

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

WRIT PETITION NO. 1915 OF 2015

TATA Consultancy Services Ltd.,
TCS House, Rave Line Street,
Fort, Mumbai 400 001.

... Petitioner

v/s

1. Mr.Bharat Sharma,
40, Kanti nagar, Near Loco shed,
Tansen Road,
Gwalior – 474 002, (M.P).

2. The Presiding Officer,
10th Labour Court, Mumbai.

... Respondents

Mr.K.M.Naik, senior advocate along with Sujeet P. Salkar and Hemant Telkar for the petitioner.

None present for the respondent No.1.

CORAM: N.M. JAMDAR, J.

DATED : 29 FEBRUARY 2016

ORAL ORDER:

By order dated 27 January 2016, since Respondent No.1 had remained absent on various dates, the matter was adjourned till today making it clear that the matter will be considered on merits even if Respondent No.1 does not choose to appear. The orders are uploaded on the website and the Respondent No.1, an educated

person is expected to note them.

2 By the impugned order dated 16 July 2015, the Presiding Officer, Tenth Labour Court, Mumbai, has disposed of the application dated 27 March 2015 filed by the Petitioner regarding framing of certain issues.

3 Reference (IDA) No.89 of 2014 is referred to the Labour Court, Mumbai. The schedule reads as under :

'Shri Bharat Sharma be allowed to resume on duty as it is from 05.06.2013 along with salary in between period considering continuity of past service.'

4 As regard the additional issues proposed by the Petitioner, the first issue is, whether the Respondent is a 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947. The Labour Court has held that this issue can be decided on merits along with other issues. There is no perversity in this approach. Nothing is shown how it is wrong.

5 Mr.Naik, learned Senior Advocate appearing for the Petitioner submitted that the Labour Court has not appreciated the difference between the justifiability of termination and its legality. He submitted that the additional issue regarding termination of trainee-ship of the Respondent ought to have been framed. The Labour Court has observed that this issue, as proposed, will be covered in the issue No.1 already framed. In view of this

clarification given by the Labour Court that it will consider even the aspect of justifiability of the termination within the ambit of issue No.1 already framed, it is not necessary to frame an additional issue as proposed, as the issue as stated earlier, stands covered.

6 As regard the deletion of Issue No.3 regarding demand of Rs.20 crores, the learned counsel for the Petitioner submitted that such demand is beyond the scope of reference. The Labour Court has placed reliance on provisions of Section 2A(2) of the Industrial Disputes Act, which gives an additional right to the workman to approach the Labour Court directly for adjudication of disputes. It is not clear as to how this section would assist the Respondent in making a claim of damages of Rs.20 crores. The Labour Court has also not considered the argument of the Petitioner that this is beyond the terms of reference already made to the Labour Court and that, present is not a case where the Reference is made at the behest of the workman. Since this argument is not considered by the Labour Court and it would have implications for proper adjudication of the Reference, it would be appropriate if the Labour Court considers the application made by the Petitioner regarding deletion of this issue afresh, after giving an opportunity to the Respondent who has also chosen not to remain present.

7 Accordingly, the writ petition is disposed of to the extent that the application filed by the Petitioner dated 27 March 2015 is restored for reconsideration by the Labour Court in respect of the deletion of issue No.3 regarding demand of Rs.20 crores. The

application to be disposed of by the Labour Court on its own merits.

8 The writ petition is accordingly disposed of in above terms.

(N. M. JAMDAR, J.)