

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5339 OF 2017

Mr. Pankajseth Jayantilal Jakharia	...	Petitioner
Versus		
Mr. Ramasare Hiralal Nishad		
And Others	...	Respondents

Mr. Rahul D. Oak a/w Siddhesh S. Shetye for the Petitioner.
Mr. Aslam M. Shaikh for Respondent No.1.
Ms. Vaishali Nimbalkar, AGP for Respondent No.4.

CORAM : S.C. GUPTE, J.

DATE : 27 FEBRUARY 2020

P.C. :

. Heard learned Counsel for the parties.

2 This writ petition challenges an award passed by the Labour Court at Thane in a reference made to it under Section 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947. Respondent No.1 herein, who was the original second party, was claiming reinstatement with full back wages and continuity of service in the reference. The Petitioner herein, who was the original first party, was contesting the relationship of employer and employee between the parties and jurisdiction of the Labour Court on that basis. It is not in dispute that the second party had stepped into witness box and

deposed to his employment and also salary received by him from 5 September 1998 until his services were terminated on 20 September 2001. He had filed two complaints in 2001 in respect of his termination. These complaints were also followed by an application made by Respondent No.1 under Section 33C-2 of the Industrial Disputes Act 1947. The application was allowed and the Petitioner herein was directed by the Labour Court to pay overtime wages as well as leave wages to the Respondent workman. The court, whilst considering the evidence, also noticed that the Petitioner employer was called upon to produce documents, such as attendance register and salary register, but failed to produce these documents. The Labour Court, in the premises, was of the view that adverse inference needed to be drawn against the first party that the second party was its employee.

3 No infirmity can be found either with the approach or the conclusion arrived at by the Labour Court. The Labour Court was perfectly within its rights to draw an adverse inference, since in case of an employment such as this, where the employee has not been appointed by any appointment letter or paid wages upon salary slips, much would turn on documents such as wage register or salary register. In this case, it has come on record that the first party was maintaining attendance register as well as salary register. The first party was called upon by the court by an order passed in the course of the reference to produce these documents. It is not in dispute that the documents were not produced by the first party. In the premises,

it was legitimate to draw an adverse inference against the first party.

4 So far as the conclusion of the labour Court is concerned, it is certainly supported by some evidence on record. It does take into account all relevant circumstances and materials available before it, and does not consider any irrelevant or non-germane material or circumstance. The conclusion, in the premises, cannot be termed either as impossible or perverse.

5 Accordingly, there is no merit in the writ petition. The petition is dismissed.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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by Rajesh V.
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