

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2257 OF 2016

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Mr. P.C. Pawaskar i/b Mr. Neel G. Helekar, for petitioner.
Mr. Ashok D. Shetty a/w Mr. S.P. Kamble, for respondent No.1.
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DATE : 19TH JUNE, 2017.

Heard Mr. Pawaskar, learned Counsel for the petitioner and Mr. Shetty, learned Counsel for respondent No.1 at length.

2. By this Petition under Article 226 of the Constitution of India, the petitioner has challenged the judgment and Award dated 27th January, 2015 passed by the learned Presiding Officer, 9th Labour Court, Mumbai in Reference (I.D.A) No. 201 of 2012. By that order, Labour Court partly answered Reference in the affirmative and held that respondent No.1, hereinafter referred to

as 'second party workman' has attained age of superannuation during pendency of the Reference, reinstatement is not practicable. However, second party shall be deemed to have been reinstated from the date of termination i.e from 3rd December, 2003 till the date of his superannuation. Petitioner hereinafter referred to as 'first party' was directed to make payment of Rs. 1,50,000/- as a lump sum compensation towards full and final settlement of all his dues, which would include in itself back wages and other claims except provident fund, if any.

3. Rule. Mr. Shetty waives service. Having regard to narrow controversy raised in this Petition as also at the request and by consent of both the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

4. In support of this Petition, Mr. Pawaskar raised various contentions. He submitted in the first place, first party is not an "Industry" within the meaning of Section 2 (j) of the Industrial Disputes Act, 1947 [for short 'Act']. He invited my attention to written submissions filed by the first party and in particular decision in the case of **M/S. Karwa Commercial Pvt. Ltd. Vs. Baburao K. Malgaokar in Writ Petition No. 1487 of 2005.**

He submitted that Labour Court has not even dealt with the judgment. He further submitted that there is delay on the part of the second party in moving the Authorities under the Act for referring dispute to the Labour Court. He submitted that the second party stopped reporting duty from 1st March, 2003 and the reference is made sometime in September, 2010 and, therefore, suffers from gross delay and laches.

5. Mr. Pawaskar has invited my attention to statement of claim submitted by the second party, written statement filed by the first party and the oral evidence adduced by the parties in support of his submission.

6. On the other hand, Mr. Shetty has also taken me through evidence of the parties and submitted that second party has already retired and question is only about payment of monetary benefits. After arguing the matter for sometime, Mr. Shetty consents for setting aside the impugned order and deciding the Reference afresh. He submits that second party may be permitted to lead additional evidence. Mr. Pawaskar opposes this submission.

7. Learned Counsel for the parties agree that they will appear before the 9th Labour Court, Mumbai on 17th July, 2017 and for that purpose, no fresh notice be issued to them. In view thereof, by consent of the parties, impugned order is set aside. Reference (I.D.A) No. 201 of 2012 is restored to file of 9th Labour Court, Mumbai. Parties agree that they will appear before the 9th Labour Court, Mumbai on 17th July, 2017 and for that purpose, no fresh notice be issued to them. Labour Court will consider whether to permit the parties to lead additional evidence. All contentions of the parties on merits are kept open. Accordingly, Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]