

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

WRIT PETITION NO.78 OF 2007

Mr. Jamil A. Adhikari
of Mumbai Indian Inhabitant,
Residing at 1/B/9, Siddharth Nagar,
Opp. Swimming Pool, Goregaon (West),
Mumbai-400 062.

.. Petitioner

Versus

M/s The Oberoi Towers
Nariman Point,
Mumbai-400 021

.. Respondent

.....

Ms. Neeta Narnik a/w Mr. M.D. Nagle for the Petitioner.
Mr. Rajesh Gehani i/b Sujal Vikhare and Mr. Mahendra Agvekar for the
Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 9 JUNE 2016.

P. C. :

. Heard learned Counsel for the parties.

2 This Petition challenges an order passed by 12th Labour Court, Mumbai on a reference preferred by Deputy Commissioner of Labour (Conciliation), Mumbai, under Sections 10(1) and 12(5) of the Industrial Disputes Act, 1947 for adjudication in the matter of reinstatement of the Petitioner-workman.

3 The case of the Petitioner-workman is that he was not allowed to join his duty on and from 1 July 1994; and that, whilst he was not allowed to join duty, by a letter dated 30 August 1995 (received by the Petitioner on 7 September 1995), his services were terminated by removing his name from the muster roll with effect from 1 September 1995. It is submitted by the Petitioner that the Respondent did not issue any charge-sheet or conduct any inquiry against the Petitioner or give him any opportunity of being heard and terminated his services without following due process of natural justice. It is contended that the services of the Petitioner were terminated without any notice or salary in lieu of notice. In the reference, before the Labour Court, both parties led evidence. The Petitioner-workman led evidence to the effect that he was not allowed to join duty on and from 1 July 1994, whilst the Respondent led evidence to the effect that the Petitioner himself abandoned work and did not report for duty after 1 July 1994 and inspite of communication of the Respondent calling upon him to join the duty. The Labour Court accepted the Respondent's case that the Petitioner-workman abandoned the work and did not report for duty after 1 July 1994. It rejected the Petitioner-workman's case that he was terminated illegally with effect from 1 July 1994 or by a formal communication issued on 30 August 1995.

4 The Labour Court's conclusion being based on evidence before the the Court, the only question this Court has to consider is whether or not the conclusion is in any way perverse or such as could not be arrived at on the basis of record before it.

5 The admitted record of the case discloses that the Petitioner-workman's services were earlier terminated by the Respondent. The Petitioner had challenged that termination by filing a complaint under the MRTU & PULP Act, 1971 before the Labour Court. The Labour Court directed reinstatement of the Petitioner with full back wages and continuity of service. After his reinstatement on 1 January 1994 in pursuance of that order, the Petitioner had hardly worked for 45 days, during which period all the back wages were paid to him by the Respondent. Between 19 February 1994 and 6 April 1994, the Petitioner went on leave for 47 days on personal grounds. He, thereafter, applied for extension of leave from 7 April 1994 to 30 May 1994 for 54 days purportedly on medical ground. That leave was not granted by the Respondent. In the meantime, the Petitioner made an application for a service certificate and such certificate was issued to him on 2 April 1994. Thereafter, on 9 June 1994, the Petitioner sent a fax stating that he was bed ridden and disabled from coming to work for 15 days.

6 These facts have not been contested by the Petitioner. The Petitioner's case is that he had reported on duty on 1 July 1994 (apparently first time on 1 June 1994) but was not allowed to join duty on that day. There is some controversy as to whether the evidence produced by the Petitioner in the form of a chit addressed to the Time Keeper of the Respondent by Senior Manager of the Respondent, not to allow the Petitioner to go on duty and instead asking him to contact Senior Personnel Manager of the Respondent, ought or ought not to have been admitted. In the impugned order, the Labour Court has held this document as not proved. Leaving aside this controversy and even accepting the document

as proved, does not take the Petitioner's case any further. The document merely shows that on 1 July 1994, the Petitioner was not allowed to go on duty and instead asked to see the Senior Personnel Manager of the Respondent. It does not, however, explain why the Petitioner has not ever reported on duty after 1 July 1994. Be that as it may, the record of the case does establish that at least as of 8 November 1994, through the reply given to the Petitioner's Advocate, the Respondent had called upon the Petitioner to join duty. In spite of the admitted receipt of this letter, there is a further admission on the part of the Petitioner that he did not take any steps in compliance with this offer. Even as late as at the hearing before the Labour Court, in its written statement, the Respondent once again offered to allow the Petitioner to join duty. Even this offer was admittedly not acted upon by the Petitioner.

7 On the basis of these facts, which are not in serious dispute, it cannot be said that services of the Petitioner were illegally terminated by the Respondent with effect from 1 July 1994 or by a formal communication dated 30 August 1995. What emerges from the record lends far greater support to the Respondent's case that the Petitioner in fact abandoned duty and did not report on work after 1 July 1994 and had no intention to do so at any time thereafter.

8 The conclusion drawn by the Labour Court that this is rather a case of abandonment of the work by the workman himself than an illegal termination by the employer, is based on evidence and can be termed as a fair and proper conclusion, and which cannot be described either as perverse or improper.

9 In the premises, there is no merit in the Petition. **Rule** is discharged and Petition dismissed. There shall be no order as to costs.

(S.C.GUPTE, J.)