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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.811 OF 2007

Mohammad Murtaja

...Petitioner

vs

M/s. Vishal Creation

...Respondent

.....

None for the Petitioner.

Mr. Ashok D. Shetty, for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATED: JUNE 22, 2018

(ORAL JUDGEMENT) :

. Heard learned Counsel for the Respondent. The Petitioner is absent. Since this is an old matter of 2007 and the board was notified at least one week in advance, I am not inclined to grant any time. I, accordingly, proceed to hear the petition.

2. The petition challenges an award passed by the Labour Court at Mumbai on a reference made to it at the instance of the Petitioner workman. It was the case of the Petitioner in his statement of claim that he was employed by the Respondent as a tailor from 1 January 2000; that his engagement was as a permanent workman and he had completed continuous service of more than 240 days in twelve calendar months. It was his case that his service was terminated with effect from 18 May 2002 without complying with the provisions of Section 25-F of

the Industrial Disputes Act. This case was opposed by the Respondent employer. It was the case of the Respondent in its written statement that the Petitioner joined the Respondent as a tailor on a temporary engagement sometime in January 2002 and worked for 120 days. He left the services of the Respondent on and from 18 May 2002 on his own, without any intimation to the Respondent or without tendering his resignation. The Labour Court in its impugned award held that the onus to show that he had worked continuously for 240 days in twelve calendar months was on the Petitioner workman and he had failed to discharge that onus. The Court observed that there was absolutely no documentary evidence tendered by the Petitioner workman that he had worked for 240 days. There was no wage slip or proof of payment of wages or any other service related record. No independent oral testimony was produced either in support of the workman's case. Apart from his bare statement in his examination-in-chief, there was nothing to suggest that he joined the service of the Respondent in January 2000. His own testimony also did not inspire any confidence of the Court. The Court observed that he could not recognize any of the workmen whose names appeared in the muster-cum-wage register maintained by the Respondent nor could tell the names of the workers working with the Respondent during the relevant period. The Respondent, for its part, produced its muster-cum-wage register which showed the names of its various employees. The Court observed that the Petitioner's name did not figure in this register. (The Petitioner had admitted in his cross-examination that he used to sign a separate register, namely, salary book muster.) The Court also observed that from the oral evidence of the Respondent, no significant admission concerning the Petitioner's having

completed 240 days of service in twelve calendar months could be extracted. The Petitioner argued before the Labour Court that since the name of the Petitioner was not found in the muster-cum-register produced by the Respondent, an adverse inference would have to be drawn against the Respondent. This contention did not find favour with the Labour Court. The Court noted that in a case like this, the workman had to stand on his own legs or fall; assuming that the Respondent had failed to prove its case, that would not help the case of the workman that he was in employment from January 2000 till 18 May 2002.

3. No infirmity can be found with either the approach of the Labour Court or its analysis of the evidence or its conclusion. The conclusion is supported by material on record. The Court has not considered any irrelevant or non-germane material or circumstance, or disregarded any relevant material or circumstance for arriving at its conclusion. There is, accordingly, no case for interference with the impugned award in the writ jurisdiction of this Court.

4. Accordingly, there is no merit in the petition and the petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)