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

**WRIT PETITION NO.10107 OF 2017
WITH
WRIT PETITION NO.10108 OF 2017**

M/s. Sterling Auxiliaries Pvt. Ltd. .. Petitioner

Vs.

Avadesh Tiwari .. Respondent

Mr. Abhijeet Desai i/b. M/s. Desai & Desai Associates for the petitioner.

Mr. Rahul D. Oak for the respondent.

CORAM : A.K. MENON, J.

DATED : 26TH FEBRUARY, 2019.

P.C. :

1. Heard the learned counsel for the parties. These two petitions are filed by the employer. The petition no.10107 of 2017 seeks to challenge the award in Reference (IDA)no.250 of 2005.
2. Today at the hearing of the petitions for admission, the learned counsel for the petitioner states, on instructions, that the petitioner was always ready and willing to comply with the award. In the light of that statement this petition cannot survive. The petition no.10107 of 2017 is therefore liable to be dismissed in view of the above statement.

3. The only challenge is in writ petition no.10108 of 2017 is to an order at Exhibit U-2 dated 6th August, 2016 in Complaint (ULP)no.19 of 2016. The complaint in which the impugned order is passed under Section 28 is based on the allegations of unfair labour practices under item 9 of Schedule IV of the MRTU & PULP Act. There is no dispute that the respondent was working as a machine operator since 1987 and that his services have been terminated.
4. The grievance of the petitioner is that although they had offered to reinstate the respondent, the respondent has not reported to work. In the meantime, it is submitted by the learned counsel for the petitioner that the factory of the petitioner at Boisar is not now in operation pursuant to disruption of the activities of the union and as a result of some fire. It is stated across the bar that the petitioner is willing to accommodate the respondent by reinstating him at their factory at Dahej. However, as regards the issue of back wages, there is a dispute.
5. According to the learned counsel for the petitioner, after passing of the award, demand notice dated 23rd September, 2015 had been received by the petitioner company. A reminder dated 8th December, 2015 has also been received, pursuant to which the company had vide their letters dated 14th December, 2015 conveyed to the respondent's

Advocate that they would reinstate the respondent and pay him back wages as per the award. This is to be seen at Exhibit H to this petition. The offer to reinstate the respondent at Dahej was also communicated to the respondent personally as also vide letter dated 14th December, 2015 part of Exhibit H collectively. By that letter, the respondent was advised to report at Dahej within four days. The letter also records that payment of back wages would be made after completing formalities. However, in the meantime, the respondent filed the subject complaint before the Industrial Court, Thane.

6. It is the case of the petitioner that although they were willing to comply with the award, the respondent was not inclined to join and therefore had filed the complaint. In that complaint, an interim application was moved claiming for deposit of back wages. The petitioner filed a reply to the interim application in which it has reiterated that the petitioner company would comply with the award and also pay some advance to the respondent to enable him to report at Dahej. In fact the petitioners sought a direction from the Industrial Court directing the complainant (respondent herein) to report at Dahej and collect the amount of his back wages. This averment is seen in paragraph 1(c) of the reply dated 12th March, 2016. Be that as it may, an additional affidavit came to be filed. The copy of the affidavit is

annexed to this petition is undated. A further affidavit by way of reply is seen to be filed on 20th April, 2016 on behalf of the company by its legal officer denying the contentions of the respondent. The contention of the petitioner in that reply is that the respondent had failed and neglected and avoided reporting to work at Dahej. The deponent has also taken objection to the statement in the additional affidavit to the effect that the respondent had transferred some of their employees to a sister concern at Boisar and has further submits that the petitioner had appointed the respondent in the year 1987 and provided him work at M/s. Triumph Non Ionics Pvt. Ltd. The controversy is as a result of the mis-description of the name since according to the petitioner and as canvassed before me today M/s. Triumph Non Ionics Pvt. Ltd. is not a sister concern and a false statement has been made in that behalf in paragraph 5 of the additional affidavit. Nothing else has been shown to me as perverse in the impugned order. A further submission is made that the impugned order incorrectly recorded that no affidavit was filed by the petitioner.

7. Apropos the affidavit filed by the respondent in relation to the alleged sister concerns viz. M/s. Triumph Non Ionics Pvt. Ltd. and M/s. Omtech Chem Ind. Pt. Ltd. I do not see how this misconceived notion can affect the compliance with the award since the petitioner company had already accepted the award.

8. The other grievance made before me is that upon failure to comply with the award, the payment of back wages would entail payment of interest @ 12% p.a. after two months and further that if the order of reinstatement was not complied with, the respondent would be entitled to full back wages with effect from 1st September, 2016 till he has been reinstated. In the light of the fact that reinstatement was offered vide the company's reply dated 14th December, 2015 there is no occasion for the respondent to take advantage of his own wrong and not report to work. In view of the above, no interference is called for to the impugned order. In my view, ends of justice will be satisfied by passing the following order;

(i) Writ petition no.10107 of 2017 is dismissed.

(ii) The petitioner shall pay back wages as per the award within a period of four weeks from today by paying the arrears along with interest @ 6% p.a. In view of the above, writ petition no.10108 of 2017 is also dismissed.

(iii) Both writ petitions are disposed in the above terms.

(A.K.MENON,J.)