

901- WP 12981 of 2017 a/w. WP 12982 of 2017
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No. 12981 OF 2017

M/s. Eveready Industries India Ltd.Petitioner
Vs.
Shri D.B. HanawaleRespondent

WITH
WRIT PETITION No. 12982 OF 2018

M/s. Eveready Industries India Ltd. ...Petitioner
Vs.
Shri Vijaykumar Shri Satam ...Respondent

Mr. Vijay Vaidya a/w. Mr. Jayesh Desai i/b. Ms. Desai and Desai Associates for
Petitioner

Mr. Sohail Shaikh for Respondent

CORAM : SMT. SADHANA S. JADHAV, J.
DATE: SEPTEMBER 5, 2018

P.C.

1. Heard.
2. Rule. Rule is made returnable forthwith by the consent of the parties.

(In Writ Petition No. 12981 of 2017)

3. The Petitioner Company herein being aggrieved by the certificate of recovery issued by the Assistant Commissioner of Labour, Mumbai dated 1st August, 2017 has approached this Court on a limited ground that the net

amount arrived at by the Labour Court while issuing the certificate under section 33 C (2) of the Industrial Disputes Act, 1947 is misconstrued and is not calculated properly.

4. The case has checkered history. The Respondent herein was terminated vide order dated 24th December, 2009. Being aggrieved by the order of termination, the Respondent herein had approached the Labour Court. The Labour Court has allowed the complaint by taking cognizance of the same and an Award was pass by judgment and order dated 17th of March, 2015. The Petitioner herein had approached this Court by filing Writ Petition No. 6808 of 2016, which was dismissed vide judgment and order dated 19th September, 2016. The Petitioner had then approached the Hon'ble Apex Court and the Special Leave Petition was dismissed vide order dated 6th January, 2017.

5. While answering the Reference in the affirmative, the 3rd Labour Court had directed the Petitioner to pay 50% backwages to the Respondent from the date of termination till the Respondent attains the age of superannuation. The Respondent had superannuated on 31st August, 2012. The Respondent herein had filed an application under Section 33 C (2) of the Industrial Disputes Act, 1947 before the Assistant Commissioner of Labour and the recovery certificate was issued for a sum of Rs.4,62,590/- on the basis of the calculations made in a

tabular chart and submitted before the Labour Court by the Respondent. The writ jurisdiction of this Court has been invoked not to challenge the certificate as a whole but the quantum i.e. awarded by way of recovery certificate.

6. The learned counsel for the Respondent submits that the Petitioner had not given any documentary evidence on the basis of which the amount has been calculated before the Writ Court. It is also submitted that the calculations submitted by the Respondent were not specifically denied by the Petitioner and, therefore, it could not be proper to consider the calculations by this Court, especially, when no supporting documents are filed.

7. It is in view of this, this Court would not calculate the quantum assigned in the recovery certificate issued by the Assistant Commissioner of Labour, the matter deserves to be remanded back to the Labour Commissioner for consideration of the amount i.e. to be given to the Respondent.

(In Writ Petition No. 12982 of 2017)

1. The Respondent herein was appointed by the Petitioner Company on 1st December, 1995. His services were confirmed on 3rd June, 1996 and he was promoted on 10th August, 2011. The Respondent herein was terminated by striking of his name from the muster roll from 1st of April, 2009. The

Respondent herein was constrained to approach the Labour Court. The Labour Court had decided in favour of the Complainant and an Award was passed by the 3rd Labour Court vide order dated 17th March, 2015.

2. Being aggrieved, the Petitioner had approached this Court by filing Writ Petition No. 5586 of 2016 which was dismissed vide judgment and order dated 19th September, 2016. The Petitioner company had approached the Hon'ble Apex Court and the Special Leave Petition was dismissed vide order dated 14th January, 2017.

3. The Respondent herein had filed an application under section 31 C (2) before the Assistant Commissioner for Labour and the Reference was decided in favour of the Respondent and the Labour Court had directed the Petitioner to reinstate the Respondent with continuity of service and payment of 50% backwages. A recovery certificate has been issued for an amount of Rs.9,16,900/- only. The Petitioner had challenged the same before is Court.

4. Hence, it would be appropriate to direct the Assistant Commissioner of Labour to consider the calculations given by both the parties and adjudicate upon the same. It is further directed that the Assistant Commissioner for Labour, Mumbai shall decide the application filed by the Petitioner Company

within two weeks from the date of filing of the application. The Labour Court shall not grant any unwarranted adjournments to the Petitioner.

4. The learned counsel for the Petitioner submits that the Petitioner would file an application before the Assistant Commissioner of Labour along with supporting documents including salary certificate issued by the Petitioner Company.

5. The Labour Commissioner shall independently calculate 50% backwages of both the Respondents (in both the petitions) within two weeks from the date of filing of the application. It is further directed that the application be considered on merits subject to the condition that the application is filed on or before 11th September, 2018.

6. With these directions, writ petitions stand dismissed and disposed of accordingly. Rule is discharged.

[SMT. SADHANA S. JADHAV, J.]