

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO. 299 OF 2004
IN
CIVIL APPLICATION NO.1511 OF 2003
IN
WRIT PETITION NO.4862 OF 2000

M/s.Telco Employees' Consumers
Co-op Society Limited .. Appellant
Versus
Ramchandra Mahadeo Gargote & Anr .. Respondents

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Mr. K.S. Bapat for the appellant.
Mr. R.S. Khadapkar for respondent no.1.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 7th NOVEMBER, 2019

P.C:-

- 1 Heard learned counsel for the parties.
- 2 Challenge in the Appeal is to an order dated 5th May 2004 passed by the learned Single Judge allowing respondent's application under Section 17B of the Industrial Disputes Act directing last drawn wages to be paid to the respondent pending hearing of the writ petition filed by the appellant.

3 The appellant had challenged an award holding respondents' services to be terminated illegally and as a consequence directing his reinstatement with 50% back wages. The award was stayed upon the condition that 50% back wages be deposited in this Court; which has since been withdrawn by the respondent.

4 The appellant had contested the application filed by the respondent seeking last drawn wages under Section 17B of the Industrial Disputes Act, 1947 by pleading that the respondent was gainfully employed as an agent of LIC having registration No.LIC-14026957 and was earning Rs.5,000/- per month. In response to the said reply by the appellant, the respondent has admitted working as an agent of the LIC but pleaded that his income as an agent was meager. In the year 2001-02, it was Rs.35,265/- and in the year 2002-03 it was Rs.61,350/-.

5 Vide impugned order dated 5th May 2004, the view taken by the learned Single Judge is that employment as an LIC agent was not a secured employment. It has been held that unless there was a secured alternative employment, it could not be said that the respondent was gainfully employed.

6 At this stage, we note that the writ petition filed by the appellant challenging the award directing reinstatement of the

respondent has been set aside. 50% back wages received by the respondent was required to be reimbursed. Challenge to the said decision failed before the Division Bench and the petition seeking Special Leave to Appeal filed before the Supreme Court has also been dismissed but with a direction that the back wages received by the workmen would not be refunded.

7 The view taken by the learned Single Judge as per order dated 5th May 2004 is incorrect. Gainful employment can be as an agent. The respondent who was earning Rs 2,000/- per month while working under the appellant started earning more as an agent of the LIC.

8 We allow the Appeal and set aside the impugned order dated 5th May 2004.

9 If the appellant has deposited any sum in this Court pursuant to the order dated 3rd February 2004 the same shall be refunded to the appellant but if the appellant has paid any wages to the respondent in terms of the impugned order, the same shall not be recovered.

9 No costs.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE