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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8623 OF 2013

Fakira Nathanwanai Bhosale ... Petitioner
Vs.
Dy. Commissioner of Labour and Ors. ... Respondents

Mr. Prosper D'souza for the Petitioner.
Mr. Y.S. Khochare, AGP for the Respondent No.1.
Mr. K.S. Bapat I/by Mr. Jayesh K. Desai for the Respondent No.4.

CORAM : A.S.OKA AND
SANDEEP K. SHINDE, JJ.

DATE : 14th DECEMBER 2018.

P.C. :

1 We have heard the learned counsel appearing for the petitioner. Before we advert to his submissions, a brief reference to the facts of the case will be necessary. From the prayers made in the petition, one can gather that the challenge is to the order dated 19th December 2007 passed by the Deputy Commissioner of Labour rejecting the prayer of the petitioner for making a reference of an alleged industrial dispute for adjudication. It appears to us from the order that the petitioner was an employee of Philips Electronics India Limited (for short "Philips"). After service of charge sheet, employment of the petitioner was terminated on 3rd September 1980 by Philips. An application for grant of approval was filed by Philips invoking sub-section (2) of section 33B of the Industrial Disputes Act, 1947. The said application was allowed on 11th August 1982 by the Industrial Court. It appears that the Employees' Union of Philips

raised an industrial dispute in respect of the termination of the employment of the petitioner which was referred to the Industrial Tribunal. On 26th July 1982, the reference was rejected by the Industrial Court for want of prosecution. It appears that in the year 1996, the petitioner once again raised a dispute about the order of termination on the basis of which a reference was made to the Labour Court for adjudication. By the order dated 29th April 2000, the said reference was rejected on the ground that the same was not maintainable. It is mentioned in the impugned order that for restoration of the said reference, a miscellaneous application was made by the petitioner to the Labour Court which was rejected by the order dated 10th May 2001. It is mentioned in the impugned order that in the order dated 10th May 2001, the learned Judge of the Labour Court had observed that remedy of the petitioner was to challenge the order made in the said reference of the year 1996. The impugned order has been made by the Deputy Labour Commissioner on an application dated 28th March 2007 made by the petitioner seeking to raise an industrial dispute on the basis of the order of termination dated 3rd September 1980 and seeking a reference for adjudication. By the impugned order, the said application has been rejected. We may note here that the second respondent in the petition is Philips and the third respondent is M/s. Vishay Components India Pvt. Ltd. It is claimed that the third respondent has taken over the second respondent.

2 The learned counsel appearing for the petitioner submitted that the industrial dispute raised by the Union was referred for adjudication which was not adjudicated upon on merits. Even the second

reference was not adjudicated on merits. His submission is that at every stage, the petitioner appears to have been misguided. He submitted that instead of challenging the earlier orders, the petitioner was misguided to move the Commissioner of Labour for raising a fresh industrial dispute. His submission is that adjudication on the legality of the order of termination which is illegal has not been made.

3 The learned counsel appearing for the third respondent has tendered an affidavit. In the affidavit, it is stated that on 22nd April 1999, an agreement of sale was entered into between Philips and the third respondent for purchase of entire conventional passive components undertaking and accordingly, by sale deed dated 1st December 1999, the conventional passive components undertaking was purchased. The affidavit points out that the fourth respondent has purchased the some portion of land and business from Philips.

4 We have considered the submissions. There are several difficulties in the way of the petitioner. The order of termination is of 3rd September 1980. Approval application under section 33(B)(2) of the said Act of 1947 was allowed on 11th August 1982. There was never any challenge to the said order. The industrial dispute referred at the instance of the employees' Union of Philips resulted into rejection of the reference for want of prosecution. There was never any challenge to the said order. After lapse of more than 12 years, one more dispute was raised by the petitioner on the basis of the same order of termination which was rejected by the order dated 29th April 2000 on the ground that the same was not maintainable. Even the said order was not challenged by the petitioner. It appears that on the basis of the application made by the

petitioner in the year 2007 raising a demand for reinstatement, the Deputy Commissioner of Labour referred the matter for adjudication to the Labour Court. When Philips challenged the said order, the same was withdrawn with liberty to make a fresh order. Thereafter, the present order dated 11th July 2008 was passed by the Deputy Commissioner of Labour rejecting the application for reference. It appears that the petitioner filed a Writ Petition bearing No.333 of 2010 which was withdrawn. Thereafter, an application was made by the petitioner for grant of recovery certificate under section 33C(1) of the said Act of 1947 which was rejected by the order dated 13th September 2010. Writ Petition No.9159 of 2011 was filed by the petitioner for challenging the said order which was eventually withdrawn.

5 The prayer in this petition is for remanding the matter to the Deputy Commissioner of Labour. In fact, the application made by the petitioner before the Deputy Commissioner of Labour on 28th March 2007 seeking to raise the dispute on the basis of the order of termination of 1980 was not maintainable in view of the earlier orders.

6 Assuming that the petitioner was misguided at every stage of the proceedings, it is impossible to help the petitioner in any manner as of today, considering various orders which have become final. Hence, the prayer made in the petition cannot be acceded to. The petition is disposed of.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)