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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.484 OF 2012

Kinetic Engineering Ltd.,
Nagar Daund Road, Ahmednagar. ..PETITIONER

VERSUS

Mukund s/o Nivruti Bodhe,
Age: 62 years, Occ: Nil,
R/o. At General Arun Vaidya
Colony, Old, V.R.D.E. Road,
M.H. Road, Bhingar (Camp)
Tq. & Dist. Ahmednagar. ..RESPONDENT

**WITH
WRIT PETITION NO.1492 OF 2012
WITH
CIVIL APPLICATION NO.12252 OF 2017
IN
WRIT PETITION NO. 1492 OF 2012**

Mukund Nivruti Bodhe,
Age: 64 years, Occ: Retired,
R/o. Gen. Arun Vaidya
Colony, Old VRD Road,
M.H. Road, Bhingar (Camp)
Ahmednagar. ..PETITIONER

VERSUS

Kinetic Engineering Ltd.,
Nagar Daund Road, Ahmednagar
District Ahmednagar
through its Manager. ..RESPONDENT

Mr V.S. Bedre, Advocate for petitioner in W.P.
No.484/2012 and for respondent in W.P.
No.1492/2012;
Mr P.V. Barde, Advocate for petitioner in W.P.
No.1492/2012 and for respondent in W.P. No.484/2012

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CORAM : NITIN W. SAMBRE, J.**DATE : 10th OCTOBER, 2017****ORAL ORDER :**

Heard respective Counsel.

2. The order impugned is passed by 2nd Labour Court, Ahmednagar answering the Reference placed before it by learned Deputy Labour Commissioner, Nashik in favour of employee thereby observing that the services of the employee were illegally terminated and was held to be entitled for lump sum compensation of Rs.3,00,000/-.

3. Writ Petition No.484 of 2012 is filed by employer alleging that the employee is not workman within meaning of Industrial Disputes Act as he was performing the job of supervisor. According to the petitioner, the nature of job as is performed by the employee is of supervisor capacity. According to learned Counsel for the petitioner, employee was superannuated at the age of 55 years and as such,

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Reference should have been rejected by the 2nd Labour Court.

4. Mr. Bedre, learned Counsel for the petitioner-employer would urge that the amount of lump sum compensation is required to be reduced to Rs.2,00,000/-, in case this Court is inclined to hold that the services of the employee are illegally terminated.

5. Per contra, Mr. Barde, learned Counsel for the respondent-employee in his petition is seeking enhanced compensation. According to him, the fact remains that the service conditions of the present employee are changed without any notice of change, as age of retirement is reduced from 60 years to 55 years. According to him, no supervisor duty was entrusted to the employee, as such, his Reference was very much maintainable. He would urge that the compensation awarded be increased.

6. Considered rival submissions. In support

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of respective claims before Labour Court, the parties have completed their pleadings following issues were framed at Exhibit-28.

ISSUES

1-A. Whether the party no.2 is 'Workman' within the meaning of Sec.2(s) of Industrial Disputes Act?. If no.

1-B. Whether this Court has jurisdiction to try and decide present reference?

2. Does the party no.1 proves that the Party no.1 has been retired from service vide letter dated 27.7.2003?

3. Does the Party no.2 proves that the Party No.1 has terminated his services illegally without adopting due process of law w.e.f. 16.8.2003?

4. If yes, does he further proves that, he is entitled for the relief of reinstatement with continuity of service and back wages from the date of impugned termination?

FINDINGS

1-A. Yes.

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1-B. Not survive.

2. No.

3. Yes.

4. Party no.2 is entitled for lump sum compensation to the tune of Rs.3,00,000/-.

5. As per final order.

7. In support of the claim, both the parties have led their oral evidence, in addition to documentary evidence, which prompted Labour Court to award lump sum compensation of Rs.3,00,000/- to the employee.

8. While doing so, Labour Court considered the conduct of both the parties, nature of duties performed by the employee, admitted fact of employer-employee relationship and proceeded to pass award, which is under challenge.

9. Admittedly, employer has not brought on

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record the nature of duties which were assigned to the employee, particularly whether such duties were supervisory or not. Though stray admissions are relied upon by Mr. Barde, learned Counsel for the employee so as to infer that the employee was entrusted with the job of supervisory work, however, I hardly see any material brought on record by employer so as to demonstrate that the nature of work carried out by employer was of supervisor in nature.

10. Learned Court below then proceeded to answer the issue as regards award of lump sum compensation of Rs.3,00,000/- considering last drawn salary by the employee, which is Rs.7910/- per month.

11. The fact as regards change of service conditions of employee and non-residence of employer to the notice of change has prompted the Court below to form an opinion that the services of the employee are terminated without following due

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process of law and change carried out, if any, is without notice.

12. The Court below considered the last drawn salary and assessed lump sum compensation Rs.3,00,000/-.

13. In my opinion, the award of compensation as ordered appears to be just and proper based on last drawn salary and the fact that services of the employee were terminated before five years from the date of superannuation, that too, without following any legal procedure.

14. In the wake of above, both the writ petitions, in my opinion, do not warrant any interference in extraordinary writ jurisdiction. As such, both the writ petitions fails and stand dismissed.

15. The employee is entitled to withdraw the amount deposited by the employer before the Labour Court.

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16. Pending civil application stands disposed
of.

(NITIN W. SAMBRE, J.)

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