

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

WRIT PETITION NO. 1 OF 2007

M/s.Target Marketing	...Petitioner
Vs.	
Jagadamba Pandey & Anr.	...Respondents

WITH
WRIT PETITION NO. 585 OF 2010

Jagadamba Pandey	...Petitioner
Vs.	
M/s.Target Marketing	...Respondents

Mr.C.R. Sadasivan for Petitioner in WP 585/2010 & for Respondent No.1 in WP 1/2007.

CORAM : S.C. GUPTE, J.

DATE : 12 JULY 2018

P.C. :

Heard learned Counsel for the Petitioner in Writ Petition No.585/2010, who is Respondent No.1 in Writ Petition No.1/2007. The Petitioner in Writ Petition No.1/2007, who is the Respondent in Writ Petition No.585/2010, is not present. The Petitioner has not been appearing before the court since the last many dates. By an order dated 22 June 2018, by way of special indulgence, the writ petition was stood over due to the Petitioner's absence. Even today, none appeared for the Petitioner when the matter was called out in the morning session and the matter was, accordingly, kept back and is once again called out in the afternoon session, when again none appears for the Petitioner. I am not inclined to grant any further time in the matter and accordingly proceed to

hear the Respondent in Writ Petition No.1/2007 (Petitioner in Writ Petition No.585/2010), who is hereinafter referred to as the “Respondent”.

2 The controversy in the present cross-petitions concerns an award passed by the Labour Court. The Petitioner and the Respondent are both aggrieved by the award. The Petitioner is aggrieved on account of the entire award setting aside the Respondent's termination; the latter is aggrieved by restriction and withholding of his backwages. The Respondent was working with the Petitioner as a fitter. He was also doing other sundry work as a peon. He was transferred by the Petitioner to its Andheri establishment from his place of work at Byculla. After transfer, he was not allowed to report for duty, except for a few days and after about a month or so after his transfer, he was discontinued from service. His grievance was that despite several efforts on his part to report on duty, he was not allowed to do so. In the premises, he approached the Deputy Commissioner of Labour and upon failure of conciliation proceedings, the matter was referred to the Labour Court for adjudication. The Labour Court, by its award dated 28 September 2006, answered the reference in the affirmative and directed reinstatement of the Respondent with full backwages and continuity of service with effect from 11 September 2000. This award was challenged by the Petitioner in Writ Petition No.1/2007. On 13 March 2007, Rule was issued in that petition and interim stay on reinstatement was granted subject to deposit of entire backwages, as ordered in the award, within eight weeks and compliance of provisions of Section 17B of the Industrial Disputes Act. The court ordered the interim relief to stand vacated automatically, in case of failure to deposit the amount. In case of such failure, the Respondent was entitled to execute the award. There was failure on the part of the Petitioner to deposit the amount ordered by the

court as part of the interim order and as a result, a complaint of unfair labour practice was filed by the Respondent under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Industrial Court at Mumbai. The Industrial Court, in its order dated 10 August 2009, directed the Petitioner herein to deposit in the court arrears of backwages from 11 September 2000 till 28 September 2006, that is to say, till the date of the award passed by the Labour Court, within 30 days. The Respondent, however, was at liberty to withdraw the amount of backwages only for the period from 11 September 2000 upto 31 October 2002. As for the backwages for the period from 1 November 2002 and 28 September 2006, the Respondent was forbidden from withdrawing the amount pending decision on Writ Petition No.1/2007 pending before this court. The Respondent was, however, given liberty to approach this court to seek permission to withdraw the amount deposited in this court, if any.

3 This order was challenged by the Respondent herein in his petition (Writ Petition No.585/2010) impugning the order of the Industrial Court to the extent it withheld backwages for the period after 28 September 2006 and denied backwages between 1 November 2002 and 28 September 2006.

4 As far the Petitioner's challenge to the impugned award of the Labour Court dated 28 September 2006 is concerned, it must be noticed at the very outset that the Labour Court has extensively dealt with the subject matter of reference in the light of oral and documentary evidence led before it by both parties. The court has considered admitted facts of the case, which showed that the Respondent workman had joined services as a

fitter and was admittedly transferred to the Petitioner's office at Byculla. After this transfer, he did work in the month of October 2000 for a few days and there was, accordingly, no question of termination of the Respondent on 11 September 2000. The record of the case shows that except for three days in October 2000, no work was given to the Respondent and, accordingly, he treated the date of termination as 11 September 2000 and went to the court on that basis, claiming reinstatement. The court was of the view that in any event, with effect from 11 September 2000, the Respondent workman has not received any wages and the date of 11 September 2000 could be reckoned as the date of his termination. The court also noted that in pursuance of the transfer order, the Respondent did his best to report on duty but no work was allotted to him. The court noted that the Respondent could not be said to have been uninterested in resuming the work. The court noted that the impugned act of the Petitioner amounted to retrenchment without following provisions of Section 25F of the Industrial Disputes Act. Though the company had claimed closure in the year 2004, there was no evidence shown to prove any payment of closure compensation to any single employee. The record showed that the premises of the Andheri establishment were still in the possession of the employer. Though the court had noted that there was no *prima facie* case of closure in order to negate the case of reinstatement, considering all this material and also considering that there were mitigating circumstances on record to show that the Respondent employee had been gainfully employed in the interregnum, the court was of the view that the relief of reinstatement might be granted to the Respondent with continuity of service with effect from 11 September 2000 but backwages might not be paid for the period between his termination and order of reinstatement.

5 This award of the Labour Court clearly reflects a possible view based on material. There is no relevant or germane circumstance, which is shown to have been disregarded by the court or any irrelevant or non-germane fact or circumstance considered by the court to arrive at the conclusion. There is, accordingly, no interference called for with the award.

6 Since the only basis on which backwages for the period after 28 September 2006 were withheld or denied to the Respondent was the pendency of the Writ Petition No.1/2007 and the interim order passed therein, the order withholding payment of backwages after 28 September 2006 cannot be sustained. So also, the Respondent cannot be prevented from withdrawing the amount of backwages for the period from 11 September 2000 to 28 September 2006. Accordingly, Rule is made absolute in Writ Petition No.585/2010. Rule is discharged in Writ Petition No.1/2007 and the petition is dismissed.

7 Since the Respondent has, in the interregnum, superannuated from 31 July 2012, the order of backwages shall be restricted upto 31 July 2012 and the order of the Labour Court passed on the complaint of unfair labour practice be enforced accordingly.

(S.C. GUPTE, J.)