

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1744 OF 2016**

Century Textiles & Industries Ltd.

..Petitioner

Versus

Ramjeet Rambaran Yadav

..Respondent

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

Mr. R. D. Bhat 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, by which order, the Review Application filed by the Respondent workman was partly allowed to the extent mentioned in the operative part of the said order dated 16.11.2015.

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

herein was directed to reinstate the Respondent with 50% backwages.

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

4 It seems that during the pendency of the said Revision (ULP) No.263 of 2006, the Respondent was again terminated. The said

termination was challenged by the Respondent 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 Petitioner to reinstate the Respondent 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 Petitioner 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 Petitioner was directed to pay full backwages to the Respondent for the period 30.09.2006 upto 11.01.2008. Thereafter certain intervening events have taken place as regards the closure application filed by the Petitioner under Section 25-O of the Industrial Disputes Act, 1947 (For short "the I. D. Act"). The adjudication that has taken place qua the said application and the order passed thereon. However for the purposes of the adjudication of the present Petition, the said intervening facts are not relevant.

5 It seems that the Respondent herein filed an application for Review of the said order dated 18.09.2014 passed by the Learned Member of the Industrial Court. The Review was sought on the ground that the Respondent should be extended the same benefit as the 275 workmen who had not availed of the Voluntary Retirement Scheme and

in respect of whom the Petitioner had agreed to go on paying monthly wages upto the age of 63 years. The said Review Application came to be partly allowed and though the relief sought by the Review Application was not granted, the Petitioner was directed to pay closure compensation to the Respondent on the basis that he would continue upto 63 years. The order passed on the Review is dated 16.11.2015. The above Writ Petition No.1744 of 2016 has been filed on 13.07.2016.

6 The above Petition *interi-alia* takes exception to the order dated 18.09.2014 passed by the Learned Member of the Industrial Court to the extent that it grants reinstatement to the Respondent. It was the submission of the Learned Counsel appearing on behalf of the Petitioner that the Learned Member of the Industrial Court has found fault with the retrenchment of the Respondent by the Petitioner on the ground that the liberty granted to retrench the Respondent was set aside in the earlier round. It was the submission of the Learned Senior Counsel that notwithstanding the said liberty being set aside, the Petitioner was entitled in law to retrench the Respondent and the only requirement was to comply with the provisions of Section 25-F of the I. D. Act. A reading of the impugned order dated 18.09.2014 discloses that the said fact has undoubtedly weighed with the Learned Member of the Industrial Court whilst ordering the reinstatement of the Respondent. However the

question which arises is whether the said order is required to be interfered with in the background of the fact that the above Petition has been filed almost after a period of two years of the said order dated 18.09.2014 came to be passed by the Industrial Court. The filing of the Review Application by the Respondent obviously cannot close the gap in so far as the delay in filing the above Writ Petition is concerned. Hence the justification for the delay in filing the above Writ Petition being attributed to the pendency of the Review Application cannot be accepted. The Review Application was filed by the Respondent and the reliefs if any that would be granted in the said Review Application would only enure to the Respondent. Hence there was no warrant or justification for the Petitioner to delay the challenge to the said order dated 18.09.2014. The challenge is therefore an after thought and seems to be raised in view of the challenge raised to the order passed in Review by the Respondent, by filing Writ Petition No.1732 of 2016. In my view, therefore, having regard to the aforesaid facts, this Court does not deem it appropriate to exercise its writ jurisdiction under Article 226 of the Constitution of India qua the order dated 18.09.2014 as also the order dated 16.11.2015 which is a consequence of the said order 18.09.2014 passed by the Industrial Court. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]