

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7970/2018

Suresh Gundaramji Meshram,
 Aged 40 years, Occu. Nil.
 R/o Gose (Buj) Tah. Paoni, Dist. Bhandara.

... **PETITIONER**

...V E R S U S...

- 1] Secretary,
 Bhandara Zilla Patbandhare Shaskiye
 Karmachari Sahkari Pat Sanstha,
 Reg. No.155, Apna Nagar, Takiya Ward,
 Bhandara.
- 2] President,
 Bhandara Zilla Patbandhare Shaskiye
 Karmachari Sahkari Pat Sanstha,
 Reg. No.155, Apna Nagar, Takiya Ward,
 Bhandara.
- 3] Manager,
 Bhandara Zilla Patbandhare Shaskiye
 Karmachari Sahkari Pat Sanstha,
 Reg. No.155, Apna Nagar, Takiya Ward,
 Bhandara.

..... **RESPONDENTS**

 Shri A.A.Dhawas, Advocate for petitioner.
 None for respondents though duly served.

CORAM : A.S.CHANDURKAR, J.
DATED : 31.07.2019

ORAL JUDGMENT

Despite service the respondents have not chosen to contest the prayers made in the writ petition. Accordingly, the learned counsel for

the petitioner has been heard by issuing **Rule** and making the same returnable forthwith.

2. The petitioner claims to have been appointed as a peon with the respondents. It is his grievance that without giving him any show cause notice his services came to be terminated. He raised a grievance before the Additional Commissioner of Labour who thereafter made a reference under Section 10 of the Industrial Disputes Act, 1947 for being adjudicated by the Labour Court. Before the Labour Court, the petitioner failed to file his statement of claim. On that count, the learned Judge of the Labour Court on 09.11.2017 observed that since the petitioner failed to substantiate his claim by filing any documentary evidence, the reference was liable to be answered in the negative. The petitioner on 18.01.2018 filed an application under Rule 26 of the Industrial Disputes (Bombay) Rules, 1957 praying that as the award had been adjudicated in his absence, the proceedings be restored. On that application the respondents gave their no objection. The learned Judge of the Labour Court on 04.09.2018 rejected that application on the ground that the reference was decided on merits and hence there was no question of restoring the same. Being aggrieved, the present petition has been filed.

3. Heard Shri A.A.Dhawas, learned counsel for the petitioner and perused the documents on record. The award dated 09.11.2017 indicates

that the petitioner failed to file his statement of claim or any other documentary evidence. In view of this fact, the reference was answered in negative. In other words in absence of there being any statement of claim, there was no adjudication on merits and the proceedings were dismissed. The request for restoration of the proceedings was not objected to by the respondents. This is clear from the say given by them on 08.06.2018. The learned Judge of the Labour Court was not justified in observing that the reference was decided on merits. When the statement of claim itself was not filed, question of deciding the reference on merits would not arise. The application as filed by the petitioner was liable to be allowed and by dismissing the same, the learned Judge of the Labour Court erred in not enabling an adjudication on merits.

4. In that view of the matter, the order dated 04.09.2018 is set aside. Similarly, the proceedings in IDA No.13/2017 are restored after setting aside the order dated 09.11.2017. The said reference proceedings be adjudicated after giving due opportunity to both the parties. The writ petition stands allowed in aforesaid terms. No orders as to costs.

JUDGE

Andurkar..