

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.225 OF 2021

Gammon India Limited

...Petitioner

vs.

M.R. Prakash

...Respondent

Mr. K.P. Anilkumar a/w. Ms. Jayshree Kumar, Mr. Amit Saple, Mr. Priyanka Kumar and Mr. Chinmay Apte, for the Petitioner.

Mr. Arshad Shaikh, Senior Advocate a/w. Mr. Rahul Oak and Mr. Siddhesh Shetye, for the Respondent.

CORAM : N. J. JAMADAR, J.

DATE : JULY 10, 2023

P.C.:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an award dated 6th February, 2020 passed by the learned Presiding Officer, Labour Court, Mumbai in Reference (IDA) No. 231 of 2016 whereby the Reference made by the Deputy Commissioner of Labour under section 12(5) of the Industrial Disputes Act, 1947 regarding the claim of unlawful termination and reinstatement in service with full back wages came to be answered partly in affirmative, and petitioner/employer was directed to reinstate the respondent/workmen with continuity of service and 50% back wages.

3. The principal ground of challenge is that the Reference came to be decided without providing an effective opportunity of hearing.

4. A submission was made on behalf of the petitioner that though the name of Mr. K.P. Anilkumar is shown as the advocate who appeared for the first party on the date of the passing of the award yet neither Mr. Anilkumar nor any other advocate had appeared for the first party before the Labour Court.

5. A copy of the roznama is tendered for the perusal of the Court. Roznama dated 5th February, 2020 records that none appeared for the first party. A perusal of the roznama, however, also indicates that advocate's appearance was intermittently shown for the first party.

6. Mr. Shaikh, learned senior counsel for the respondent, would submit that Mr. K.P. Anilkumar had, indeed, appeared for the first party. In any event, there was no reason not to file the written statement while the first party had full knowledge of the proceeding and had filed an application seeking representation through the legal practitioner.

7. I do not deem it appropriate to delve deep into the circumstances, in which the first party could not be represented before the Labour Court. The fact remains that the Reference has proceeded ex-parte at hearing.

8. Having regard to the nature of industrial dispute raised before the Labour Court, it would be expedient to provide an effective opportunity of hearing to the first party. At the same time, the first party is required to be put to terms so as to protect the interest of the second party-respondent. The petition, therefore, deserves to be allowed in the following terms.

ORDER

1] The impugned award dated 6th February, 2020 stands quashed and set aside.

2] Reference (IDA) No. 231 of 2016 is restored to the file of the Labour Court, Mumbai.

3] The first party shall file written statement within a period of four weeks from today.

4] The Labour Court shall decide the Reference afresh after providing an effective opportunity to both the parties to lead evidence.

5] The petitioner/first party shall pay costs of Rs. 50,000/- to respondent/second party within a period of four weeks.

6] The first party shall also make a deposit of Rs. 1,50,000/- before the Labour Court, Mumbai within the said period and the said deposit shall abide the final decision in the Reference (IDA) No. 231 of 2016.

7] The learned Presiding Officer, Labour Court, is requested to make an endeavour to decide the Reference (IDA) No. 231 of 2016 as expeditiously as possible and preferably within a period of eight months from the date of filing of the written statement by the first party.

8] Petition disposed.

9] All concerned shall act on an authenticated copy of this order.

(N. J. JAMADAR, J.)