for the period 30.09.2006 to 11.01.2008 till the closure of the appellant company.

3. The appellant company shall pay to the respondent employee full wages for the period 30.09.2006 to 11.1.2008.

4. The appellant company deposited 50% amount of backwages in the Court while filing the appeal.

5. The appellant company shall pay the closure compensation to the respondent employee from the period 13.01.2008 till the respondent employee attaining his age of 63 years u/s. 25FFF of the Industrial Disputes Act, 1947 alongwith the cost of Rs.2,000/- as awarded by the 9th Labour Court, Mumbai.

6. The 50% of the amount of backwages deposited in the Court by the appellant company be adjusted towards the payment of closure compensation payable to the respondent employee.”

2 In the context of the challenge raised to the said order dated 16.11.2015, a few background facts are required to be noted :-

By the order dated 18.09.2014 passed by the Industrial Court, the Appeal filed by the Respondent herein being Appeal No.12 of 2012 came to be partly allowed and resultantly, the Respondent was liable to pay to the Petitioner workman full backwages for the period between 30.09.2006 to 11.02.2008. The said order modified the order passed by the Labour Court in Application (BIR) No.120 of 2006, by which order, the application filed by the Petitioner came to be allowed and the Respondent herein was directed to reinstate the Petitioner with 50% backwages.

3 The facts antecedent to the passing of the said orders would have to be referred to. It seems that the Petitioner herein in the year 1989 had suffered multiple fractures to his left hand whilst lifting cotton belt during the course of his employment. It appears that thereafter in the year 1996, the Petitioner was injured in an accident which had taken place outside the factory premises of the Respondent on account of which he suffered permanent injury. The Petitioner was receiving the benefits under the ESIC. The Petitioner was terminated on 28.02.1998. This resulted in the Petitioner filing Complaint (ULP) No.287 of 1998. Suffice it would be to state that the said Complaint was partly allowed and the Respondent was directed to reinstate the Petitioner with continuity of service and 50% of backwages, however liberty was granted to the Respondent to retrench the Petitioner. The Respondent challenged the said order dated 28.02.1998 by filing Revision (ULP) No.263 of 2006. The said Revision was partly allowed and resultantly, the direction of the Labour Court giving liberty to the Respondent to retrench the Petitioner was deleted.

4 It seems that during the pendency of the said Revision (ULP) No.263 of 2006, the Petitioner was again terminated. The said termination was challenged by the Petitioner by filing Application (BIR) No.120 of 2006. The said application was allowed by the Learned Judge

of the Labour Court and a direction was issued to the Respondent to reinstate the Petitioner with 50% backwages and costs of Rs.2000/-. The judgment and order dated 27.04.2012 passed by the Labour Court was taken exception to by the Respondent by filing Appeal (IC) No.12 of 2012. The said Appeal came to be partly allowed and resultantly, the judgment and order dated 27.04.2012 passed in Application (BIR) No.120 of 2006 came to be modified and the Respondent was directed to pay full backwages to the Petitioner for the period 30.09.2006 upto 11.01.2008.

5 It seems that the Respondent herein applied to the State Government for closure of its Mill under the provisions of Section 25-O of the Industrial Disputes Act, 1947 (For short "the I. D. Act"). The dispute as regards closure was referred for adjudication to the Industrial Court and came to be numbered as Reference (IT) No.11 of 2008. In the said Reference, affidavits came to be filed on behalf of the Respondent that the 275 workmen who had not accepted VRS and were continuing with the Respondent would be paid wages from month to month till they attain the age of 63 years. Hence taking into consideration the undertaking given in the said affidavits, the Reference came to be disposed of by the Industrial Court by Award dated 15.10.2009 and resultantly, permission came to be granted to close down the Mill from

12.01.2008.

6 The Petitioner filed the instant Review Application for Review of the said order dated 18.09.2014, which was in the context of the affidavits which were filed in the said Reference proceedings and the statement made therein that the 275 workmen would be paid their wages from month to month till they attain the age of 63 years. The Review Application was also founded on the fact that the directions as contained in the operative part of the said order dated 18.09.2014 as regards payment of closure compensation could not be issued. As indicated above, the Review Application filed by the Petitioner came to be allowed and the directions came to be issued to the extent mentioned in the operative part of the order dated 16.11.2015. The directions were inter-alia to the effect that reinstatement was granted to the Petitioner for the period between 30.09.2006 to 11.01.2008 i.e. till the closure of the company and the Respondent was directed to pay closure compensation to the Petitioner from 13.01.2008 till the Petitioner attains the age of 63 years under Section 25-FFF of the I. D. Act. It was further directed that 50% of the amount of backwages deposited by the Respondent be adjusted towards the payment of the closure compensation. Hence the relief sought, akin to the benefit granted to the 275 workmen was rejected by the Industrial Court in review.

7

It is in the background of the termination of the services of the Petitioner that in the first round i.e. Complaint (ULP) No.287 of 1998, the Labour Court had granted reinstatement with liberty to the Respondent to retrench the Petitioner. The said liberty however was withdrawn by the Industrial Court in Revision No.263 of 2006. In the second round, i.e. under the BIR Act the Labour Court had granted the Petitioner reinstatement with 50% backwages. However in the Appeal filed by the Respondent herein being Appeal (IC) No.12 of 2012, the said order was modified and full backwages for the period between 30.09.2006 to 11.01.2008 were granted to the Petitioner. Hence in an Appeal filed by the other side i.e. the Respondent herein, the order passed by the Labour Court was modified to the extent of granting full backwages to the Petitioner. It seems that though a contention was sought to be raised on behalf of the Petitioner in the said Appeal based on the facts leading to the closure and the undertaking given in respect of 275 workmen, the Industrial Court did not deem it appropriate to extend the said benefit to the Petitioner. This must be obviously attributed to the fact that the Industrial Court found that the Petitioner's case stands apart from the case of the said 275 workmen who were to be paid monthly wages upto the age of 63 years. In the Review Application filed by the Petitioner, the said relief sought by the Petitioner, akin to the

relief granted to the 275 workmen has not been granted by the Industrial Court, but the Industrial Court has modified the directions to the extent mentioned in the operative part of the impugned order.

8 Taking an overall view of the matter, in my view, the order impugned i.e. the order dated 16.11.2015 passed by the Learned Member of the Industrial Court cannot be said to suffer from any infirmity or illegality considering the restricted nature of the Review jurisdiction. Hence no interference is warranted in the writ jurisdiction of this Court under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]