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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7491 OF 2019

Rohini International Co.

...Petitioner

vs

G. Lilly Chettiar

...Respondent

.....

Mr. Ashok D. Shetty, a/w. Mr. Swapnil P. Kamble and Dr. S.N. Jadhav,
for the Petitioner.

Mr. B.K. Ashok, i/b. Bekay Legal, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: 28 JANUARY, 2020

P.C. :

. Heard learned Counsel for the parties.

2. This writ petition challenges an award passed by the Labour Court at Mumbai on a reference made to it under Sections 10(1) and 12(5) of the Industrial Disputes Act, 1947 ("Act"). The subject matter of reference concerned the alleged oral termination of the Respondent herein (original second party before the reference court) by the Petitioner herein (original first party).

3. The second party was appointed as an unskilled worker by the first party vide appointment letter dated 7 February 1994. Her last drawn wages were Rs.10,400/- per month. It was her case that the first party called her in the month of October 2014 and insisted on her

submitting a resignation from the employment. It was submitted that the management, thereafter, started harassing her. It was submitted that the employer orally terminated her services without following due process of law with effect from 1 November 2014. The Industrial Court found in favour of the second party. The court was of the view that the second party had proved that her services were orally terminated on 1 November 2014 by the first party and that she was entitled to full back wages and consequential benefits from 1 November 2014.

4. Learned Counsel for the Petitioner, whilst challenging this award, submits that the Labour Court has erroneously come to a conclusion that the second party was a workman, when she was lastly working with the first party as a production supervisor and was not a workman as defined under the Act. The court considered the second party's contention that she was doing the job of checking and packing of goods. The court noted that this fact was admitted by the witness of the company examined at Exhibit C-7, whilst under cross-examination. The court noted that there was no document on record to show that the nature of duties of the second party was that of a supervisor. Even in cross-examination, the second party maintained that she was doing the job of checking, packing, making challans, etc.; she used to check the product and send it to the packing department. Learned Counsel for the Petitioner submits that this admission of the second party in her cross-examination itself indicates that she was doing supervisory work. Supervision implies supervision over men and not over machines or production process. The conclusion of the Labour Court that the second party was a workman within the meaning of the Act is clearly a possible

conclusion. It is supported by some evidence on record. The court has taken into account all relevant and germane materials and circumstances and has not considered any irrelevant or non-germane material or circumstance for arriving at its conclusion. No interference is, accordingly, warranted in the matter of such conclusion.

5. Learned Counsel for the Petitioner, secondly, submits that there was no material before the court to indicate that the second party was terminated orally or otherwise and that there was, in fact, material before the court to indicate that the employer had called upon the second party to resume her duties. As the court has noted in its award, (paragraph 10) it had come on record in the cross-examination of the employer's witness (Exhibit C-7) that the workman was advised to leave the job as the work was slack. There was a letter of the employer on record (letter dated 11 November 2014), which was filed at Exhibit U-9, offering her full and final settlement amount. As per that letter, the last working day of the second party was shown as 31 October 2014. The company's witness also admitted that between 31 October 2014 and 11 November 2014, the company had not written any letter or addressed any notice to the second party workman. So also, even in the reply filed by the employer at the stage of conciliation (Exhibit U-10 – dated 13 December 2014), the workman was not asked to join the duty. The Labour Court noted that there was no document on record to show that before the second party approached the reference court, she was asked to resume the duty. The Labour Court, in the premises, came to a conclusion that the first party had failed to prove that the workman had abandoned her service. The court observed that the evidence on record

clearly indicated that the employer had asked the workman to leave the job. The court observed that such termination was without following due process of law and, in particular, in contravention of Section 25-F of the Act. Once again, this conclusion cannot be faulted as perverse or unreasonable.

6. Learned Counsel for the Petitioner, lastly, submits that there was no pleading or evidence on record that the second party was without any job or that she was entitled to full back wages. There is testimony of the second party on record that she was not employed since her termination. She stated on oath that she had tried to get a job but could not get it. Once the workman makes out a case in his or her deposition that there was no gainful employment on his or her part since termination, the onus to prove that the workman was gainfully employed during the relevant period shifts onto the first party. The court noted, in this behalf, that the first party had not produced any evidence to show that the second party was gainfully employed. Even this conclusion, being a reasonable and possible conclusion, does not merit any interference. The conclusion is in keeping with the law on the subject.

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