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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.43 OF 2017

Nashik Municipal Corporation, Nashik
Through Commissioner

...Petitioner

vs

Smt. Anju Manoj Jedhe

...Respondent

WITH

CIVIL APPLICATION NO.872 OF 2019

IN

WRIT PETITION NO.43 OF 2017

Smt. Anju Manoj Jedhe

...Applicant

vs.

Nashik Municipal Corporation, Nashik
Through Commissioner

...Respondent

.....

Mr. Shekhar Jagtap, a/w. Ms. Sairuchita Chowdhary, i/b. J. Shekhar & Co., the Petitioner.

Mr. Bennet D'Costa, a/w. Ms. Jignasha Pandya, for the Applicant in Civil Application and Respondent in the Writ Petition.

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CORAM : S.C. GUPTE, J.

DATED: 12 DECEMBER, 2019

P.C. :

. Heard learned Counsel for the parties. This petition challenges an order passed by the Labour Court at Nashik on a reference made to it under the Industrial Disputes Act. The subject matter of the reference concerns reinstatement of the Respondent herein (original second party before the reference court) with continuity of service and

full back wages.

2. The Respondent was working as a safai kamgar with the Petitioner Corporation since May 1998. It was her grievance that she was not allowed to resume service with effect from 8 September 2000, after she went on leave for medical treatment from 8 August 2000. She had produced the requisite medical certificates to justify her absence till she proceeded to resume her duties on 29/30 September 2000. Her case was that she had continuously worked for more than 240 days in a year the employment of first party Corporation and having been appointed in a perennial post, she was entitled to be made permanent. Since, by refusing to allow her to resume duties, she was terminated by the first party Corporation, she applied to the State for a reference. On the reference, after allowing the parties to lead evidence (the second party having actually led oral evidence and the first party employer not having adduced any oral evidence), the labour court held that the second party had proved that her services were illegally terminated by the first party and she was entitled to reinstatement. One of the main submissions before the labour court, which is also pressed in the present writ petition, is that there was an inordinate delay on the part of the Respondent herein in approaching the reference court. The court did not countenance the argument of delay, since delay was not raised as an objection in the written statement of the first party. So also, there was no cross-examination of the second party employee on the point of delay in the reference. The labour court's approach on the subject of delay cannot be termed as either unreasonable or perverse. In the first place, the Industrial Disputes Act does not provide for any particular period of

limitation. Even if it is to be assumed that the aggrieved party must make a reference within a reasonable time, the question whether or not the delay was unreasonable was not a pure question of law. It was a mixed question of law and facts. In that case, the party alleging a case of actionable delay ought to have laid a foundation in his pleadings and evidence in support of his case. As the labour court has noted in the impugned order, there was no such pleading in the written statement nor was any suggestion made to the second party workmen in his cross-examination in the reference. There is, accordingly, no infirmity in the conclusion of the labour court.

3. It is an accepted position that the Petitioner Corporation had proceeded to regularize services of merely 700 out of its 1205 safai kamgars working on daily wages. It is also not in dispute that the Respondent was not regularized on account of her absenteeism. So far as the absenteeism itself is concerned, there was adequate material in support of her case that she was prevented from attending the work by a reasonable excuse. She has produced the necessary record in support of her application for leave. In fact, the Corporation appears to have addressed a letter to the Urban Development Department seeking the latter's instruction on whether to regularize the Respondent in service on the basis of her representations made to the Corporation from time to time. This letter was addressed sometime in 2011. The response of the Urban Development Department was that the Corporation was free to take a call on the subject, since such regularization did not envisage any sanction on the part of the Government. It is thus apparent that the Corporation itself was at one particular juncture, and that as recent as in

2011, was contemplating to reinstate the Respondent employee. On these facts, the impugned order of the labour court, which merely allows reinstatement with continuity of service without any back wages, does not deserve to be interfered with in the writ jurisdiction of this Court.

4. Accordingly, the writ petition is dismissed.

5. It is made clear that the petition is decided on its own peculiar facts and circumstances and cannot be cited generally as a precedent for condoning delay or otherwise.

6. Since the petition itself has now been disposed of by confirming the order of the labour court, the civil application does not survive and is dismissed.

Smita
Gonsalves

Digitally signed by
Smita Gonsalves
Date: 2019.12.21
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(S.C. GUPTE, J.)