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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2109 OF 2018

Association of Engineering Workers

...Petitioner

vs

Permanent Magnets Ltd.

...Respondent

.....

Mr. R.D. Bhat, for the Petitioner.

Ms. Anjali Purav Yajurvedi, for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATED: 6 JANUARY, 2020

P.C. :

. Heard learned Counsel for the parties. This writ petition challenges an award passed by the Industrial Tribunal at Thane on a reference made to it by the appropriate Government under the Industrial Disputes Act, 1947. The controversy concerns permanency claim of 18 workmen of the Respondent establishment, whose names were listed in Exhibit "A" to the statement of claim originally filed in the reference. The Court is informed that out of these 18 workmen, 5 have expired and one has superannuated, so that the present writ petition is now being maintained on behalf of 12 workmen.

2. Originally, a reference was made to the Industrial Tribunal as far back as in 2002 for the same demand, namely, permanency for casual workmen working with the Respondent establishment. As of that

date, there were about 43 casual workmen working with the Respondent. During the pendency of that reference, some workmen resigned, whereas some others did not pursue their claim any further. As a result, the reference survived only in relation to 18 workmen (on whose behalf the present reference was filed). At that stage, by its award, the Industrial Tribunal directed permanency to these 18 workmen with effect from the date of the reference, i.e. 29 October 1993; the Respondent establishment was directed to pay wages and other benefits that were available to the other permanent workmen of the establishment. The award was challenged in a writ petition before this Court (Writ Petition No.1709 of 2003); it was stayed during the pendency of that petition. A learned single Judge, who passed final order on the petition (order dated 23 August 2006), held that, in the first place, the burden of establishing continuous service of 240 days lay on the workmen claiming the benefit of permanency and that mere completion of 240 days would not entitle the workmen to claim permanency; there ought to be evidence to indicate that the concerned workmen had completed 240 days of service in a calendar year. The court was of the view that for various reasons, including for want of documentary material on record, the award granting benefit of permanency to the concerned workmen could not be sustained. The court noted that there was a settlement arrived at by the management of the Respondent on 18 March 2002 with the representative union, namely, Kamgar Utkarsha Sabha; that settlement contemplated making of two workers each permanent on 1 April 2002, 1 January 2003 and 1 January 2004, respectively, and making of rest of the workmen permanent as and when vacancies arose. The court was of the view that

the management had not followed a consistent policy in the past for grant of permanency to its casual workmen; it had, for example, maintained only an attendance register; no appointment letters were given to those who had been recruited as casuals; and no attendance cards were issued. The court, in the premises, was of the view that for implementing the settlement now arrived at (i.e. for grant of permanency to the casual workmen of the establishment), proper directions were necessary. To that end, the court accepted a statement made by Counsel appearing for the management, requiring the management to maintain a seniority list of all its casual employees, who had worked in the past, including those, who were currently discharging duties, and operating that seniority list by giving work to its casual workmen albeit on rotation, and following it by conferring permanency upon the workmen concerned, regardless of their union affiliation, upon the occurrence of vacancies as contemplated in the settlement dated 18 March 2002. The award of the tribunal in favour of 18 casual workmen was, accordingly, quashed and set aside and substituted by these directions.

3. Before the Industrial Court, in the present reference, as noted by that court, there was no case on the part of the casual workmen either that any vacancy had arisen or that such vacancy had been filled-in by the Respondent Management otherwise than in accordance with the seniority list maintained by it in respect of its casual workmen. The court particularly noted that on the basis of the evidence before it, the second party union had failed to prove that there was any violation of the order passed by this Court in the earlier writ petition

(Writ Petition No.1709 of 2003). The court particularly noted that the second party union had failed to prove that the company had given permanency to any of its employees from casual category, since after the date of the order of this Court, contrary to that order. In that view of the matter, the court observed that there was no case either of breach of settlement of 18 March 2002 or of the order dated 23 August 2006 regulating the same. The Court, accordingly, answered the reference in the negative.

4. There is no infirmity to be found in the impugned award of the Industrial Court. Nothing is pointed out before this Court either to show that there was any breach of the original settlement dated 18 March 2002 or to indicate that the directions by this Court passed on 23 August 2006 in connection with that settlement were not followed. The impugned award does not, accordingly, merit interference under Articles 226 or 227 of the Constitution of India.

5. The petition is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)

Smita
Gonsalves

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Gonsalves
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