

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.3137 2014

The Mumbai Diamond Merchants Association

Through its Honorary Secretary ... Petitioner

Versus

Vijay Devshankar Dave ... Respondent

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Mr. V.P. Vaidya i/b Mr.M.M. Agavekar for the Petitioner.

Mr. Vijay Devshankar Dave, Respondent in-person.

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CORAM : S.C.GUPTE, J.

DATE : 1 AUGUST 2016.

P.C. :

Rule. Taken up for hearing forthwith with consent of parties.

2 Heard learned Counsel for the Petitioner and also the Respondent,
who appears in person.

3 This Petition concerns an order passed by the Industrial Court at Mumbai, allowing the Respondent's complaint of an unfair labour practice under Item 9 of Schedule IV of M.R.T.U. & P.U.L.P. Act, 1971. By the impugned order, the Petitioner-Association has been directed by the Industrial Court to comply with its statement made before the Supreme Court in SLP (Civil) No.9895 of 2009 decided on 11 December 2009. The Supreme Court, in this order of 11 December 2009, has recorded a statement made on part of the Petitioners that they were prepared to

reinstate the Respondent with all consequential benefits, if he was agreeable to accept 50% of back wages. The suggestion was accepted by the Respondent's counsel in the presence of the Respondent. The SLP was, accordingly, disposed of by the Supreme court. The Petitioner, thereafter, paid a sum of Rs.2,84,707/- to the Respondent in compliance with the statement made before the Supreme Court. It is grievance of the Respondent in the present complaint of unfair labour practices that the Petitioner has not paid him the agreed amounts in full and that there was a short payment.

4 The Industrial Court, instead of going into the question, as to what is the exact quantum of 50% back wages payable to the Respondent, appears to have simply passed an order directing the Petitioners to comply with their own statement made before the Supreme Court on 11 December 2009. The parties have presented before me, at the hearing of the Petition, their respective statements. There is a clear diversion in (i) the summary statement prepared by the Petitioner showing the exact quantum of 50% of back wages and consequential benefits and (ii) the statement prepared by the Respondent. It is not possible for this Court to determine the quantum in a contested matter for the first time. It was really incumbent on the Industrial Court to go into the respective claims of the parties in this behalf and work out the exact short payment.

5 In the premises, Rule is made absolute and the impugned order of the Industrial Court dated 20 August 2013 is quashed and set aside. The Complaint is remanded back to the Industrial Court for determination of the exact amount of short payment, if any, having regard to the statement

made before the Supreme Court and the applicable wages. The parties are permitted to bring such material before the Court as they may choose. The Industrial Court shall dispose of the complaint as expeditiously as possible, and in any event, within a period of eight weeks from today.

6 The Respondent is at liberty to seek such remedy as may be permissible to him in respect of individual components forming part of his claim.

7 In view of the order passed today, the proceedings before the Industrial Court, under Section 50 of M.R.T.U. & P.U.L.P. Act, 1971, shall not survive. The determination of the quantum of 50% wages must be made in the pending complaint itself.

8 The Petition is disposed of accordingly.

(S.C.GUPTE, J.)