

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

WRIT PETITION NO.12976 OF 2018

Aesseal India Pvt. Ltd. ... Petitioner
Versus
Shri Shridhar Ramchandra Shevale ... Respondent

.....

Mr. A.D. Patwardhan a/w Mr. T.R. Yadav for the Petitioner.
Mr. A.S. Rao for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATE : 13 DECEMBER 2019

P. C. :

. The writ petition challenges an order passed by the Labour Court at Pune on a reference made to it under Section 12(5) of the Industrial Disputes Act, 1947. The reference concerns whether the Respondent, who was the workman of the Petitioner, was illegally terminated on 31 October 2014.

2 The brief facts of the case indicate that the Respondent (original second party) was working as a Rubber Technician with the Petitioner company (original first party) since 1 September 2009 in a permanent job. His service record was clean and unblemished. It is the case of the second party workman that on 31 October 2004, an officer of the first party, one Mozes Mahankale, forced the second

party to sign on a blank paper and thereafter, orally terminated his services illegally and without following due process of law. The first party has not paid any legal dues or gratuity to the second party. The second party, in the premises, raised a dispute concerning his termination before a conciliation officer and in the course of time a reference came to be made by the appropriate government to the labour court. The first party appeared and filed its written statement, denying all contentions of the second party. The case of the first party was that the workman had voluntarily tendered his resignation and that it was accepted by the first party and that he was relieved from his duties. On the rival pleadings, issues concerning termination or dismissal of second party and its justification or legality were framed by the labour court.

3 The labour court, in the first place, observed that it was an accepted position that the second party was working with the first party since 2009 and that he was a permanent employee. It was the contention of the second party that on 31 October 2014, a stated officer of the first party obtained his signature on a blank paper and orally terminated him from services without following due procedure of law. The court observed that though the initial burden lied on the second party to prove his contention, he had discharged it by his oral evidence. The entire case was based only on an oral testimony of the second party; the resignation was not otherwise proved by the first party by any admissible evidence. The court observed that that it was not the case of the second party that his resignation was

forcefully obtained by the first party under undue influence or coercion. He only contended that his signature was taken on a blank paper. He had specifically pleaded and deposed to the name of officer (Mhankale), who was responsible for this act. Mahankale was working as H.R. Manager with the first party. The court observed that the second party had deposed on oath about his alleged illegal oral termination; he was not cross examined by the first party on this point. The court observed that the first party, who had rebutted the contention of the second party, had neither examined any witness nor filed any documentary evidence on record, except the alleged original resignation letter. Since this letter was specifically denied by the second party, the burden to prove his resignation, and its acceptance and communication of such acceptance by the first party, had shifted to the first party. No evidence was brought on record by the first party to rebut the contention of the second party. The court particularly observed that there was no evidence to show that after receipt of resignation, its acceptance was communicated by the first party to the second party. The court observed that even if it is presumed that the resignation was voluntary, whether, in pursuance of such resignation, the second party was relieved upon payment of legal dues and other benefits, was an outstanding question and there was no clarity on the same so far as the first party was concerned. Nothing was brought on record in this behalf by the first party. The court noted that the best documentary evidence in this behalf ought to be available with the first party and since no evidence was produced, it was reasonable to accept that the first party had

terminated the services of the second party without following due procedure of law and the termination was, thus, illegal.

4 These observations of the labour court indicate a fair and reasonable assessment of the materials on record. The impugned order of the labour court is supported by some evidence. All relevant and germane circumstances and materials have been considered by the labour court; and no non-germane or irrelevant circumstance or material is taken into account for arriving at these conclusions. The order is clearly within jurisdiction and suffers from no perversity.

5 The writ petition, accordingly, does not merit acceptance. The writ petition is dismissed.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

Digitally signed
by Rajesh V.
Chittewan
Date: 2020.01.13
15:34:10 +0530