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Bharat
D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3762 OF 2019**

Pacific Brands (India) Pvt. Ltd.

.... Petitioner

V/s

Mr. Ikram Siddique

..... Respondent.

Mr. Pradhyuman M. Bhagat for the Petitioner.

Mr. Swapnil P. Kamble a/w Dr. S.N. Jadhav for the Respondent

CORAM: NITIN W. SAMBRE, J.

DATE: 27th June, 2019

P.C.:-

1] Respondent-employee, who was allegedly appointed as Cloth Cutter by the Petitioner-employer from December 2007, submitted proceedings against his illegal retrenchment, which were referred for conciliation. The conciliation proceedings since were not materialized, a Reference was made in accordance with the provisions of Section 12 sub-section (5) of the Industrial Disputes Act, 1947 on 12/07/2011 by Labour Commissioner. The said Reference came to be

answered against the Petitioner, thereby directing the Petitioner to re-instate the Respondent with 40% back-wages vide impugned Award dated 31/10/2014. As such, this Petition.

2] The submission of the learned Counsel for the Petitioner is, its Director who was actually looking-after affairs of the Company and also litigation in question, after marriage, was shifted to Singapore. According to him, subsequent thereto, Company shifted its operation to Delhi from Mumbai. In the aforesaid background, there is delay in filing the present Petition, which is bonafide.

3] The next limb of the submission of the learned Counsel for the Petitioner is, the Respondent was employed pursuant to the agreement entered into on 07/07/2009 which is at Exhibit-C-6, which is admitted in evidence by the Respondent. According to him, the alleged oral termination is of 08/10/2009. In the aforesaid background, he submitted that it cannot be inferred that pursuant to the contract of employment, Respondent has completed 240 working days in a year and as such, protection under the provisions of Section

25F is not available to the Respondent.

4] The next limb of submission of the learned Counsel for the Petitioner is, it is for the Respondent to establish that he is a workman and was in employment of the Petitioner since 2007. According to him, Respondent has removed cloth worth Rs 35,000/- and complaint to that effect was already lodged with the concerned Police Station. As such, it is also pleaded that the Petitioner has lost confidence in the Respondent-employee.

5] The learned Counsel for the Petitioner, in the aforesaid background, would urge that the order impugned, passed by the learned Labour Court, thereby answering the Reference in the affirmative i.e. in favour of the Respondent-employee, issuing direction of reinstatement with 40% back-wages, is liable to be quashed and set aside and the matter needs to be remanded to the learned Labour Court for fair and fresh opportunity of hearing to the Petitioner-employer.

6] Per contra, learned Counsel for the Respondent-employee, would urge that the order impugned in the form of Award is just and proper and the same is based on the proper appreciation of evidence. That being so, the order impugned does not warrant any interference. Apart from above, the objection is raised to the very maintainability of the Petition, which according to the Respondent, suffers from inordinate delay and laches. As such, dismissal of the Petition is sought.

7] The Award in question appears to be delivered on 31/10/2014, whereas Petition is tendered in this Court on 08/01/2019 i.e. almost after a period of five years. Only explanation tendered by Petitioner is shifting of in-charge director to Singapore. The fact remains that in spite of above, Company was carrying out its business. There is no convincing explanation for preferring the Petition in question after a lapse of period of five years. In the aforesaid background, Petition suffers from delay and laches.

8] Apart from above, Presiding Officer, while delivering the Award

in question, had regard to the evidence brought on record by the Respondent in the form of his salary slips, identity card, extract of the pass-book of the bank wherein salary was deposited and based on the said material formed an opinion that the Respondent has completed 240 days of service in the last preceding year and that being so, he is entitled for protection under Section 25F of the Industrial Disputes Act. It is pleaded and established by the Respondent-employee that he was employed in 2007 and his date of termination is 08/10/2009.

9] The fact remains that the Petitioner has not entered into witness box so as to demolish the case put-forth and build by the Respondent-employee.

10] In the aforesaid background, this Court hardly noticed any reason which warrants interference in the Award delivered by the Labour Court. Petition as such, is dismissed.

11] At this stage, learned Counsel for the Petitioner applies for stay of this Order.

12] Since the Petition itself is filed after a period of almost five years without explaining delay, in my opinion, prayer made for staying this order does not warrant any consideration and the same also stands rejected.

(NITIN W. SAMBRE, J.)