

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

**APPEAL NO. 329 OF 2006
IN
WRIT PETITION NO. 2160 OF 2005**

M/s. Forbes Gokak Ltd.
Forbes Building,
Charanjit Rai Marg
Fort, Mumbai – 400 001

.... Appellant

Vs.

1. Mrs. Nafisa G. Sheikh
3/3, Walkeshwar Flat, Walkeshwar,
Mumbai – 400 006. Now residing
at 43, Rest Camp Road, Deolali
Camp Road, District Nashik,
Maharashtra – 422 401

.... Respondents

2. Shri. M. M. Sayyed
Presiding Officer 10th Labour
Court, Mumbai

Lancy D'Souza a/w Ms. Deepika Agarwal a/w Mr. V. M. Parkar for the
appellant
Mr. Shrey Fatterpekar i/b Law Square for the respondent no. 1

**CORAM : SMT. VASANTI A. NAIK,
SARANG V. KOTWAL, JJ.**

DATE : DECEMBER 21, 2017.

JUDGMENT: (PER: SMT. VASANTI A. NAIK, J.)

By this appeal, the appellant has appealed against the order of the learned Single Judge, dated 17/04/2006 dismissing the writ petition filed by the appellant and upholding the order of the Labour Court directing the appellant to reinstate the respondent in service with 50% back wages.

It is not in dispute that in terms of the order of the Labour Court, the respondent is reinstated in service and in view of the interim order passed in this appeal, 50% of the back wages were deposited by the appellant in this Court and the said amount is withdrawn by the respondent after furnishing security.

The respondent was employed with the appellant when her services were terminated on 23/07/1990. A reference in respect of the order of termination was made before the Labour Court and the 10th Labour Court, Mumbai had answered the reference in favour of the respondent after holding that the services of the respondent could not have been terminated. It was the case of the appellant that in December 1988, the respondent had availed the maternity leave that was granted to her till March 1989. The respondent had sought for the extension of the maternity leave for 51 days but the said extension was not granted. When the respondent was asked to present herself before the medical board-doctors of the appellant company, it is the case of the appellant that the doctors had opined that she could resume her duties. It is stated that the respondent however, produced the medical certificate showing that she required rest till her recovery. Certain communications were exchanged between the appellant and the respondent and by the order dated 23/07/1990, the services of the respondent were terminated without serving the charge-sheet on her and without conducting any departmental enquiry. On an appreciation of the material on record, the Labour Court held that the appellant was not justified in terminating the services of the respondent without holding an enquiry. Considering the circumstances of the case, the Labour Court directed the appellant to pay 50% back wages to the respondent. The order of the Labour Court was challenged by the appellant in the writ petition before the learned Single Judge. The learned Single Judge had dismissed the writ petition by the order dated 17/04/2006.

It is stated on behalf of the appellant that the Labour Court and the learned Single Judge had committed an error in holding that the services of the respondent could not have been terminated without holding an enquiry. It is submitted that the services of the respondent were not terminated in view of 'mis-conduct' but they were terminated in view of continued illness. It is submitted that when the services of an employee are terminated on the ground of ill health, it would not be necessary to conduct a full fledged enquiry before terminating the services. It is submitted that the private doctor of the respondent was not able to satisfy as to when the respondent would recover from illness and would resume the duties and in that background, considering the medical record of the respondent, her services were terminated without conducting an enquiry.

On hearing the learned counsel for the parties, we find that the Labour Court and the learned Single Judge were justified in holding that the services of the respondent could not have been dispensed with without holding an enquiry against her. We find on hearing the learned counsel for the appellant that the appellant is blowing hot and cold. It appears from the communications exchanged between the appellant and the respondent that the appellant desired that the respondent should resume the duty as according to the appellant and its doctors, the respondent was fit for duty and ought to have resumed her duties. Since an enquiry was not conducted against the respondent, the appellant tried to make out a case that it was not necessary to conduct an enquiry against the respondent before terminating her services as her services were terminated on account of her ill health. The learned Single Judge has rightly held after referring to the provisions of section 2 (oo) and section 25 (F) of the Industrial Disputes Act that the termination of the services of the respondent, in the circumstances of the case, was illegal as her services were terminated without conducting an enquiry against her. The learned Single Judge held that the

provisions of section 2 (oo) of the Industrial Disputes Act could not have been relied upon by the appellant to support its inaction to conduct an enquiry against the respondent. We find that the orders of the Labour Court and the learned Single Judge are just and proper and are in consonance with the provisions of the Act and the well settled position of law. In the circumstances of the case, the Labour Court and the learned Single Judge were justified in holding that the respondent would be entitled to 50% of the back wages. It appears that the respondent is reinstated in service and the back wages are also received by her as that were deposited by the appellant in this Court and were withdrawn by the respondent.

In the result, we dismiss the appeal with no order as to costs. The office to return the documents pertaining to the security furnished by the respondent to her, at the earliest.

[SARANG V. KOTWAL, J.]

[SMT. VASANTI A. NAIK, J.]