

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.3108 OF 2016

Supreme Industries Limited		Petitioner
Versus		
Gangaprasad Dubey		Respondent

**ALONGWITH
NOTICE OF MOTION NO.517 OF 2017**

Gangaprasad Dubey		Applicant
Versus		
Supreme Industries Limited		Respondent

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Mr. Aumkar Joshi I/b Mr. A.P. Wachasundar for the Petitioner and Respondent in Notice of Motion No.517 of 2017.
Ms. Seema K. Chopda for the Respondent and the Applicant in Notice of Motion No.517 of 2017.

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CORAM : S.C.GUPTE, J.

DATE : 16 JULY 2018

Oral Judgment

. Heard learned Counsel for the parties.

2 This petition has been posted on board with an understanding that it would be heard finally and accordingly, heard.

3 The challenge in the present petition is to an award passed by the Labour Court at Mumbai in favour of the Respondent-employee. The award is of reinstatement with continuity of service and full back wages.

4 The Respondent was employed as a security guard with the Petitioner-establishment on and from 10 April 2006. A charge-sheet was issued to him on 22 April 2006, charging him with the misconduct of theft and related charges under Model Standing Orders. In a departmental enquiry held in pursuance of the charge-sheet, the Respondent was found to be guilty of the charges framed and dismissed by an order of dismissal dated 20 June 2007. The dispute raised by the Respondent in respect of his dismissal resulted into the present reference before the Labour Court. In its Part-I award, the Labour Court held the enquiry as not fair or proper and the conclusion of the Enquiry Officer as perverse. Evidence was led thereafter before the Court by both parties. Finally, by its Part-II award dated 4 November 2015, the Labour Court quashed and set aside the order of dismissal and ordered reinstatement of the Respondent with continuity of service and full back wages. This order has been challenged by the Petitioner-establishment in the present petition.

5 In pursuance of an order passed by this court on 14 February 2017, the award was stayed by this court on the condition of deposit of entire back wages in the Registry within two weeks. The back wages were deposited till 31 March 2013, on which date the Respondent appears to have superannuated.

6 The evidence of the management of the incident of theft and the Respondent's role in that incident, has mainly come by way of examination of one Shekhar Bangera, working as Administrative Officer of the Petitioner. Bangera has deposed to the incident simply as learnt by him through a security guard of the company, one Dalluram Sharma, who was

on duty on 10 April 2006, when the incident of theft is alleged to have occurred (paragraph 4 of examination in chief). This evidence is clearly hearsay evidence and cannot be relied upon by the management in proof of the misconduct of theft against the Respondent. The witness has admitted in his cross examination that on 10 April 2006, he was not present in the company and had no personal knowledge of what happened on that day and which he had narrated in his affidavit; he himself had not seen the second party workman removing any article. In other words, the only evidence in support of the charge and that too, of a serious misconduct such as theft, is plain and simple hearsay evidence. The second witness of the Petitioner-establishment has merely deposed to the enquiry proceedings conducted in respect of the charges framed against the Respondent. There is, thus, no admissible evidence against the Respondent on the charge of theft, which is practically the only charge against him. The award, in the premises, has rightly set aside the Respondent's dismissal.

7 Learned Counsel for the Petitioner assails the impugned award on the ground that no specific issue as to whether or not misconduct alleged against the Respondent was proved before the Court was framed by the Labour Court and this has resulted in miscarriage of justice. It is true that no such issue was specifically framed by the Labour Court, but then the matter of proof of misconduct has been duly examined by the Labour Court in Issue No.3, which dealt with the punishment awarded to the Respondent. The Labour Court discussed the evidence led in this behalf before the Enquiry Officer as well as before the Court. The Court observed that perusal of the enquiry proceedings revealed that the findings were

based on the evidence of two witnesses, Bangera, who was not an eyewitness to the incident but whose evidence was based on an enquiry by Dalluram Sharma, the security guard, and Dalluram himself. Dalluram Sharma himself had denied before the Enquiry Officer that he had written any report on the incident of theft. He specifically admitted before the Enquiry Officer that the report was prepared by some other employees of the Petitioner, one of whom was a witness before the court. (Dalluram himself was not examined before the court.) The Labour Court, in the premises, observed that it could not be said that the first party company had succeeded in proving the alleged incident of theft against the second party workman. No fault can be found with the impugned award, in the premises, merely because of a technical error in not framing a specific issue.

8 Learned Counsel for the Petitioner relies on the judgment of the Supreme Court in the case of **Muir Mills Unit of NTC (U.P.) Ltd. Vs. Swayam Prakash Srivastava**¹. Relying on this judgment, learned Counsel submits that it was incumbent on the Labour Court to give a finding on gainful employment of the Respondent, without which no award of back wages could have been made. In this behalf, it is pertinent to note that the Respondent-employee had led specific evidence before the Labour Court that he was not gainfully employed; inspite of his best efforts to get an alternative job, he could not find one. He even gave names of employers with whom he tried to secure a job. He claimed in his evidence that because of his dismissal and stigma of theft, he was unable to get any alternative job. On the other hand, as far as the Petitioner-establishment is

1 (2007) 1 Supreme Court Cases 491

concerned, there is a complete want of evidence on its part concerning gainful employment of the Respondent or the lack of it. The Labour Court, in its impugned award, has considered evidence led before it by the parties after framing a specific issue on the reliefs to be granted including back wages. After considering all this evidence, a conclusion is drawn by the Labour Court that the Respondent-workman was entitled to be reinstated with continuity of service and full back wages with effect from the date of his dismissal. No fault can be found with the relief of back wages granted by the Labour Court, in the premises. It is clearly a possible view supported by evidence.

9 Accordingly, there is no merit in the petition. The petition is dismissed. The Respondent shall be entitled to withdraw back wages deposited by the Petitioner before the Prothonotary & Senior Master of this court. Office shall allow the Respondent to withdraw the amount deposited by the Petitioner with accrued interest.

10 Learned Counsel for the Petitioner prays for stay of this order. On his application, Office is directed not to disburse any amount to the Respondent for a period of four weeks from today.

11 It is made clear that if any PF contribution has been deducted from the deposit of wages made in this court, corresponding deposits will have to be placed with Provident Fund Office by the Petitioner-establishment together with applicable interest.

12 In view of the disposal of the Writ Petition, the Notice of Motion does not survive and the same is also disposed of.

(S.C. GUPTE, J.)

Rajesh
Vasant
Chittewan

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by Rajesh Vasant
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