

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

WRIT PETITION NO. 3136 OF 2015

Kansai Nerolac Paints Ltd.
(formerly known as Goodlass Nerolac
Paints Ltd.), Office at Nerolac House,
Ganpatrao Kadam marg, Mumbai – 400 013. ... Petitioner

v/s

- 1 Paints Employees Union
C/o.T.K. Walawalkar, having office
at B-2/9, Jeevan Nagar, Mithagar Rd.,
Mulund (E), Mumbai – 400 081.
- 2 Mrs.Hemlata Vijaykumar Kini,
Sagar Darshan, Wing D/202,
Mahim Causeway Machimar, Housing Ltd.,
Behind Swami Vivekanand Garden,
Mahim (West), Mumbai – 400 016. ... Respondents

Mr.R.N. Shah along with Ms.Radha Ved i/by M/s.Sanjay Udeshi &
Co. for the petitioner.

Ms.Meena H. Doshi for the respondents.

CORAM: N.M. JAMDAR, J.

DATED : 16 FEBRUARY 2016

ORAL ORDER:

Rule. Rule made returnable forthwith. Respondents waive
service.

2 The Petitioner challenges the order passed by the Industrial Court, Mumbai, in Revision Application No.80 of 2012 dated 24 September 2015.

3 There have been various proceedings between the parties essentially originating from action of the Petitioner transferring the Respondent No.2 to Bhiwandi. The order of transfer was passed on 5 September 2003. Complaint (ULP) No.673 of 2003 was filed by the Respondents challenging the order of transfer of Respondent No.2. The interim relief was initially granted till the notice. Thereafter, on 7 May 2004, the Industrial Court directed the Respondent No.2 to join the duties at Bhiwandi. Thereafter on 17 May 2004, the services of the Respondent No.2 were terminated. The Respondents challenged the action of dismissal by filing another Complaint (ULP) No.222 of 2004 in the Labour Court. This Complaint was dismissed by the Labour Court by an order dated 10 May 2012. Thereafter the Respondents filed Revision Application No.80 of 2012 wherein the Industrial Court set aside the order dated 10 May 2012 and directed the Petitioner to pay full back wages to the Respondent No.2 from the date of termination till her superannuation.

4 The Labour Court, while dismissing the Complaint, came to the conclusion that there was no victimization and there was no interim relief in the Complaint filed by the Respondents when services of Respondent No.2 came to be terminated. The Labour

Court held that the action of the Petitioner in terminating the services of the Respondent No.2 by an order dated 17 May 2004 was justified as remaining absent without leave was an unauthorized absence. The Industrial Court, in the impugned order held that the Petitioner has not held an enquiry before terminating the services of Respondent No.2, and secondly the Petitioner could not have terminated the services of Respondent No.2 pending the Complaint filed by the Respondents challenging transfer of Respondent No.2. This order is under challenge.

5 I have heard learned counsel for the parties.

6 As far as the first foundation of the impugned order that the Petitioner ought to have held an enquiry, it is settled law that, in such contingency the employer can justify the action by leading evidence in the Court. In the impugned order passed by the Industrial Court, there is no assessment of evidence. The Industrial Court has also not remanded the proceedings to the Labour Court. It is also pointed out by the learned counsel for the Petitioner that, in fact, it was one of the prayers of the Respondents themselves in the Revision to remand the matter to the Labour Court for fresh hearing.

7 As regard the second ground that the action of the Petitioner of terminating the services of Respondent No.1 pending his complaint challenging his transfer in which there was no interim

relief is *per se* illegal, nothing is shown by the learned counsel for the Respondents to support this proposition. The reference made by the Industrial Court to the decision of ***Novartis India Ltd. v/s State of West Bengal & ors.***¹ does not lay down such proposition.

8 In the circumstances, the appropriate course of action would be to remand the proceedings to the Labour Court to consider the illegality and propriety of the order of termination dated 17 May 2004. For this purpose, the Labour Court will frame a specific issue as regard the termination dated 17 May 2004. The Labour Court will also frame a issue as to whether the misconduct leading to the order of termination dated 17 May 2004 is proved or otherwise and an issue regarding the proportionality of the punishment. It is the contention of the counsel for the Respondents that, without there being any charge-sheet the employer cannot be permitted to justify the misconduct. The Labour Court will, no doubt, follow the settled position of law while deciding the issues. All contentions are kept open.

9 In view of the above mentioned position, the writ petition is disposed of by quashing and setting aside the order passed by the Industrial Court dated 24 September 2015 and the order passed by the Labour Court dated 10 May 2012 dismissing Complaint (ULP) No.222 of 2004. Complaint (ULP) No.222 of 2004 is restored to the file. The Labour Court will dispose of Complaint (ULP) No.222

1 2009 I C.L.R. 75.

of 2004 in the light of what is stated above. The Labour Court will take up the Complaint for disposal keeping in mind that the Complaint is of the year 2004 and give the priority it deserves. It is open to the Labour Court to consider whether both the parties be given opportunity to lead further evidence.

(N. M. JAMDAR, J.)