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

WRIT PETITION NO.2053 OF 2018.

Lupin Ltd ... Petitioner

V/s.

Satyendra Yadav and anr ... Respondents

Mr. N. B. Jalota i/by ENS Legis Law Firm,for the
Petitioner.

Mr. P. M. Palshikar a/w J.R. Pawar, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th NOVEMBER, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and respondent.
- 2] Admit.
- 3] With the consent of learned counsels for both the parties,
the petition is taken up for final hearing at the stage of admission
itself.
- 4] This Writ Petition takes an exception to the Award dated
31st July, 2017, passed by the Presiding Officer, First labour Court,
Thane, in Reference (IDA) No.185 of 2013.
- 5] The said Reference was referred by the Deputy

Commissioner of Labour, Thane, in exercise of the powers conferred under Section 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as, "I.D.Act"), to the Labour Court, for adjudication in the matter of reinstatement of the respondent alongwith back wages and continuity of services with effect from 30.2.2013.

6] As per admitted facts, respondent joined employment of the petitioner with effect from 30.3.1993 as Trainee Assistant. As per terms of his employment, he has to report whole time to the work of of petitioner and was not to undertake any other direct/indirect business or work, honourary or remunerative, except with the written permission of the management. However, as it was brought to the notice of the petitioner that the respondent was running the business of conducting JCB Machine, after obtaining loan in his name for the purpose of JCB Machine, the termination letter dated 30.3.22013, was issued to him, and respondent was relieved from the service with immediate effect.

7] When the said termination order was challenged by the respondent, the Commissioner of Labour, has accepted the said challenge and referred the dispute to the Labour Court for adjudication.

8] The Labour Court has after considering the pleadings of

the parties, framed issue for consideration as to, “whether the termination of services of respondent was legal and valid?” While answering this issue, however, the Labour Court, considered the provisions of Section 25(F) and 25(G) of the I.D.Act and recorded the finding that, as while terminating the services of the respondent, petitioner has not issued chargesheet; no enquiry was conducted and seniority list was also not displayed, hence respondent's termination was illegal. The Reference was accordingly answered in the affirmative and the petitioner was directed to reinstate the respondent with 50% back wages and continuity of services.

9] This finding of the Labour Court is challenged in this Writ Petition and in my considered opinion rightly so. Even a cursory glance to the dismissal order dated 30.3.2013, which is produced on record is sufficient to show that the respondent was “dismissed” from service of the petitioner company and was relieved from the services with immediate effect, on the ground that he was engaged in the gainful business while in the employment with the company and it was proved that neither he has informed to the company about it, nor taken any prior permission from the company for the said business. Therefore, it was an order of “dismissal” from service and not at all “termination”, either under Section 25(F) or 25(G) of the I.D. Act.

10] The entire order of the Labour Court, is conspicuously

silent as to how the dismissal of the respondent from services, on the ground that the respondent was engaged in dual employment without permission of the petitioner company, was illegal and therefore, not tenable. Nowhere this aspect has been considered by the Labour Court.

11] It is pertinent to note that respondent has challenged his “dismissal” by taking a specific plea that this dual employment was not proved. According to him, even accepting that JCB machine was purchased in his name by obtaining loan, in that case also, the business of JCB machine was conducted by his brother. To prove this plea, he has examined his brother. It was further his contention that there was specific condition in the appointment letter that “the respondent will not undertake and participate directly or indirectly in any activity, which may come in the way of effective discharge of his duties, without consent in writing from the management”. It was contended by the respondent that no such evidence was led to show that the purchase of JCB machine in his name or conduct of JCB business, by his brother was, coming in the way of effective discharge of his duties.

12] All these contentions were specifically raised before the Labour Court. It is pertinent to note that none of these contentions are adverted to by the Labour Court in its order. There is no

reference as to whether, for breach of service conditions, respondent can be directly dismissed from the service, without holding domestic enquiry. The Labour Court only considered whether the termination of service of the respondent either by way of retrenchment or otherwise is legal and correct?.

13] Thus, as the impugned order passed by the Labour Court is conspicuously silent on the material dispute raised before it, it is necessary to remand the matter to the Labour Court.

14] Accordingly, the Writ Petition is allowed.

15] The impugned order and the Award passed by the Labour Court is quashed and set aside.

16] The Labour Court is directed to decide afresh the Reference considering the crux of the dispute involved therein, namely whether the order of dismissal from service, on the count that the respondent is engaged in dual employment is legal and proper?.”.

17] It is made clear that this Court has not expressed any opinion regarding the merits of the dispute and all the contentions raised by both the parties are expressly left open.

18] The Labour Court to decide Reference afresh as expeditiously as possible.