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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2012 OF 2022

M/s Living Room
(Living Room Style Pvt. Ltd) ... Petitioner.
V/s
Shri Nitin Dilip Kadam ... Respondent.

Ms. Shobana Gopal for the Petitioner.
None for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 07, 2022

P.C.:-

1] Heard.

2] Respondent-employee has approached the Labour Court under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The complaint was lodged by the Respondent-employee on 29th June, 2015 which was decided by the Labour Court vide judgment dated 06/12/2017, operative part of which reads as under:-

“ORDER

- 1) The complaint is partly allowed.
- 2) It is hereby declared that the respondents have engaged in unfair labour practice under item 1(a), (b), (d) & (f) of Schedule IV of MRTU and PULP Act, 1971.
- 3) The respondents are hereby directed to cease and desist from engaging in unfair labour practice under item 1(a), (b), (d) & (f) of schedule IV of M.R.T.U. and P.U.L.P. Act, 1971.
- 4] The complainant is entitled for reinstatement with continuity of service from 03/06/2015 but without back wages.
- 5) The respondents are entitled for reinstatement with continuity of service from 03/06/2015 but without back wages.
- 6] The parties to bear their respective costs.”

Since the Respondent-employee was not granted back-wages, he approached the Industrial Court.

3] Industrial Court, in exercise of revisional powers, allowed revision of the Respondent-employee and directed the Petitioner-employer to pay full back-wages for the period from June, 2015 to June, 2016. As such, this Petition.

4] Contentions are, so as to discharge burden that Respondent-employee was gainfully employed, photo copy of the quotation issued by M/s Naz Furniture which was in the handwriting of the Respondent-employee bearing his mobile number has been produced. As such, it is claimed that the Petitioner-employer has discharged its burden thereby proving a fact that Respondent-employee was gainfully employed.

5] In the aforesaid backdrop, it is strenuously urged by the Counsel for the Petitioner that Industrial Court has committed an error, thereby ordering payment of back-wages.

6] I have appreciated the said submissions.

7] The Labour Court has appreciated the said document

Exhibit-C-4 produced by the Petitioner-employer and noticed that Respondent-employee has denied the same. It is also observed by the Labour Court that original of the said document, though was not produced, however, photocopy of the same was part of record.

8] While appreciating the said documentary evidence, Labour Court has analysed oral evidence of the employee and reached to the conclusion that Respondent-employee was in gainful employment of M/s Naz Furniture.

9] Industrial Court, while appreciating the said issue has noticed that burden was on the Petitioner-employer to prove and establish that Respondent-employee during the period of suspension was gainfully employed. Fact remains that document Exhibit-C-4 is in the form of photocopy. Original of the same was never produced on record. A photocopy of such document that too coming from the custody of the Petitioner-employer should have prompted the Petitioner to lead secondary evidence or make an application to the Court to issue witness summons to M/s Naz Furniture so as to establish very authenticity of such photocopy, which the Petitioner-employer has

failed to. Even there is no corroborative evidence in support of the aforesaid piece of evidence so as to establish that the Respondent-employee was gainfully employed during the period from June, 2015 to June, 2016.

10] As a sequel of above, Industrial Court, in my opinion, was justified in awarding back-wages. No case for interference in extraordinary jurisdiction is made out. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)