

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

WRIT PETITION NO. 2626 OF 2006

National Bicycle Corporation of India Ltd.	...Petitioner
vs.	
Murat Madhu	Respondent

Mr. Vishwajit Sawant I/b. P.M. Jadhav for Petitioner.
None for Respondent.

CORAM : S.C. GUPTE, J.

29 JULY 2016

P.C.:

Heard learned Counsel for the Petitioners. The Respondent is absent despite notice. From the record and proceedings, it appears that the Respondent was not present even on the last occasion when the matter was called out for hearing. Even on last three occasions, i.e. on 1 April 2016, 10 June 2016 and 24 June 2016, none had appeared for the Respondent.

2 The petition challenges orders passed by the Labour Court at Mumbai in Complaint (ULP) No.80 of 2000 and confirmed by the Industrial Court at Mumbai in Revision Application No. 153 of 2003.

3 The first Petitioner is an undertaking of Government of India. It had declared closure as of 21 July 2001. The disputes between the parties concern the retirement of the Respondent prior to the closure, i.e. with effect from 1 January 2000. In the records of the Petitioner as of 1 January 1987, the Respondent's age was 47 years and accordingly, he was to retire with effect from 1 January 2000. On the other hand, it is the case of the Respondent that his age on 1 January 1987 was 46 years and the date of his superannuation accordingly would have been 31 December 2000. It is a

matter of record that in November 1999, a memorandum of notice of retirement was given to the Respondent for his impending retirement with effect from 1 January 2000. The Petitioner accepted the notice of retirement, as also all retirement benefits as of the date of his superannuation on 1 January 2000. After his retirement, he filed a complaint of unfair labour practice before the Labour Court at Mumbai, being Complaint (ULP) No. 80 of 2000. The Labour Court, by its impugned order dated 19 April 2003, held that the Petitioner had committed an unfair labour practice inasmuch as the Respondent was entitled to work upto 31 December 2001 and since 21 July 2001 was the date of closure, he was entitled to all monetary benefits, including salary and other dues upto 21 July 2001. The Labour Court accordingly directed the Petitioner to pay wages to the Respondent from 1 January 2000 to 21 July 2001. The Petitioner carried the matter in revision before the Industrial Court. In its order dated 19 June 2006, the Industrial Court accepted the Petitioner's case that when the management of the Petitioner had carried out the exercise of correcting and ascertaining the particulars of their workmen by giving a common notice on 20 May 1987 requiring the workmen to state their age as of 1 January 1987, the Respondent had stated his age as 47 years. If the Respondent's age as of 1 January 1987 was 47 years, then it followed that his retirement would be with effect from 1 January 2000 as the workman would turn 60 years as of 1 January 2000. Strangely, however, the Industrial Court noted that the workman would have attained the age of superannuation on 31 December 2000 and further strangely the Industrial Court confirmed the impugned order of the Labour Court, which held his entitlement to work upto 31 December 2001, i.e. the date of superannuation to be 1 January 2002. It is on the basis of this date of superannuation that the impugned order of the Labour Court gives the Respondent monetary benefits upto 21 July 2001, that date being the date of closure of the first Petitioner undertaking. What is important to note is that the order of the Industrial Court in revision has been passed after taking into account a

judgment of this court in a case between this very Petitioner and fellow workmen of the Respondent. The court held that on the basis of opportunity given to the workmen of the Petitioner to set their age as of 1 January 1987, the Petitioner was entitled to work out the respective dates of superannuation of workmen. If one goes by the admitted position in the present case, the Respondent had mentioned his age as of 1 January 1987 to be 47 years. If that is so, his date of superannuation would indeed be 1 January 2000 and his retirement as of 1 January 2000 with prior notice of retirement given in November 1999, which was acted upon by both the parties, should have concluded the issue and the Labour Court ought not to have interfered with the retirement at the instance of the Respondent.

4 Rule is accordingly made absolute and the impugned orders, namely, the order of the Labour Court dated 19 April 1983 and the order of the Industrial Court dated 19 June 2004, are quashed and set aside. No order as to costs.

(S.C. Gupte, J.)