IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8252 OF 2014

M/s. Pratap Enterprises … Petitioner
Vs.
Arun Baburao Suryawanshi … Respondent

WITH
WRIT PETITION NO.8253 OF 2014

M/s. Pratap Enterprises … Petitioner
Vs.
Milind Manohar Pawar … Respondent

WITH
WRIT PETITION NO.8254 OF 2014

M/s. Pratap Enterprises … Petitioner
Vs.
Vishnu Rangraj Sutar … Respondent

WITH
WRIT PETITION NO.8255 OF 2014

M/s. Pratap Enterprises … Petitioner
Vs.
Subhash Bhimrao Bhosale … Respondent

WITH
WRIT PETITION NO.3095 OF 2016

M/s. Pratap Enterprises … Petitioner
Vs.
Suman Madhukar Jadhav … Respondent

Ms Meelan Topkar for Petitioner in all the Petitions.
Mr. Dilip Shinde for Respondent in all the Petitions.

CORAM : R. G. KETKAR, J.
DATE : JULY 27, 2017

P.C. :

Heard Mr. Topkar, learned Counsel for petitioner and Mr. Shinde, learned Counsel for respondent in all the Petitions at length.

2. Writ Petitions No.8252 of 2014 to 8255 of 2014 are instituted under Articles 226 and 227 of the Constitution of India challenging the judgment and award dated 13.12.2013 passed by the learned Presiding Officer, Second Labour Court, Kolhapur (for short 'Labour Court') in Reference (IDA) No.145 of 2008 (Writ Petition No.8252 of 2014), Reference (IDA) No.131 of 2008 (Writ Petition No.8253 of 2014), Reference (IDA) No.172 of 2008 (Writ Petition No.8254 of 2014) and Reference (IDA) No.29 of 2009 (Writ Petition No.8255 of 2014). By these awards, the Labour Court has partly answered the references in the affirmative and directed the petitioner, hereinafter referred to as 'first party employer' to reinstate the respondent 'second party workman' in his original post with continuity of service and 50% back wages for intervening period.

3. Writ Petition No.3095 of 2016 filed under Articles 226 and 227 of the Constitution of India challenges the judgment and award dated 14.03.2014 passed by the Labour Court in Reference (IDA) No.34 of 2008. By that order, the Labour Court partly answered the reference in the affirmative and directed the first party employer to reinstate the second party workman with continuity of service and 50% back-wages.

4. In support of these Petitions, Mr. Topkar invited my attention to the averments made in paragraph 11 of the Petitions. He submitted that the Advocate appearing on behalf of the first party employer had made a complaint to the learned President, Industrial Court, Maharashtra, Mumbai making serious allegations of despotism and vindictance against him exercised by the learned Presiding Officer of the Labour Court, who passed the impugned order. There was investigation into the complaint against the learned Presiding Officer and ultimately vide order dated 05.04.2014, the learned President transferred about 30

matters in which petitioner's Advocate was appearing for either party, to another Labour Court, Kolhapur. He submitted that during the course of hearing before the learned Presiding Officer of the Labour Court, he was apprised about the pendency of the complaint by placing a copy of the complaint on record and requested to abstain from hearing the matters. The learned Presiding Officer however proceeded to decide the complaints on the ground that the learned President has not passed any order on the complaint made by the Advocate appearing on behalf of the petitioner. The learned Judge refused to stay the proceedings and proceeded to decide the complaint ex-parte i.e. in the absence of petitioner's Advocate. He, therefore, submitted that on this short count alone, the impugned orders are required to be set aside.

5. On the other hand, Mr. Shinde submitted that the recording of evidence was over and at the stage of arguments, the Advocate appearing on behalf of the first party prayed for staying the proceedings on the ground that complaint was made before the learned President, Industrial Court, Maharashtra, Mumbai. He submitted that the identical references pending before the other Labour Court were decided in favour of the workmen. In other words, he submitted that only because of the complaint made by the first party employer for transferring the references to other Court, it cannot be said that the learned Judge did not decide the references on merits. He submitted that the respondent workmen are similarly situated with the workmen in other references, which are decided in their favour. He, therefore, submitted that no case is made out for interfering with the impugned orders.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 11 of the Petitions, first party employer has

specifically averred about making complaint against the learned Presiding Officer, who passed the impugned orders before the learned President, Industrial Court, Mumbai, Maharashtra. Even in the impugned order, the learned Judge has referred to this aspect in paragraphs 9 and 10. Though the learned Judge has referred to the complaints made against him, he proceeded to decide the References. The learned Judge also noted that the Advocate for the petitioner did not appear before the Court and advanced the arguments.

7. In my opinion, once the complaint was made against the Presiding Officer and the learned Presiding Officer was apprised about the said fact, he should not have proceeded with the matter on the ground that no stay was granted by the learned President. At least in the present case, it has come on record that in about 30 matters where Petitioner's Advocate was appearing before the learned Judge, were transferred on 05.04.2014. In my opinion, the learned Judge should have waited till order was passed by the learned Presiding Officer on the complaint made by the petitioners. That apart, the impugned orders are ex-parte i.e. without hearing Advocate of the first party employer. One of the facets of the principles of natural justice is that justice should not only be done but it must seem to have been done. In the light of the discussion, impugned orders passed in all the Petitions deserve to be set aside and are accordingly set aside.

8. Learned Counsel for the parties assure that they will appear before the Labour Court on 14.08.2017 and for that purpose, no fresh notice be issued to them. The Labour Court is requested to decide the references as early as possible and in any event, within three months from the receipt of the authenticated copy of this order as also R & P of the cases. Office is directed to forthwith transmit the record and

proceedings to the Second Labour Court, Kolhapur. References shall be decided on the basis of evidence already on record. All contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

9. All the parties, including the Labour Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab