

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

WRIT PETITION NO.12106 OF 2017

Dinkar Laxman Desai

.. Petitioner

Vs.

M/s. Johnson & Johnson India Ltd.

.. Respondent

Mr. N. R. Kolte for the petitioner.

Mr. V. P. Vaidya a/w Mahendra Agvekar for the respondent.

CORAM : A.K. MENON, J.

DATED : 16TH JANUARY, 2018.

P.C. :

1. By this petition, the petitioner challenges an impugned order dated 15th March, 2017 passed in Application (IDA)no.122 of 2002 whereby the application has been disposed of. The facts in brief are as follows:-
Vide award dated 18th February, 2002 the Labour Court directed the respondent to reinstate the petitioner in service with full back wages and with continuity of service. The award came to be challenged by filing writ petition no.3345 of 2002. The operation of the award was stayed subject to the respondent depositing back wages with the Labour Court in a sum of Rs.4,75,309/-. While directing deposit of the said amount, this Court had made the order of stay conditional upon deposit of the amount of back wages awarded by the Labour Court within four weeks with due intimation to the respondent (emphasis supplied). The Labour Court was permitted to allow withdrawal of the

amount upon furnishing security to the satisfaction of that Court and within a period of six weeks from deposit, failing such withdrawal the amount was to be invested in a fixed deposit. If the deposit so not made, interim order of stay was to be vacated without further reference to the Court.

2. On behalf of the petitioner, it is submitted that the amount of back wages to be deposited was not Rs.4,75,039/- but Rs.9,70,088/-, that the respondent was in breach of the order and direction of this Court dated 1st July, 2002. Mr. Kolte, the learned counsel for the petitioner submitted that when Petition no.3345 of 2002 came up for final hearing and disposal, the petitioner had filed written submissions, copy of which is annexed to this petition wherein he has repeated the contention that the amount is to be deposited was Rs.9,70,088/- and not Rs.4,75,039/-. He submitted that despite this application, the Labour Court did not consider his case that he was scheduled to receive Rs.9,70,088/-. In the meantime, the writ petition no.3345 of 2002 came to be heard and disposed of finally by this Court by order dated 26th March, 2015. The petitioner's reinstatement was upheld. However, this Court found that the Labour Court after having observed that the punishment was disproportionate had reinstated him with full back wages and continuity of service. The Court held back wages were required to be reduced and, accordingly, it was ordered that

considering the extent of absenteeism, back wages would have to be restricted to the amount already received as back wages till the date of award by withdrawing the amount deposited in the Labour Court. Although the orders refers to the amount deposited in this Court, both counsel state that this observation is incorrect since no amount was deposited in this Court but the amount was deposited in the Labour Court. The operative portion while disposing of the petition specified that the reinstatement ordered was to take effect without payment of any more back wages.

3. Mr. Vaidya on behalf of the respondent company has opposed this petition and pointed out that the disposal of the Application (IDA)no.122 of 2002 occasioned on the application filed by the respondent. As against this the petitioner has filed the present petition on presumption that the amount of back wages was higher. He pointed out that the order of the High Court dated 26th March, 2015 had in no uncertain terms directed reinstatement without any further back wages. He therefore submitted that no further amounts were due.
4. Having heard both sides, I am of the view that this petition has no merits. The amount of Rs.4,75,039/- was deposited in Court in the year 2002 pursuant to an interim order of this Court. It was made clear at that stage that if the amount was not so deposited, the interim order would stand vacated. However, the petitioner has not made out

such case of non-compliance since the year 2002. On the other hand, the amount deposited in the Labour Court has been withdrawn albeit under protest. However, this by itself does not lend credence to the contention of the petitioner that the amount deposited was fell short as alleged. If indeed the amount deposited fell short, the least that would be expected is that the petitioner would have protested and sought further orders of dismissal of the Writ Petition no.3345 of 2002 for non-compliance of the interim order or at least seek an order vacating that interim relief. Nothing of the sort has been done. Even when Writ Petition no.3345 of 2002 was heard and disposed of finally and the respondent union had not raised any such plea, no such case was made out on behalf of the respondent. Even otherwise after the final order was passed on 26th March, 2015 no application was made for review of that order.

5. In the circumstances, by the present writ petition, the petitioner cannot expect this issue to be revisited. The petition is by way of an after thought and it is devoid of merit. I therefore pass the following order:-
- (i) Petition is dismissed.
 - (ii) No orders as to costs.

(A.K. MENON,J.)