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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6951 OF 2017

Nandkumar R. Jadhav

... Petitioner

vs.

Eveready Industries India Ltd.

... Respondent

.....

Mr. Pradumna M. Mokashi for the Petitioner.

Mr. Jayesh Desai i/b. M/s. Desai and Desai Associates for Respondent no. 1.

.....

CORAM : A.K. MENON, J.

DATE : 22nd JANUARY, 2018

P. C.

1. By this Writ Petition the petitioner seeks to challenge an order dated 25th November, 2016 passed in application (Exh U-6) in a complaint filed under Section 33 C(2) of the Industrial Disputes Act, 1947 seeking recovery of sum of Rs.19,44,896/- being difference in salary and other benefits. The petitioner has admittedly retired on 1st April, 2014. His claim pertains to the period April, 2006 to March, 2014. The particulars of the claim are seen in an annexure to his application and it indicates a difference in salary, difference in Provident Fund Contribution, Leave Travel Allowance, privilege leave encashment and food subsidy. In addition it includes conveyance benefits in lieu of subsidy interest and a hospitalisation insurance claim.

2. Mr. Mokashi submitted that the impugned order of the Labour Court has rejected the application Exh-U-6 by observing that the petitioner had failed to establish relevancy of the documents since it pertains to the period 1982-2006. Furthermore, the impugned order records that the admitted position is that the factory where the petitioner was employed was closed by the respondent in the year 2007. The respondent contended that these records were not traceable upon closure of the plant and shifting.

3. On 20th December, 2017, the respondent has sought time to file an affidavit of the Company Secretary of the respondent on the aspect of the records stated to be in their possession. The affidavit in reply has since been filed by one Tehnaz Punwani in which it is stated that the petitioner was promoted to the post of Accounts Analyst w.e.f. 26th March, 1987 and he worked in the Mumbai Regional office from 2006-2014. The plant where he had been working earlier was closed w.e.f. 31st March, 2007 and there was no dispute regarding closure of the EMD plant at any time. Even at that time no dispute had been raised by the petitioner as evident from the records and as recorded in the impugned order

4. In the course of the hearing today, a question was put to Mr. Mokashi as to why no demand was made by the petitioner on account of non payment of the increment from 2006. Mr. Mokashi contended that no demand was made for fear of being transferred out of Mumbai. Mr. Mokashi further submitted that oral requests had been made repeatedly. The petitioner had, from time to time, requested the General Manager Sales (West) of the respondent company about his

increment and the petitioner had been assured of the needful being done, despite which he had not received yearly increments and other benefits. Mr. Mokashi relied upon the contention in paragraph 2 of the annexure to the application, and the statement that the petitioner had not made the claim before approaching the Labour Court because he apprehended that he would be transferred to some far away place as was allegedly done in the case of his ex-colleagues.

5. The record indicates that the petitioner retired on 1st April, 2014, but the claim was first made by him only on 20th February, 2015 i.e. after about 9 months from the date of retirement. The application also does not disclose any written demands made at the time of retirement or just after retirement. In the instant case he has waited for a period of 9 months before making his claim under various heads.

6. The impugned order is passed during the pendency of the main application. According to Mr. Mokashi's plea the relevancy of the document could not have been decided at this stage, since it caused great prejudice to the petitioner. In the circumstances he contended that impugned order be set aside. The affidavit in reply filed on behalf of the company in paragraph 6 states that pursuant to the petitioners request for production of documents (pertaining to the period 1982-2006 of the EMD plant) on 18th November, 2017 the Area Manager, Commercial and the Regional Manager, Commercial went to the Godown at Pune to search the documents at the EMD plant. Result of the search reveal that document were soiled and in a deteriorated condition and attempt was made to search the document but

the said document were not traceable as on 25th November, 2017. It appears that if the documents were available the respondent was not averse to producing them

7. In my view the petitioner not having asserted his claim from 2006, cannot take now advantage of his own wrong and contend that he was entitled to increment. It is not in dispute that as of 2006 the petitioner was appointed as Accounts Analyst. The question of producing documents pertaining to the year 1982-06 does not in my view appear to be crucial for the purpose of determining whether or not the petitioner is entitled to increment from the year 2006. The documents production of which is sought will only disclose nature of the petitioners duties for the period from 1982 onward till 2006 . This does not in any manner come in the way of claiming increments from 2006. In the circumstances it is always open to the petitioner to argue that an adverse inference may be drawn pertaining to that aspect of the matter. In the circumstances, I find no reason to interfere with the impugned order. Accordingly, I pass the following order :

- (a) Writ Petition is dismissed.
- (b) No order as to costs.
- (c) Needless to mention the main application u/s. 33C(2) will be decided on merits without being influenced by this Order.

(A.K. MENON, J.)