

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.399/2017

M/s. Team Ferro Agro Power Plant

..Vs..

Shri Pyarelal B. Pardhi

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Alok Daga, Advocate for the petitioner.

Shri N.G. Moharir and N.L. Hemne, Advocates for the respondent.

CORAM : Z.A. HAQ, J.

DATE : 3.1.2019.

Heard.

The employer has challenged the award passed by the Labour Court answering the reference in favour of the respondent / employee, setting aside the order of termination of his services and directing the petitioner / employer to reinstate the employee with continuity of service and back-wages.

According to the petitioner / employer, the finding recorded by the Labour Court that the employee was in service of the petitioner / employer for more than 240 days in the year preceding the termination order is unsustainable as the evidence brought on record by the employee is not sufficient to record such finding. The relevant considerations are in paragraph Nos.8 to 10 of the impugned award. The conclusions are summed up in paragraph No.11 of the impugned award as follows:

“11. Party No.1 has not brought any evidence on record to show that Team Ferro

Alloys Power Ltd. and Gayatri Agro Industrial Power Ltd. are two different and distinct companies. However, they have contended that Team Ferro Alloys Power Ltd. has purchased the company from Gayatri Agro Industrial Power Ltd. In support of their contention, they have examined Jagannath Suresh Unkapudi at Exh.58. It has come in the evidence of this witness that Team Ferro Alloys Power Ltd. has purchased Slico Manganese Plant from Gayatri Agro Industrial Power Plant. It has come in the evidence of Party No.2 that he was working with Gayatri Agro Industrial Power Ltd. since the year 2005 and he was appointed by Party No.1 after purchase of plant on 1.11.2009. Thus, it becomes clear that his services were continued by Party No.1 since 2005. Party No.1 has not produced any evidence on record to show that full and final payment was made by Gayatri Agro Industrial Power Ltd. to Party No.2 and his services were terminated by Gayatri Agro Industrial Power Ltd. which shows that the services of Party No.2 was continued by Party No.1.....”

The petitioner has not been able to point out that the conclusions recorded by the Labour Court suffer from any perversity.

Further submission on behalf of the petitioner / employer is that the Labour Court has committed an error by directing the employer to pay full back-wages to the employee. According to the employer, the employee has not produced any evidence on record to substantiate his claim that he was not gainfully employed during the period after termination of his services. The learned Advocate for the employee has

pointed out the pleadings in paragraph No.7 of the statement of claim. The employee discharged the preliminary burden of pleading that he was not in gainful employment during the relevant period. The employer has failed to lead evidence to rebut the claim of the employee.

In the above facts, I see no reason to interfere with the impugned award. It cannot be said that the Labour Court has committed any error of jurisdiction which necessitates interference by this Court in the extra-ordinary jurisdiction. The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

The amount deposited by the petitioner before the Labour Court alongwith interest on it, if any, be given to the respondent / employee.

JUDGE