

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

WRIT PETITION NO. 12680 OF 2019

M/s.Mehta Sawantraj Hanwantraj
(Mehta Emporium)

...Petitioner

vs.

Shri Ramashankar Harihar Dwivedi

...Respondent

Mr.Nagesh Chavan i/b. Deep Thakkar and Falguni Kotak for Petitioner.
Ms.Seema K. Chopda with T.R. Yadav and F.R. Mishra for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 16 DECEMBER 2019

PC. :

This writ petition challenges an order passed by the Labour Court at Mumbai on a reference made to it under the Industrial Disputes Act. The subject matter of dispute was the demand of the Respondent herein (original second party before the Labour Court) for reinstatement in service with full backwages and continuity of service with effect from 1 June 2012.

2 According to the second party, he was employed by the Petitioner herein (original first party) as a counter salesman at their shop where he worked continuously, regularly and permanently, for the period between January 1980 till 1 June 2012 and his last drawn wages were Rs.18,000/- per month. These averments have been disputed by the first party. It was submitted that the second party was on sanctioned leave on and from 6 April 2012 till 23 May 2012, whereafter he joined duty and worked till 1 June 2012; whilst on duty, the second party demanded his unpaid earned wages, whereupon one of the partners was annoyed and

pushed him out of the shop and orally demanded that no work would be assigned to him thereby terminating his service. This termination was challenged by the second party as an illegal termination. Before the Labour Court, the first party claimed that there was no termination and that the management of the first party had in fact called upon the second party to report on duty but that he had failed to resume duties. On these facts, evidence was led by both parties. After considering the evidence, both oral and documentary, the Labour Court came to a conclusion that it was apparent from the evidence that the second party's leave had been always orally sanctioned by one Vimlesh Mehta and that for the particular period, leave was orally sanctioned for the second party. The court was of the view that the story narrated by the first party in its written statement as well as evidence affidavit that the second party had himself left services and remained absent could not be accepted. The court was of the view that the evidence made out a case that on and from 1 June 2012, the services of the second party were orally and illegally terminated by the first party and that the termination was liable to be set aside and the second party reinstated in service.

3 No infirmity can be found with the assessment of evidence by the Labour Court in this behalf. The view expressed by the Labour Court is clearly a possible view, which is supported by some evidence. No irrelevant or non-germane circumstance or material appears to have been considered. So also, no relevant or germane material or circumstance appears to have been disregarded for arriving at this conclusion. No fault can be found, accordingly, with the order of reinstatement.

4 Coming now to the benefit of full backwages, the Labour Court

has not indicated what the backwages should be. In fact, if one has regard to the impugned order (in paragraph 18), the Labour Court appears to have come to a conclusion that the last drawn wages of the second party were Rs.8000/- per month and that this was verified from the wage register maintained by the first party, though it was the case of the second party in his evidence that his last drawn salary was Rs.18,000/- per month. The court having particularly found that there was no document in support of the second party's case and the wage register showed that his last drawn wages were Rs.8,000/- per month, the order of backwages must be on the basis of last drawn wages of Rs.8000/- per month. Backwages computed, accordingly, shall be paid by the Petitioner to the Respondent within eight weeks.

5 No fault can be found with the order of continuity of service. On these facts, the consequential relief of continuity of service must follow.

6 Apropos the argument of learned Counsel for the Petitioner first party that the Respondent second party is not fit any longer to work, there being no such case urged before the Labour Court, no such case can be entertained in the present writ petition. Liberty is, however, reserved unto the first party employer to assess the suitability of the Respondent to continue in service based on his state of health. The first party is within its rights to insist on a fitness certificate from the Respondent and assess the matter for itself.

7 The writ petition is disposed of accordingly.

(S.C. GUPTE, J.)