

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

**WRIT PETITION NO. 2883 OF 2006
WITH
NOTICE OF MOTION NO. 404 OF 2015**

M/s.Galaxy Surfactants Ltd.	...Petitioner
VS.	
Mr.Deepak Chewle	Respondent

Mr.Vinod Tayade I/b. Piyush Shah for Petitioner.
None for Respondent.

CORAM : S.C. GUPTE, J.

16 JUNE 2016

P.C. :

Heard learned Counsel for the Petitioner. The Respondent is absent, despite service. An affidavit in proof of such service has already been filed by the Petitioner. The petition was stood over on the last date to grant one more opportunity to the Respondent to remain present, despite which he is absent even today.

2 The Petitioner challenges an award passed by the Labour Court on a reference under Sections 10(1) and 12(5) of the Industrial Disputes Act. The main grievance of the Petitioner is that after the dismissal order was challenged by the Respondent workman, the company allowed the workman to resume duties on 15 January 1997. The workman accordingly joined the duties and thereafter, stopped reporting from duties from 19 December 1997 onwards. This position is not disputed by the workman. Even the Labour Court in the impugned order has not come to any finding against this position. Despite this position, the Labour Court has come to a finding that the relationship of employer and employee cannot be stated to be restored in a legal sense. The Labour Court has come to the conclusion that the company has not withdrawn the termination with effect from 1 October 1996, but merely to defeat the claim of the workman and to avoid the consequences of illegal termination order, has allowed the workman to

report for duty. On this basis, the Labour Court has granted reinstatement with full back wages with effect from 1 October 1996 to the date of reinstatement with continuity of service with effect from 1 October 1996. The conclusion of the Labour Court in the face of the admitted position that the workman was reinstated and actually worked with the Petitioner between 15 January 1997 and 19 February 1997 is clearly unsustainable. The workman can certainly be stated to have abandoned the service with effect from 19 February 1997 and in the premises, could not have been reinstated with continuity service and full back wages with effect from 1 October 1996 and till the date of reinstatement. The only question before the Labour Court in the case of reinstatement of workman with effect from 15 January 1997 was regarding payment of wages for the period between 1 October 1996 (the date of his original termination) and till 14 January 1997 (i.e. the date prior to his reinstatement). Instead of deciding that question, the Labour Court appears to have treated the original termination as still subsisting and come to an express conclusion that it was not necessary for the court to determine whether the workman was terminated again on 19 February 1997 or had he himself remained absent after 19 January 1997. There is abundant material on record to show that the workman actually did not report for duty after 19 February 1997 on his own and continued to do so thereafter. In the premises, the order of reinstatement with continuity of service and full back wages could never have been passed by the Labour Court. Rule is, accordingly, made absolute and the impugned order of the Labour Court is set aside.

3 Learned Counsel for the Petitioner, however, offers to allow the Respondent to withdraw the sum of Rs.1,47,000/- deposited by the Petitioner in this Court in pursuance of an interim order passed in the present petition along with accrued interest, as and by way of ex-gratia payment.

4 The office of the Prothonotary & Senior Master of this Court is directed to permit the Respondent to withdraw the amount deposited by the Petitioner along with accrued interest provided such application for withdrawal is made within a period of ten weeks from today.

5 The Petitioner shall serve a copy of this order on the Respondent by way of substituted service indicating the offer to allow the Respondent to withdraw the amount deposited in court in accordance with this order. Such notice shall be by way of substituted service by publication in two newspapers, namely, "Free Press Journal" in English and "Loksatta" in Marathi, circulating in Mumbai. Such advertisement shall be issued within a period of two weeks from today.

6 The petition is disposed of accordingly. The notice of motion is also disposed of.

(S.C. Gupte, J.)