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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELATE JURISDICTION

WRIT PETITION NO. 8724 OF 2016

Bhikshapati Rajayya Mamdyaal ... Petitioner

vs.

The Manager, Chandramogli ... Respondent

Ramayya Kamtam

Mr. Suhas Suresh Inamdar for the Petitioner.

Mr. Swaroop Karade i/b. Surel Sunil Shah for the Respondent.

CORAM : A. K. MENON, J.

DATE : 4th MARCH, 2019

P.C. :

1. The challenge in this petition is to an award dated 20th June, 2015 passed by the Labour Court, Solapur in Reference(IDA) No. 3 of 2009. By the impugned award the reference was answered in the negative.

The facts which lead to the impugned award are as follows :

2. The petitioner was employed as a Jobber with the respondent from 1986. He has alleged that his services were orally terminated on 7th May, 2008. He was then earning monthly salary of Rs.4200/-. Salary has been paid fortnightly. It is his case that he had proceeded on 8 days leave after obtaining permission from the respondent which was orally granted but on 2nd May,

2008 a notice came to be issued to him. Thereupon the petitioner met with the respondent and requested the respondent to take him back in services but the respondent declined as a result the petitioner approached the Government Labour Officer through his Union. A settlement was arrived at between the parties and the respondent agreed to take petitioner in services from 15th May, 2008. On 15th May, 2008 it is alleged that the respondent declined to take him in services unless petitioner signed on some blank pages. It is stated that there are about 30 to 40 workers employed by the respondent and by removing him from services the respondent had violated the requirement of section 25F, G and H and Rule 80 and 81 of the Industrial Disputes Act. The respondent therefore sought reinstatement. The respondent has however denied this contention and filed a written statement setting out the fact that they offered to take the petitioner back in service. It was denied that the petitioner was granted leave in the first place.

3. According to the respondent the petitioner had absented himself without leave. After the petitioner approached the Government Labour Officer through the union, parties had arrived at a workable arrangement but the petitioner did not attend on 15th May, 2008. The respondent is therefore stated to have waited till 27th May, 2008 when the petitioner caused a notice to be issued. The respondent took up the plea that by virtue of failure of the petitioner to report to work there was no occasion to adjudicate the reference. They sought dismissal of the reference. Both parties led evidence. After considering these

aspects, the Labour Court framed two issues which are essentially whether the petitioner proved that he was dismissed from services on 7th May, 2008 and secondly whether the Court should direct reinstatement with full backwages. Both these issues were answered in the negative. It is this order that has been challenged by the petitioner.

4. Mr. Inamdar learned counsel for the petitioner submitted that the order is unsustainable since the respondent was bound to hold an inquiry especially since it was contention of the petitioner that he had been sanctioned leave of 8 days. Despite that when notice dated 2nd May, 2008 was received the petitioner immediately sought to join duty but was not taken back. That since absenteeism was alleged an inquiry should have been conducted. The petitioner had remained unemployed throughout and the respondent had in the course of hearing admitted that records pertaining to attendance had been maintained but these records were not produced by the respondent. Failure to produce records is sought to be urged by Mr. Inamdar in support of the challenge. It is contended that the Labour Court should have allowed the application for production of documents and including application seeking confirmation of signatures and some other documents. That the services of the petitioner were terminated without proper inquiry even though petitioner completed 240 days in each year. It is alleged that respondent had created false evidence and since the petitioner had not secured any employment he was entitled to reinstatement with full back wages.

5. Mr Inamdar relied upon decision of single Judge of this Court in *M/s. Ocean Creations and Manohar Gangaram Kamble and Anr [2014 (140) FLR 725]* in support of his contention. He also relied upon statements made in examination in chief in which the petitioner made reference to and relied upon certain letter issued by one Shriniwas Ramayya Kamtam. The petitioner contended that he had been working with Chandramogli Ramayya Kamtam and Shriniwas Ramayya Kamtam in a handloom factory for about 35 years. He had been receiving salary of about Rs.2100/- every fortnight. He had not received salary for about 4 years. In his cross examination he has deposed that he had not taken leave in April and May 2008 but his services were terminated from 2nd May, 2008. He has denied the fact that he did not join duty despite being called upon but admitted that he did not have any documentary evidence to that effect. He had denied that he did not go to work from 15th May, 2008 to 27th May, 2008. He asserted that he attended the place of work but the respondent did not take him back. However there was no evidence to that effect. He has denied that he is not in need of work and had reiterated his contentions. On behalf of the respondent the case of the petitioner was denied.

6. I have heard the learned counsel for the parties, considered the documents and the impugned order. The impugned order records that the respondents' witness was cross examined but did not produce documents

indicates that no record was made available. It takes into consideration the contention of the petitioner that absenteeism without permission is no ground for termination of services and there is no evidence on record to prove that the petitioner had remained absent from duty and that he was not sanctioned leave. The respondent had contended that the compromise was arrived at between the parties on or about 15th May, 2008 but the petitioner never attended duties. By the filing of the reference he had claimed Rs. 1,10,000/- as overtime and Rs. 70,000/ as difference in minimum wages. It is further contended that consequent to the agreement between the parties arrived at on 15th May, 2008 second party remained absent on 15th May, 2008. Notice was served on 3rd May, 2008 but the second party did not join duties on 3rd May, 2008 or 4th May, 2008. He admitted that he did not join duty on 5th May, 2008. The Labour Court observed that the petitioner was in the habit of remaining absent.

7. The impugned order in my view makes certain references to inconsequential factual aspects such as in paragraph 26 where reference is made to notice issued by the respondent to the petitioner on 2nd May, 2008 which was served to him on 3rd May, 2008 and also the fact that the petitioner did not join duties on 3rd May, 2008 or 5th May, 2008 but he waited till 7th May, 2008 which was holiday. It was Mr. Inamdar's contention that once having accepted the fact that there was a compromise on 14th May, 2008 after examining the evidence the Labour Court came to the conclusion that the

petitioner was neither removed nor dismissed from service, there was no occasion to make reference to dates prior to 14th May, 2008.

8. In my view the decision in the case of *M/s. Ocean Creations vs. Manohar Gangaram Kamble and Anr [2014 (140) FLR 725]* relied upon by Mr. Inamdar are of no consequence inasmuch as in that case it was observed that there was no specific provision permitting the employer to treat absence beyond specific period as presumptive of abandonment of service and in absence of such provision the petitioner employer was bound to serve notice to resume duties and despite such notice if the workmen failed to attend, the employer would have to hold a domestic inquiry and charge him with unauthorised absence.

9. In the instant case, there is nothing to show that after the compromise on 14th May, 2008, the petitioner went back to join duties but was refused his post. Although in the case of *Andhra Bank vs ABN Amro Bank N.V. and Ors [2007 AIR S.C.2511]* the Supreme Court had held that the absenteeism without permission is not a ground for termination, in the present case, the Court found that there was no evidence to invoke the said decision in favour of the employee. In view of the fact that admittedly there was settlement, the petitioner was required to attend and although he claims having tried to report for duty, this aspect has not been established despite having been provided an opportunity to do so.

10. The case at hand does not fall within the factual matrix in which *Ocean Creations (supra)* was decided. As stated in *Ocean Creation (supra)* two views may be possible but merely because second view is possible and because reference is made to dates and that prior to 14th May, 2008 would not justify any interference. On appreciation of evidence the Labour Court has come to a finding and nothing has been shown to me to persuade me to take a different view. There is no case for interference in the writ jurisdiction of this Court. I therefore pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No costs.

(A.K. MENON,J.)