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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7606 OF 2016

M/s. Business Combine Ltd.

... Petitioner

vs.

Bajarangi Hiranman Pande

... Respondents

.....

Mr. Ravindra V. Paranjpe for the Petitioner.

Mr. Ram U. Singh for the Respondent.

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CORAM : A.K. MENON, J.

DATE : 24th APRIL, 2018

P. C.

1. Considering the narrow compass within which the present challenge lies this petition can be disposed of finally at the stage of admission. In the circumstances, I issue Rule. Rule made returnable forthwith. By consent of parties taken up for final hearing and disposal.

2. The petitioner seeks to challenge Part I of the Award dated 22nd February, 2016 passed by the 2nd Labour Court, Nashik in Reference (IDA) No. 8 of 2009. The respondent was employed with the petitioner as a Machine Chipper with effect from 22nd July, 1984. There were allegations of serious misconduct which resulted in charge sheet being issued alleging violation of standing order under clause 24 (a), (b), (k) and (l) and while the inquiry came to be held and the charge sheeted

workman was found guilty of misconduct, the management by order dated 30th September, 2001 the respondent services were terminated and a dismissal order came to be issued. The respondent sought adjudication of the dispute seeking reinstatement and continuity of services with effect from 30th September, 2001. The enquiry was found to be fair and proper. The petitioner company had apparently not produced inquiry document on record whereas the respondent workman had filed an affidavit by way of examination in chief pertaining to various issues arising for consideration. Documents were also produced on behalf of the workman. It was found that the inquiry conducted was fair and in accordance with rules of the natural justice.

3. In Part II of the award dated 29nd February 2016 it was held that misconduct was not proved and that the punishment was disproportionate. The impugned award records misconduct which had to be proved before the inquiry officer and there were no papers produced by the petitioner at the relevant time. It appears and as stated across the bar today that the papers were subsequently sought to be tendered along with written arguments. The reason for the belated attempt at producing the relevant records, it is submitted by the learned counsel for the petitioner, is that at the relevant time due to lock out in operation between 4th October, 2001 to 4th February, 2005 the relevant records were not accessible since the management was not allowed to enter the premises. Only after the lock out was lifted the documents were sought to be collected and were traced. Many of the files and documents are stated to have been lost by damage in the interim stage.

4. In the peculiar facts of the case it would have been appropriate that the

document were allowed to be produced although belatedly. In this view of the matter it is appropriate that the matter be remanded to enable the Labour Court to consider the evidence sought to be produced by the petitioners. However, this will have to be conditional upon payment of costs. In the circumstances I pass following order :

- (a) The impugned award dated 22nd February, 2016 is hereby set aside subject to payment of costs of Rs.20,000/- to the respondent within a period of 4 weeks from today.
- (b) Subject to payment of costs the Labour Court shall permit the petitioner to file its compilation to prove the charges in accordance with law.
- (c) Petition is disposed of in the above terms.
- (d) In view of the fact that the reference has been pending since the year 2001 it would be appropriate that the Labour Court accords appropriate priority in the disposal of the reference which shall be disposed of within a period of one year from today.

(A.K. MENON, J.)