

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12311 OF 2016

M/s. Neven Textile Engineers

(Neven Engineers)

.. Petitioner

Vs.

Shri Kanaiyalal D. Yadav

.. Respondent

WITH

WRIT PETITION NO.6231 OF 2017

Shri Kanaiyalal D. Yadav

.. Petitioner.

Vs.

M/s. Neven Textile Engineers

(Neven Engineers)

.. Respondent

Mr.Vasant J. Amberkar for the petitioner in WP No.12311 of 2016 and for the respondent in WP No.6231 of 2017.

Ms.Seema Chopda for the respondent in WP No.12311 of 2016 and for the petitioner in WP No.6231 of 2017.

CORAM : A.K. MENON, J.

DATED : 25TH APRIL, 2018.

P.C. :

1. These two writ petitions are filed by the petitioner – employer challenging an award dated 14th September, 1995 passed in favour of the respondent in Reference (IDA) No.110 of 2014.

2. In Writ Petition No.12311 of 2016, the petitioner-firm

challenges granting back wages and reinstatement. On 17th July, 2017 when the matter was listed for admission before this Court a statement was made on behalf of the workman (Petitioner in Writ Petition No.6231 of 2017 and the respondent in Writ Petition No.12311 of 2016) that he was ready and willing to resume duties. However, on account of apprehension expressed by the employer's partner that the workman may not resume the duties, this Court directed the Labour court to depute the Investigating Officer to ensure that the workman resumed duty on 31st July, 2017. This was accordingly done and a compliance report has been filed on 1st August, 2017 which records that the workman had resumed duty as a Welder and having signed muster roll on 31st July, 2017. The issue therefore that falls for consideration is whether he is entitled to back wages.

3. It is the case of the petitioner-firm that the workman was employed in January 1988 as a Welder at a wage of Rs.225/- per day. He was working on a machine on 18th December, 2012 and while on duty he suffered an injury. He was then sent to ESI Hospital at Kandivali for treatment and was to report for duty only after obtaining the fitness certificate. It is contended that the workman did not report thereafter. The Union sent a letter dated 26th December, 2012 informing the manager of the firm to comply with Regulation 86 of the Employees State Insurance (General Regulation), 1950. This was done according to the firm. The workman contended that vide letter dated 4th January, 2013 his services

had been terminated orally on that date and he demanded reinstatement as a Welder with continuity of service with back wages till actual reinstatement. He enclosed a medical certificate which stated that he was under treatment from 19th December, 2012 to 3rd January, 2013. On receipt of letter, the firm vide letter dated 21st January, 2013 called upon the workman to report to duty within seven days and informed him that he had left his place of work after the accident took place and not returned thereafter. On 25th January, 2013 the workman once again wrote to the firm informing them that he had reported for duty but he was not let in since the person to whom he was to report to was not available. He reiterated his request for reinstatement. Correspondence ensued and the parties traded allegations. Ultimately, the reference came to be filed by the workman before 8th Labour Court, Mumbai wherein he alleged that the services were orally terminated on 4th January, 2013 and sought declaration that such termination was illegal. He sought reinstatement with full back wages.

4. A statement of claim came to be filed on 28th July, 2013. In the written statement, the firm refuted the allegations and repeated the circumstances under which the workman had left. It was contended that even when the matter was pending before the Conciliation Officer, his services had not been terminated and the workman was required to report on duty, yet he did not. The allegations contained in the statement of claim

are denied and it was reiterated that the workman could report to the duty. The parties led evidence and finally by the impugned award it was held that the services of the workman were illegally terminated. The Labour Court found that the workman has stopped attending on his own from 19th December, 2012 was not established and the workman was granted 25% back wages. The petitioner – firm is aggrieved by these findings.

5. Mr.Amberkar, learned counsel for the petitioner- firm submitted that these findings are incorrect since when the accident took place, the employee could not continue to work and was sent to hospital. Although in the cross examination, he deposed that he did not suffer any injury on 18th December, 2012. According to him, he did not go to hospital at all. He admitted that the manager of the firm Mr.Sultanbhai had appeared before the Deputy Commissioner of Labour and stated that the workman's services were never terminated and that the workman was at liberty to join employment. The workman denied that he remained absent from the duty since 19th December, 2012.

6. Evidence was led. The manager of the firm deposed that the workman suffered injury and he was given money and sent to hospital. He denied that any accident had taken place as contended by the workman in his evidence. According to him, the workman stopped attending the work

and the petitioner-firm was at all times ready to employ the workman. The witness denied that the workman had been sent to another firm to carry out work and suffered an accident at that place. He reiterated his case. The impugned order records that apart from oral evidence of the workman, he relied upon office copy of the letter dated 26th December, 2012 issued by the firm to him and a photocopy of medical certificate issued by Dr.Awadhesh Singh.

7. Having scrutinised the evidence and having heard parties, the conclusion reached was that the workman was employed as a Welder since January 1998 and correspondence established that the petitioner-firm had been calling upon the workman to resume duties. It was found that the firm had not issued any charge-sheet for misconduct and although numerous letters had been written calling upon the workman to resume duties there was reluctance to pay back wages. For the said reasons, it was held that the illegal termination had occasioned. On the issue of back wages, the Court found that allowing 100% back wages would not be justified and that both parties were at fault and hence the Court concluded that award of 25% of back wages would be sufficient. The petitioner firm is therefore aggrieved by the aforesaid decision.

8. In the second Writ Petition No.6231 of 2017, the petitioner workman being aggrieved by the grant of back wages restricted to 25% According to Ms.Chopda, learned counsel for the petitioner-workman, the

Labour Court committed an error by allowing the claim in part and there were no cogent reasons for denying 100% back wages and that once termination of an employee had been held to be illegal, the workman will be entitled to full back wages. Whereas in the instant case the workman had contended that he was not gainfully employed and the burden to establish that he was employed elsewhere, fell on the respondent – firm. Ms.Chopda, learned counsel states that the workman was deprived of his back wages for entire period from 4th January, 2013 till actual date of reinstatement.

9. Having heard counsel for the parties, it appears that dispute between the parties has arisen purely as a result of the adamant stand adopted by parties themselves. The Labour Court had proceeded to hold that the firm had not issued charge-sheet for misconduct and that numerous letters written to the workman to resume duty were futile. It was further held that a condition precedent was sought to be imposed for the workman to resume duties viz waiver of his right to claim back wages. It was on account of claim of back wages that the workman was not allowed to join back. To this extent, the conduct of workman in having demanded back wages cannot be faulted. However, it was always open for the employer to permit the workman to resume duties subject to issue of back wages being separately resolved. In the instant case, the parties have proceeded to take up aggressive postures in relation to their respective contentions. The firm contending that without waiving right of back wages, the workman

would not be allowed to resume and the workman insisting for the back wages.

10. In correspondence addressed by the firm commenced on 29th December, 2012 they confirmed that the accident report had been sent. A copy of the report was also provided. Upon receipt of the demand for reinstatement, the firm contended that the workman had not resumed duties after 18th December, 2012. The workman has since been reinstated as evident from the report of the Investigating Officer of the Industrial Court, Mumbai dated 1st August, 2017. In my view, upon passing the impugned order, the workman should have immediately reported to work but he has proceeded to challenge the impugned order.

11. Having considered the facts, impugned order and submissions at bar, I am of the view that once the petitioner firm had called upon him to resume duties vide letter dated 25th January, 2013, there was no occasion for the workman not to join back. After receipt of letter dated 25th January, 2013 the workman replied on 8th February, 2013 contending that he had received a letter on 25th January, 2013 and he attempted to resume duties but was prevented from doing so by the son of the partner – Mr. Navin Shah. There was no response to the said letter from the firm. The workman has therefore once again vide letter dated 8th February, 2013 reiterated his stand that he had once again reported on 8th February, 2013 to resume duties but was not allowed to join. The watchman had attempted to call

the Manager but he was unavailable. The letter dated 8th February, 2013 was dealt with in the letter of 25th February, 2013 wherein the firm contended that the workman had never reported for duty. This exchange of correspondence is admitted between the parties. The allegations against the Manager has also been dealt with in the letter dated 28th March, 2013 which was signed by the Manager himself. Both parties having taken adversarial postures, the question is whether the order is in any way perverse or illegal. The workman having attempted to join on 9th July, 2013 and 23rd July, 2013, the petitioner firm ought to have permitted the workman to resume duties but has failed to do so and had insisted that the workman should waive his claim for back wages.

12. In the circumstances it appears that adamant attitude adopted by the parties had led to an impasse. The conclusion reached by the Labour Court that there was oral termination, however, does not appear to be justified. Merely because the parties took up adversarial positions and refused to back down could not justify the conclusion that there was oral termination. That having been said, the petitioner firm does not appear to have made efforts to establish that the workman was employed elsewhere in the interregnum.

13. In the circumstances I am of the view that the finding that the workman's services were terminated is not justified. Vide letter dated 25th January, 2013 the workman had informed the firm that he had attempted

to join work but Mr.Kalpesh Shah, son of Mr.Navin Shah, partner of the petitioner firm had informed the employee that since he had filed a complaint, his services were not required. There is no denial of this contention. The conclusion of illegal termination does not appear to be correct and to that extent the conclusion drawn by the Labour Court may not be fully justified. However, considering the overall factual position and considering the fact that the workman has since being reinstated and employed, I find no reason to interfere with the impugned order in these petitions. In the circumstances both the petitions fail and I pass the following order :

- (a) Writ petitions are dismissed.
- (b) No order as to costs.

(A.K. MENON,J.)