

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2358 OF 2015

Manager, Pride Hotel, Nagpur

-vs-

(1) Presiding Officer, First Labour Court, Nagpur

(2) Rajesh s/o Babulal Gedam

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri J. L. Bhoot, Advocate for petitioner.
None for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : AUGUST 01, 2016

None appeared for the respondents on 11/07/2016 and hence the writ petition was adjourned to 25/07/2016. None appeared for the respondent No.2 even on the said date. Today also there is no appearance on behalf of the respondent No.2 though the matter has been called out twice.

As notice for final disposal has been duly served on the respondents, the writ petition is heard finally.

The petitioner is aggrieved by the award dated 15/09/2014 passed by the learned Presiding Officer of the Labour Court, Nagpur whereby it has been held that the services of the respondent No.2 had been illegally terminated

on 15/05/2013. Accordingly an order of reinstatement with continuity in service and full back-wages came to be passed.

Shri J. L. Bhoot, the learned counsel for the petitioner submitted that all along it was the case of the petitioner that the services of the respondent No.2 were never terminated. According to him it was a case of unauthorised absence on the part of the respondent No.2. He referred to the show cause notice dated 20/05/2013 and reply thereto dated 30/05/2013 given by the respondent No.2. According to him the petitioner could not contest the proceedings before the Labour Court as the person authorised to represent the petitioner had resigned from service due to which the matter could not be attended before the Labour Court. He then referred to the order dated 26/10/2015 passed by this Court and submitted that despite the said order, the respondent No.2 was not interested in joining his duties. He also referred to the additional affidavit dated 25/07/2016 and submitted that the respondent No.2 did not approach the petitioner with a written application to join duties. He therefore submitted that the petitioner deserves to be granted an opportunity to contest the proceedings before the Labour Court.

Reply has been filed on behalf of the respondent No.2 dated 20/06/2016 in which it has been stated that after

the award in question was passed, the respondent No.2 has filed a fresh complaint seeking implementation of the said award. Reference is also made to a legal notice dated 22/04/2016 issued on behalf of the respondent No.2.

Having perused the documents placed on record, it can be seen that initially on 20/05/2013, a show cause notice came to be issued to the petitioner seeking his explanation for unauthorised absence. In the reply it has been stated that the respondent No.2 was informed on 15/05/2013 that his services were not required. Before the Labour Court, the respondent No.2 was not cross-examined nor any evidence was led by the petitioner. The reason for failure to prosecute the proceedings has been mentioned in paragraph 8 of the writ petition. Considering the aforesaid facts coupled with the stand of the petitioner that the services of respondent No.2 were never terminated, an opportunity to contest the proceedings on merits deserves to be granted. The same would however be subject to the petitioner depositing in the Labour Court 50% of the back-wages as adjudicated in the award dated 15/09/2014 and paying costs of Rs.10,000/- only to the respondent No.2. In view of aforesaid, the following order is passed :

- (i) Subject to the petitioner depositing before the

Labour Court 50% of the amount of back-wages in terms of award dated 15/09/2014 and also paying costs of Rs.10,000/- to the respondent No.2 within a period of four weeks from today, the proceedings in Ref. IDA Case No.77/2013 shall be restored for being decided afresh in accordance with law.

(ii) If the back-wages are so deposited and the costs are paid, the reference proceedings shall be decided in accordance with law without being influenced by the interim arrangement as directed. The respective contentions of the parties on merits are kept open. The amount of back-wages shall be invested in fixed deposit and the same would be subject to the final out-come of the complaint.

(iii) Shri J. L. Bhoot, the learned counsel for the petitioner, on instructions, submits that even if the respondent No.2 now approaches the petitioner for joining his duties, he shall be permitted to join the same. Statement accepted. This arrangement would be without prejudice of the rights of the parties.

Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

-: C E R T I F I C A T E :-

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