

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 5262 OF 2018

G.H.Raisoni College of Engineering
Anjangaon Bari Road, Badnera
Amravati through its Principal Shri
Vijay S/o Rajaram Rathod, Tah & Dist.
Amravati

...Petitioner

// VERSUS //

1. Dhirendra Kashiram Deshmukh,
Aged about 41 Years, Occ. Not Known
R/o C/o Shri Thawakar Guruji,
Baripura, Old Town, Badnera, Dist.
Amravati

2. The Presiding Officer,
Labour Court, Amravati

... Respondents

Shri V.P.Marpakwar, Advocate for the petitioner.
Shri P.S.Raut, Advocate for the respondent no. 1.
Shri K.L.Dharmadhikari, AGP for the respondent no.2.

CORAM : ANIL S. KILOR, J.

DATED : 6th FEBRUARY, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith by consent of the parties.

2. In this writ petition, the challenge is raised to the order dated 9th May, 2018 passed by the learned Presiding Officer, Labour Court, Amravati in an application (IDA) No. 8 of 2017, filed under Section 33-C(2) of Industrial Dispute Act, 1947 (in short referred as "Act, 1947") directing the petitioner to pay Rs.56,434/- to the respondent no.1 along

with interest at the rate of 7 % per annum on the said amount from the date of application till actual realization of the amount.

3. It is the case of the respondent that he was appointed as an attended on 3rd September, 2009. On 25th February, 2017 without issuing one month notice or one month salary or without paying retrenchment compensation, the respondent was terminated. In absence of the petitioner, the learned Labour Court proceeded exparte and decided the application under Section 33C(2) of I.D.Act in favour of the respondent no.1, which is under challenge in the present writ petition.

4. Shri Marpakwar, learned counsel for the petitioner submits that without observing anything about the appointment of the respondent no.1 by the petitioner or without considering whether there was termination or there was no termination, the impugned order came to be passed. It is submitted that while considering the application under Section 33C(2) of the ID Act, learned Labour Court ought to have adjudicated upon the above referred issues.

5. He further points out that the respondent was appointed through one agency namely Bright Carrier Consultancy and the respondent submitted a resignation letter to the said agency and thereby resigned on 25th February, 2017. In the circumstances, even in absence of the petitioner, the learned Labour Court ought to have considered the issue namely whether the respondent no.1 was appointed by the petitioner and there was termination.

6. On the other hand, learned counsel for the respondent no.1 submits that the respondent no.1 was appointed on 3rd September, 2009 by the petitioner and even there is document issued in the year 2019 signed by the Principal of the College, showing the appointment of the respondent no.1 on 3rd September, 2009 upto 25th February, 2017. However, on a query put to the learned counsel for the respondent that whether the said document was filed along with the application which was filed in October, 2017 before the Labour Court. He fairly states that the said document was not placed before the Labour Court.

7. Similarly, on putting a query to the learned counsel for the respondent about the appointment order. He submits that on 3rd September, 2009 while the respondent was appointed no appointment order was issued. He further fairly states that there are no pleadings made to that effect in the application that no order of appointment was handed over to the respondent no.1.

8. In the above referred backdrop and considering the rival submission, I have perused the documents filed along with the writ petition and impugned order.

9. Admittedly, the learned Labour Court proceeded *exparte* against the petitioner. However, considering the case of the respondent, the learned Labour Court ought to have made observations as regards the appointment of the respondent and his termination. Learned Labour Court has not referred to any document namely appointment order or any

termination order. Moreover, in the pleadings also there is nothing stated by the respondent no.1 whether the appointment was oral or whether the termination was oral.

10. Thus, in absence of such pleadings, the learned Labour Court ought not to have accepted the case of the petitioner only because the petitioner did not appear and the Court proceeded ex parte. In that view of the matter, I am of the opinion that the present matter needs to be remanded back to the learned Labour Court subject to costs paid by the petitioner. Accordingly, I pass the following order.

- i. Writ petition is partly allowed.
- ii. Impugned judgment and order 9th May, 2018 passed by the learned Labour Court, Amravati in IDA Case No. 8 of 2017 is hereby quashed and set aside and the matter is remanded back to the learned Labour Court to decide the application under Section 33C(2) of the Industrial Dispute Act, 1947 afresh after giving sufficient opportunity to both the parties including amendment of application and to lead the evidence subject to costs of Rs.15,000/- to be paid by the petitioner to the respondent no.1, within two weeks from today.

Accordingly, the writ petition is disposed of.

SACHINDANAND
K NAIR

Digitally signed
by
SACHINDANAND
K NAIR
Date: 2023.02.16
17:18:03 +0530

[ANIL S. KILOR, J.]