

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.90 OF 2008
IN
CIVIL APPLICATION NO.3108 OF 2007
IN
WRIT PETITION NO.8508 OF 2007

Vishay Components India Pvt. Ltd. .. Appellant

Vs

Pandurang Vithal Patil & Anr. .. Respondents

...

Mr. Rahul Nerlekar for the Appellant.

Mr. Avinash Belge i/b Mr. N.A. Kulkarni for Respondent No.1.

Mr. K.S. Bapat i/b Mr. Jayesh Desai for Respondent No.2.

**CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI H. DANGRE, J.**

DATED : 15TH NOVEMBER, 2019.

P.C:-

1. Heard learned counsel for the parties.
2. Respondent No.1 was an employee of Philips India Limited and was working in the Unit at Loni Kalbhor. Respondent No.1

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was issued a charge-sheet by Philips India Limited and his service was terminated on 24th December, 1997.

3. Respondent No.1 raised an Industrial Dispute which was referred to the Second Labour Court, Pune. Evidence led before the Labour Court resulted in the Labour Court concluding that the punishment of termination was grossly disproportionate. Reinstatement was not ordered on account of the fact that the Unit of Philips India Limited at Loni Kalbhor was taken over by the Appellant together with the workmen working therein as on 1st December, 1999. Respondent No.1 was by the said date, a terminated employee. The Labour Court also noted that another Unit of Philips India Limited at Bhosari had closed. Thus, the direction was to pay full back wages to Respondent No.1 from the date of his service being terminated till 31st December, 2003.

4. The workman challenged the Award by and under Writ Petition No.8508 of 2007 and filed an Application to implead the Appellant as a Respondent in the said Writ Petition on the plea that the Unit of Philips India Limited at Loni Kalbhor was initially taken over by M/s. B.C. Components India Private Limited followed by M/s. Vishay Components India Private Limited.

5. Noting the aforementioned facts vide impugned Order

dated 01st February, 2008, learned Single Judge has reasoned that the Unit of Philips India Limited wherein Respondent No.1 was working was taken over with employees as on 01st December, 1999 and if the Order of termination dated 24th December, 1997 was not there, Respondent No.1 would be an employee of the Company which took over the Unit.

6. The doctrine of Relation Back in service jurisprudence has been applied to enable the dismissed workman to advance arguments on the said aspect of the matter and thus has impleaded the Appellant as a Respondent in the Writ Petition.

7. Learned counsel for the workman urges that the doctrine of Relation Back would apply.

8. Suffice it to state that the doctrine of Relation Back would apply if the employer continues to be the same. In case where the Unit of a Company is sold, the liability on the successor has to be determined on the terms and conditions of the transfer and if it is not recorded that claims of terminated employees would be to the account of the Transferee, the Transferor continues to be liable. Thus, the claim of the workman has to be worked out with reference to the liability of the Philips India Limited and not the Appellant.

9. The Appeal is allowed. The impugned order dated 1st February, 2008 is set aside.

10. The Writ Petition filed by the Respondents would be decided by the learned Single Judge as per law.

(SMT. BHARATI H. DANGRE, J.) (CHIEF JUSTICE)