

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2003 OF 2015

M/s Bishan Dyeing, Printing and Weaving Mills ... Petitioner
Versus
Chandrakant R. Patil ... Respondent

Mr. Meelan Topkar for the Petitioner.
Mr. Balasaheb R. Deshmukh for the Respondent.

CORAM : PRASANNA B. VARALE, J.

DATE : 26 SEPTEMBER 2017

P.C. :

. Heard learned Counsel appearing for the Petitioner and the learned Counsel appearing for the Respondent. The contentions raised by the petitioner are referred to in the order of this Court dated 14 December 2015.

2 The facts in brief giving rise to the present petition can be summarised as follows :-

The Respondent submitted his statement of claim. The sum and substance is that the Respondent was working with the Petitioner as a

Wireman for considerable length of period i.e. 13 long years. On two casual absences, Respondent failed to report his duty. When the Respondent made an attempt to report his superior, he was not allowed. On 15 November 2007, the employer told Respondent that he has been terminated and his services are no more require. Respondent raised the industrial dispute and approached Conciliation Officer for reinstatement. It is the submission of the Respondent that the termination is un-sustainable, unjust, arbitrary and illegal. Opposing the statement of claim, the Petitioner filed the written statement. The ground raised was that there is no existence of employer and employee relationship between the parties. It was submitted in the written statement that the first party i.e. the Petitioner is governed under the provisions Bombay Industrial Relations Act, 1946 as such dispute raised under the Industrial Disputes Act, 1947, is not maintainable and reference is liable to be rejected on these counts. It was then submitted that the Respondent never worked with the Petitioner for 240 days in a calendar year and it was false claim of Respondent that he worked with the Petitioner for 13 years.

3 The learned Presiding Officer of IV Labour Court, Thane framed issues for consideration, namely :-

1. Whether the Second Party is proved that he has been illegally terminated by First Party ?
2. Whether the reference is tenable before this Court ?
3. Whether the Second Party has proved his entitlement to reinstatement with continuity of service and back wages ?
4. What order ?

4 On all these issues, the Labour Court duly recorded positive findings. In so far as Issue No.2 is concerned, the Labour Court observed that though it is contended that since the provisions of Bombay Relations Act, 1946 apply to the First Party, this Court has no jurisdiction to entertain the dispute, but no oral or documentary evidence is produced by the First Party to show how and why this Court cannot try the dispute. It was further observed that the First Party has not discharged its obligation to prove that the Court has no jurisdiction to entertain the dispute. Whilst, assigning the reason, the Court further observed that the First Party has also not produced any Certification of Registration under the provisions of Bombay Industrial Relations Act. As such the Labour Court arrived at the conclusion that the reference can be heard by the Court.

5 Learned Counsel appearing for the Petitioner submitted that it was a specific stand taken by the Petitioner in the written statement about the

maintainability of the reference. Learned Counsel for the Petitioner then submitted that the Petitioner possessing the Certificate issued by the State of Maharashtra dated 27 January 1984, showing that the Petitioner is indulged in manufacturing/processing activity of cotton cloth i.e. bleaching, dyeing and printing, the registration certificate could not be placed before the Court below due to communication gap between the petitioner and Counsel representing the petitioner. Learned Counsel then submitted that there is also a copy of Notification available with the Petitioner and the same is placed on record along with the petition at Exhibit 'B', supporting the statement of the petitioner and the same was referred to in the written statement. This document also could not be placed on record. The document, namely, notification which is placed on record along with the petition also supports the contention of the Petitioner. Learned Counsel for the Petitioner submitted that merely because there was an inadvertence or some human error, the Petitioner could not have subjected to positive finding on an issue which is going to the root of the matter. Learned Counsel, thus, pray for quashing and setting aside the order passed by the learned Presiding Officer of IV Labour Court, Thane and in the alternate, Counsel submits that the matter be remitted back to the learned Presiding Officer for deciding issue which was

framed by the Court below, specifically, Issue No.2 afresh on the backdrop of the material presented before this Court in the form of registration certificate issued by the State of Maharashtra.

6 Learned Counsel appearing for the Respondent vehemently opposes the submissions. Learned Counsel submitted that though the ground was raised in the written statement, the Petitioner failed to place on record any material supporting the ground raised by it. For its own failure, the Petitioner cannot through blame on the Court below. Learned Counsel for the Respondent then submitted that the Petitioner had an opportunity while leading its evidence, even at that stage, the Petitioner failed to state anything in respect of the certificate of registration. Learned Counsel then submitted that the Respondent was successful before the Court below and as per the Award of the learned Presiding Officer, Respondent is entitled for reinstatement on his original position with continuity of service and full back wages with effect from 15 November 2007. Learned Counsel for the Respondent submitted that the Respondent would be entitled for an amount of Rs.7,00,000/- approximately in respect of his full back wages.

7 Considering the rival contentions of learned Counsel appearing for

the parties, in my opinion, an issue about maintainability was specifically raised by the Petitioner in the written statement. The Petitioner who was represented through Counsel and thus was in belief that Counsel may accordingly ask it for presentation of the required documents. There is considerable merit in the submission of learned Counsel for the Petitioner that for some communication gap and for some human error, the Petitioner could not have deprived of a decision on an issue maintainability, as the Petitioner was possessing the required registration certificate to support its submission. It is also not in dispute that on other issues, Ld. Labour Court recorded positive findings on appreciation of the material and the Petitioner was directed to pay full back wages to Respondent with effect from 15 November 2007. Considering these aspects of the matter, I am of the opinion that the interest of justice can be served by remitting the matter back to Ld. Labour Court for its decision afresh on Issue No.2. In view of the observation of this Court on the aspect of certificate of registration issued by the State of Maharashtra and placed on record, at the same time, this Court is of the opinion that the interest of the Respondent is also to be taken care of, the Petitioner is directed to deposit an amount of Rs.3,50,000/- in the VI Labour Court, Thane, within four weeks from today. Ld. Labour Court, Thane to decide Issue No.2 i.e. tenability of the reference

as expeditiously as possible and not later than 31 December 2017. Needless to state that by giving an equal opportunity of hearing to the parties. The Petitioner is directed to pay the costs of Rs.20,000/- to the Respondent within two weeks from today. The costs can be paid to Respondent or be deposited with learned Counsel representing the Respondent and the receipt thereof be placed on record.

8 The petition is disposed of accordingly.

(PRASANNA B. VARALE, J.)