

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2323 OF 2016

Khwaja Hussain Shaikh

.. Petitioner

vs.

M/s.Topaz Bar & Restaurant and Anr.

.. Respondents

Mr.R.D. Bhat for the petitioner

CORAM : K. K. TATED, J.
DATE : JANUARY 12, 2017

PC.:

1 Heard the learned counsel for the petitioner.

2 As per earlier order dated 1.12.2016, advocate for the petitioner placed on record photocopy of Exhibit-C-25 i.e. Nokarnama and Exhibit-C-26 Authority Letter.

3 By this petition, under Article 226 of the Constitution of India, petitioner original claimant challenges the judgment dated 28.3.2014 passed by Labour Court, Mumbai in Complaint (ULP) No.295 of 2004 dismissing the petitioner's complaint and also judgment dated 28.11.2015 passed by Industrial Court, Mumbai in Revision Application (ULP) No.51 of 2014 confirming the order of Labour Court.

4 In the present proceeding, it was the case of the petitioner that he was working with the respondent as Waiter since 1992. Respondent

terminated his service on 17.6.2004. Hence, petitioner filed complaint under item Nos.1 (a), (b), (f) and (g) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 directing respondent to allow the petitioner to continue his job w.e.f. 17.6.2004 on payment of regular wages.

5 In the said complaint, petitioner placed on record the original identity card issued by the respondent, uniform and another document in support of his defence showing that he was working with the respondent as a waiter.

6 On the other hand respondent also placed on record some documents and examined two witnesses in support of their case that they never appointed petitioner as waiter in their establishment. Considering the evidence on record particularly Exhibit-C-9 and C-10, Labour Court held that the petitioner failed to prove any case and dismissed the complaint.

7 Being aggrieved by the order passed by the Labour Court, petitioner preferred Revision Application under section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. That Revision Application was also dismissed by the Industrial Court. Hence, by this Writ Petition under Article 226 of the Constitution of India, petitioner is challenging the concurrent finding of fact recorded by both the courts below.

8 The learned counsel for the petitioner submits that both the courts below failed to consider the fact that the petitioner placed on record original identity card issued by the respondent establishment,

uniform and other documents. Apart from that, petitioner also examined his colleague working with the respondent as a Waiter. He submits that all these documents were not considered by both the courts below and dismissed his complaint.

9 The learned counsel for the petitioner submits that though the respondent in written statement specifically stated that there was no practice in their establishment to issue identity card to their employees, during the trial respondent through their witness placed on record photocopy of identity cards issued by the respondent being Exhibit-U-21/1. He further submits that though more than 12 persons were working with the respondent establishment they placed on record tax return challan and provident fund return dated 31.3.1997 and 1.4.1997 till 31.3.1998 in respect of some of the employees. He further submits that both the courts below mainly relied on the documentary evidence produced by the respondent i.e. muster roll and other documents for coming to the conclusion that petitioner failed to prove that he was working with the respondent establishment.

10 The learned counsel for the petitioner submits that both the courts below failed to rely on the photocopy of the documents produced by the respondent, which were not admissible in evidence. Hence, judgment passed by both the courts below are required to be set aside.

11 I have heard the learned counsel for the petitioner at length. It is to be noted that by this petition, under Article 226 of the Constitution of India, petitioner is challenging the concurrent finding of fact recorded by both the courts below. Therefore, the scope of interference

is very limited. Unless and until petitioner made out a case that both the courts below failed to consider the evidence on record then only court can interfere with the concurrent finding of facts recorded by courts below.

12 In the present proceeding, both the courts appreciate the evidence brought on record by the respondent by way of muster roll cum wage register, tax return challan, provident fund return and Nokarnama of petitioner showing that he was working with M/s.Pejas Restaurant & Bar during for the period 1.4.2003 to 31.3.2004 and not with respondent. Nokarnama Exhibit-C-25 shows that the same was issued in the name of petitioner with his photograph.

13 Considering these facts and the concurrent finding of fact recorded by both the courts below, I do not find any reason to entertain the present Writ Petition to interfere with the well reasoned order passed by both the courts below. Hence, Writ Petition stands rejected.

JUDGE