

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

WRIT PETITION NO.11103 OF 2018

Brahmanath Textiles	..	Petitioner
vs		
Shivaji Kepanna Patil	..	Respondent

...

Mr.Meelan Topkar for Petitioner
None for Respondent

...
CORAM : NITIN W.SAMBRE, J.
DATE: 15 JULY.2019

P.C.

1. This Petition is directed against the award delivered by the Labour Court No.2, at Kolhapur on May 10, 2016 whereby the reference made to it, pursuant to the provisions of section 12 of the Industrial Disputes Act, 1947 (Hereinafter referred to as the said 'Act') came to be answered against the present Petitioner-employer. The Labour Court directed the Petitioner to re-instate the Respondent-employee with full back wages.

2. The case as is apparent from the record of the Respondent-employee is, he was appointed with the Petitioner on November 1, 2007

whereas his services as a permanent employee, came to be terminated on October 17, 2008. In the wake of above, after receipt of notice of demand, pursuant to the provisions of sub-section 2A of the said Act, the Petitioner came out with a defence that the Respondent-employee tendered his resignation on October 24, 2008. As conciliation proceedings before the Labour Commissioner failed on March 26, 2010, the Labour Commissioner made a reference on the following two issues:

- (a) Whether the services of the Respondent-employee are terminated from October 17, 2008 ?
- (b) Whether the Respondent is entitled for rein-statement with continuity in service with complete back wages ?

3. The present Petitioner-employer in response to the claim of the Respondent under Exhibit U-6, submitted its written statement at Exhibit C-8. The Petitioner denied the claim of the Respondent-employee of termination of the services and has specifically raised a defence of resignation tendered by the Respondent-employee on October 24, 2008. An additional Written statement came to be filed by the Petitioner at C-37. In the wake of the respective pleadings, the Labour Court framed issues at page 64 and accordingly answered the same against the

Petitioner.

4. The submission of the learned counsel for the Petitioner-employer is that the Reference Court while answering the Reference under section 12 of the Act, is required to confine itself to the extent of the point of Reference. According to him, the Labour Court has exceeded its jurisdiction thereby, recording a finding on the issue of resignation and as such, the Award is not sustainable. The Petitioner has drawn support from the judgment of the Apex Court in the matter of **POTTERY MAZDOOR PANCHAYAT vs PERFECT POTTERY CO.LTD** reported in **AIR 1979 SUPREME COURT PAGE 1356** particularly pages 5 and 6. According to the learned counsel for the Petitioner, as such the impugned Award is liable to be quashed and set aside.

5. With the assistance of the learned counsel for the Petitioner, I have perused the entire record including that of the pleadings of the Petitioner in the form of defence which were raised before the learned Labour Court.

6. The Petitioner in categorical terms in its Written statement

has come out with a defence that the Respondent- employee has tendered his resignation on October 24, 2008. Said assertions of the Petitioner were not admitted by Respondent. The Petitioner-employer has produced the said resignation at Exhibit C-40 and in support have examined a witness Mr.Chavan. The said witness in his evidence, is unable to prove the said resignation particularly when he was not a witness to the said resignation. The Labour Court thereby proceeded to analyse the evidence of the respective parties based on the pleadings particularly the defence that was raised by the Petitioner and noticed that the resignation letter Exhibit C-40 is in typed-form and contains signature of two witnesses. The Petitioner has failed to examine these two witnesses, who are signatories to the resignation Exhibit C-40 as is claimed by them. As such, the Tribunal has gone on record to observe that the said resignation was not proved. While recording the said finding, the Tribunal had regard to the vague nature of resignation, its form etc.

7. In the aforesaid background, the submission of the learned counsel for the Petitioner, are appreciated, the Petitioner themselves have set up a defence while dealing with the Statement of claim pursuant to the Reference made that the Respondent-employee has resigned from the

services of the Petitioner vide resignation letter C-40.

8. The Petitioner has also tried to lead evidence on the said issue to prove the resignation. It was the case of the Petitioner before the learned Tribunal that the resignation Exhibit C-40 was rightly tendered before the witnesses of Petitioner employees. The Tribunal upon analysis of the evidence answered the same against Petitioner. The Petitioner at no point of time had objected to the framing of the said issue on the validity of resignation.

9. As such, from the conduct of the Petitioner particularly when the defence of the Petitioner is based on the resignation letter Exhibit C-40, the Petitioner themselves have invited finding on the said issue. In my opinion, it is not open for the Petitioner to canvass the said grievance before this Court that the Tribunal has exceeded its jurisdiction while answering the Reference referred by recording findings on the issue of validity of resignation.

10. As such, while recording a finding on the issue of resignation Exhibit C-40, the Tribunal was well within its jurisdiction, while

answering the Reference. Decision about validity of resignation letter Exhibit C-40 was very much concluded at the behest of the Petitioner. That being so, no case for interference is made out.

11. Petition fails. Dismissed.

(NITIN W.SAMBRE,J) `