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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1336 OF 2007

M/s. Cambata Aviation Private Limited ...Petitioner

VS

Mr. Shanel Pareira And Anr. ...Respondents

.....

Mr. Kiran Bapat, i/b. Desai & Desai Associates, for the Petitioner.

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CORAM : S.C. GUPTE, J.

DATED: JUNE 10, 2016

P.C.:

. Heard learned Counsel for the Petitioner. None for the Respondents. On the last three occasions, when the matter was called out, none had appeared for the Respondents.

2. The petition challenges an award passed by 10th Labour Court at Mumbai in a reference under the Industrial Disputes Act, 1947. The Petitioner is a Company engaged in the business of Cargo Handling at the International Airport in Mumbai. Respondent No.1 was working as a Badli Loader with the Petitioner. On 4 November 1999, while on duty, Respondent No.1 was intercepted by the Security Personnel of Air India, when he was found to be in possession of one camera and one mattress cover in his bag. When he was confronted by the Senior Security Personnel, he admitted having pilfered the said camera and mattress cover from one of the passengers of Cathay Pacific, whose cargo was handled by the Petitioner, and gave his confessional statement

admitting his guilt. Ever since that date, Respondent No.1 stopped attending the duties. Since Respondent No.1 did not report for duty, his name was struck off by the Petitioner on the Badli Register in accordance with the provisions of Clause 22 of the settlement executed between the Petitioner and the recognized Union of its workmen. Respondent No.1, thereafter, raised an industrial dispute and gave a demand letter claiming that his services were terminated by the Petitioner on 4 November 1999. Upon the failure of conciliation proceedings, a reference was made by the Government for adjudication by the Labour Court. Both parties led evidence before the Labour Court. After hearing the evidence, the Labour Court in the impugned award dated 10 October 2006, reached a categorical finding that Respondent No.1 had committed misconduct of both absenteeism and commission of theft of the cargo handled by him on 4 November 1999. Despite holding that the Petitioner had proved the serious misconduct on the part of the delinquent employee, warranting termination of services, the Labour Court in the impugned award granted relief of payment of full wages of Respondent No.1 from 3 March 2000 till the date of the award. That was presumably on the footing that though Respondent No.1 had failed to prove that his services were illegally terminated by the Petitioner, the Petitioner not having issued any show cause notice or, charge-sheet or conducted any enquiry, the Respondent was entitled to get back wages between the date of termination till the date of proving of his misconduct, i.e. from the date of termination till the date of this award.

3. In the first place, the case before the Labour Court urged by the Petitioner was that Respondent No.1 had stopped attending duties

on his own, after being caught with a serious misconduct, namely, pilferage of an article belonging to the passenger's luggage which was being handled by him. This case apparently was not considered by the Labour Court. Instead it proceeded on the footing that there was a dismissal on account of serious mis-conduct. Be that as it may, the Court allowed both parties to lead evidence on the alleged mis-conduct. After considering the evidence, the Court actually came to the conclusion that that misconduct was duly proved.

4. The main question which arises in this matter is whether the Labour Court, having expressly come to a finding that the misconduct of the employee was proved, should have accepted the dismissal on the basis of the doctrine of “relation back”. The Supreme Court in the case of **Punjab Dairy Development Corporation Ltd. vs. Kala Singh**¹ held that in a case where a domestic enquiry was held to be defective, an opportunity to adduce evidence was afforded to both the management and the workman and accordingly, the dismissal was held to be valid, it relates back to the date of the original dismissal and not the date of the judgment of the Labour Court. Our Court in the case of **United Ink & Varnish Co. Pvt. Ltd. vs. Chandrashekhar Kuvre**² says that this legal position is no more *res integra*. Where an order of dismissal of an employee is not based on a duly conducted domestic enquiry, it is open for the employer to prove the misconduct in the Court. This being a legal right available to the employer, there is no justification permitting the Industrial Court to direct the employer to reinstate the complainant employee and pay the back wages in the

1 (1997) 6 Supreme Court Cases 159

2 2007 I CLR 503

interegnum. In the event the Industrial Court comes to the conclusion that the order of dismissal was justified on the basis of the misconduct alleged, the dismissal would relate back to the date of the original dismissal and could not be treated as a dismissal from the date of the judgment of the Labour Court.

5. In the premises, the impugned order of the Labour Court cannot be sustained. The rule is, accordingly, made absolute. There shall, however, no order as to costs.

6. The Office shall permit the Petitioner to withdraw the amount deposited by the Petitioner in this Court pursuant to the order dated 21 August 2007, which amount is invested by the Prothonotary and Senior Master, along with accrued interest.

7. All parties to act on the authenticated copy of this order.

8. In view of the disposal of the petition, the Notice of Motion does not survive and the same is also disposed of.

(S.C. GUPTE, J.)