

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****WRIT PETITION NO. 3613 OF 2021**

Sanjay s/o Prabhakar Gulhane vs. The Manager, New Regal Talkies

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S. T. Harkare, Advocate for petitioner.
Mr. P. K. Mohta, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 14/03/2022

By this petition, the petitioner has challenged order dated 08/08/2018, passed by the Labour Court, Akola whereby an application for restoration of Reference (IDA) No.07 of 2011 was rejected.

2. Perusal of the record shows that on 07/08/2017, the reference proceeding was answered in the negative for want of prosecution. It was recorded that the petitioner had been absent for about one year in the proceeding and it appeared that he was not interested in conducting the proceeding. On this sole ground the reference stood answered in the negative on 07/08/2017. The petitioner filed the aforesaid application for restoration of the reference and explained the circumstances in which he was

unable to attend the proceedings before the Labour Court. As regards a particular date i.e. 07/08/2017, when the petitioner could not remain present before the aforesaid Court, it was stated that he was urgently required to go to Amravati. The Labour Court refused to accept the reason given for absence of the petitioner and held that sufficient cause was not made out and accordingly rejected the application for restoration.

3. Mr. Harkare, learned counsel for the petitioner submits that the Labour Court in the present case took a harsh view in the matter and that the rejection of the application for restoration and the reference leads to negation of the claim of the petitioner, without there being any contest on merits. It is expected that in the facts and circumstances of the present case, the reference case ought to be restored.

4. Mr. Mohta, learned counsel appearing for the respondent opposed the contentions raised on behalf of the petitioner and submitted that it was because of the negligence on the part of the petitioner that the reference proceeding stood answered in the negative, due to want of prosecution and that

sufficient cause was not made out for restoration of the same.

5. Having heard the learned counsel for the rival parties and upon perusal of the material placed on record it appears that as the petitioner was absent before the Labour Court on certain dates in the reference proceeding, a chance could have been given to the petitioner to place his case before the Labour Court on merits.

6. A perusal of the impugned order passed by the Labour Court shows that the reason put forth for the absence of the petitioner is recorded, but the same is rejected only on the ground that the petitioner failed to place on record documentary material regarding travel to Amravati to take admission of his child.

7. This Court is of the opinion that in such matters, the Court should adopt an approach which ensures decision of the claim of the petitioner on merits, rather than on hyper technicalities. The Labour Court appears to have taken a pedantic view of the matter, particularly, when the case of the petitioner as workman concerned alleged illegal termination of his service.

8. The petitioner has not gained anything by not being able to attend the proceeding before the Labour Court and this Court is of the opinion that an opportunity ought to be granted to the petitioner to have his grievance decided on merits by the Labour Court.

9. In view of the above, the Writ Petition is allowed. The impugned order is quashed and set aside. Consequently, the application for restoration of reference proceeding filed by the petitioner stands allowed and by implication the Award dated 07/08/2017 is also set aside.

10. The parties are directed to remain present before the Labour Court, Akola on 31/03/2022. The petitioner is directed to attend the proceedings before the Labour Court scrupulously and without any negligence.

11. The Labour Court is directed to decide the reference proceedings on merits, without being influenced by the observations made in the present order.

JUDGE