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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3360 OF 2018

M/s. Casby Logistics Pvt. Ltd.

..Petitioner.

V/s.

Chandresh Fouzdar

..Respondent.

Mr.S.C.Naidu with Manoj Gujar & T.R.Yadav I/b. C.R.Naidu & Co.
for the petitioner.

Mr.Sanjay Singhvi, Senior Advocate with Ms.Shobana Gopal for
the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 15, 2019

P.C.:-

Heard respective counsel.

2. In this petition, the order passed by the Labour Court in exercise of powers under section 33(C)(2) of the Industrial Disputes Act, 1947 ('the Act' for short), on June 10, 2010 in Application (IDA) No.332/2004 and the order dated May 22, 2018 passed by the same Court rejecting an application for restoration moved under Rule 26(2) of the Industrial Dispute (Bombay) Rules, 1957 ('the Rules' for short) is subject matter of challenge.

3. Vide order dated June 10, 2010, the learned Labour Court has allowed the claim of the respondent-employee

claiming suspension allowance of an amount of Rs.3,85,056/- with 6% interest. I am informed at this stage that the order dated June 10, 2010 passed by Labour Court is honoured and the respondent-employee has withdrawn the amount (transmitted to the respondent-employee).

4. The order dated May 22, 2017 dismissing the restoration is questioned on the following ground :-

a) The lawyer, engaged by the petitioner to defend the matter before the Labour Court has discontinued practice. In view of the aforesaid default of the lawyer, the right of the petitioner is prejudiced.

5. Mr.Naidu, learned counsel submitted that the order dismissing the restoration sans reasons. As such, according to him, the order is liable to set aside. One more aspect of which this Court is required to take note of is, at the behest of the petitioner, in a similarly based situation, the same Labour Court granted the restoration on December 22, 2010 in Restoration Application (IDA) No.45/2010 and as such, the principle of parity is sought to be invoked.

6. So far as allowing the claim of the respondent-employee vide order passed on June 10, 2010 is concerned, same is alleged to be contrary to the pleadings and evidence

of the respective parties. It is also canvassed that the employee has misrepresented himself on the issue of claim, in the evidence before learned Labour Court as communication dated December 4, 2012 asking the respondent to resume work is not honoured.

7. Mr.Singhvi, learned senior counsel would support the order passed. According to him, both the orders are supported by the reasons which are based on analysis of pleadings, evidence and contentions of the parties. According to him, the petition is liable to be dismissed as the same is only of academic importance as the order impugned is already complied with.

8. Considered rival submissions.

9. So far as refusal of prayer for restoration is required to be dealt with first. Petitioner's claim that prayer of restoration deserves to be granted on the principles of parity. Mr.Naidu has invited attention of this Court to the order passed on December 22, 2010 in restoration application No.45/2010 whereby the same Labour Court in the matter between the same parties, has allowed the prayer for restoration moved by the petitioner on almost similar cause.

10. If the contention of the petitioner is appreciated,

what is required to be noticed is the fact that the petitioner was facing other similar proceedings viz. IDA 332/2004, IDA 179/2006, is not in dispute when the order of restoration passed therein on which reliance is placed for parity. As such pendency of first application being (IDA) No.37/2004 for similar relief was well within the knowledge of the petitioner. The petitioner, in spite of the same was not diligent enough in pursuing the proceedings before the learned Labour Court. Before the order impugned came to be passed the petitioner employer participated in the said proceedings upto the stage of recording evidence. The Labour Court has allowed the claim of the respondent employees based on merits of the matter and not exclusively on the default of the petitioner vide order dated June 10, 2010. After a lapse of seven long years the application for restoration is moved on illogical and not sustainable reasons. Apart from above, the fact remains that the order on which reliance is placed for invoking the principles of parity is passed on the facts of that matter.

11. As a consequence of above, the fact remains that there is sufficient material to infer that the petitioner has failed to demonstrate sufficient cause for its non appearance, in support of his prayer for restoration. The order of refusal to

grant prayer for restoration is very much justified. So far as the issue as regards the order impugned sans reason is concerned, the order refusing restoration in categorical terms had considered the pleadings raised by the petitioner in support of the prayer, which are very much appreciated by the learned Labour Court. The Labour Court, as such has reached to a conclusion that the petitioner has failed to demonstrate sufficient cause for remaining absent in the midst of the proceedings. The fact that the petitioner was pursuing the other two applications for similar relief after the order dated June 10, 2010 cannot be ignored.

12. That being so, the order of refusing restoration, in my opinion, does not warrant any interference.

13. So far as the order impugned dated June 10, 2010 wherein directions are issued to the petitioner to pay an amount of Rs.3,85,056/- is concerned, the same is questioned on the ground that the respondent-employee was granted reinstatement by revoking the suspension. So as to substantiate the said claim, communication dated December 4, 2003 is sought to be relied upon. However, in its evidence, the petitioner has failed to prove the said evidence as has been done in other two cases.

14. In my opinion, the order which was passed on June 10, 2010 need not be interfered by this Court, particularly having regard to the fact that;-

(a) The said order is already complied with;

(b) The order is questioned before this Court after almost a period of eight years and for the said inordinate delay, there is no convincing explanation.

15. In view of the above, in my opinion, the contentions raised on the issue of re-appreciation of evidence by this Court in the matter cannot be justifiable.

16. Learned counsel for the petitioner invited the attention of this Court to the judgment of the Apex Court in the matter of *Municipal Corporation of Delhi V/s. Ganesh Razak & Anr.*¹, particularly paragraph 12. In my opinion, even the said judgment will be of hardly any assistance in view of the reasons recorded hereinabove. As such, the petition lacks merits and is dismissed.

(NITIN W.SAMBRE, J.)

¹ 1995 ! CLR 170