

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3145 OF 2024

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M/s. D.B. Corp. Ltd. Through Mir Anwar

Ali

... Petitioner

V/s.

Asburt Gonsalves

... Respondent

Mr. R. V. Paranjape a/w Mr. T. R. Yadav for the
Petitioner.

Mr. Vinod Sanjiv Shetty, for Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 14, 2024

P.C.:

1. By this petition under article 227 of the Constitution of India the petitioner is challenging the award passed by the Labour Court in IDA reference No.9 of 2018 setting aside respondent's termination on the ground that no inquiry before termination as per provisions of Section 23(3) of the Industrial Employment (Standing Orders) Act, 1946 was made nor any material was produced before the Labour Court to justify the termination.

2. The facts necessary for adjudication of petition are as under:

3. Respondent joined the petitioner company on the post of 'System Engineer' in the Technology Department with effect from

18th February 2008. He was working under Section 2(s) of the Industrial Disputes Act, 1947. The respondent was accused of non-performance by HR Manager of the petitioner on 11th August 2016. On 16th August 2016, petitioner's HR Manager started forcing the respondent-workman to resign from his job. However, the respondent has failed to resign. The petitioner's Manager terminated respondents services by the event dated 30th August 2016. The respondent was not allowed to join from 1st September 2016. The respondent, therefore, prayed for declaration that his termination with effect from 31st August 2016 by declaring as illegal as it was effected without following due process of law. He, therefore, prayed for relief or reinstatement with continuity of service of full back wages with effect from 1st September 2016.

4. The petitioner appeared in the proceedings before the Labour Court and contended that the respondent failed to work properly and the availed leave without petitioner's permission. Despite several warnings the respondent did not show any improvement, and, therefore, he was warned about the consequences. On 16th August 2016, petitioner issued last warning to the respondent and granted three months time to improve his performance. However on his failure, respondent's services were terminated.

5. There is no serious dispute about the existence of industrial dispute. The Labour Court framed necessary issues. The Labour Court answered the issue of workman in favour of respondent and held that the respondent's services were illegally terminated by the petitioner.

6. While recording finding on issue No.3, the Labour Court thoroughly scanned the evidence of petitioner's witnesses. Based on the materials produced by the petitioner, the Labour Court recorded a finding that in terms of Section 25(3) of the Industrial Employment (Standing Orders) Act, 1946 order of dismissal under Sub-clause (d) of Clause (1) was without holding inquiry of the concerned workman for alleged misconduct.

7. The fact of failure to issuance of charge-sheet is not in dispute. Moreover, the petitioner failed to prove the misconduct as alleged by adducing evidence before the Court. With the result, the Labour Court recorded a finding that in absence of charge-sheet and materials produced before the Court to prove misconduct, termination of respondent was without following due process of law. Considering the period of employment of more than eight and a half years, the Labour Court directed reinstatement of the petitioner along with continuity of service.

8. In so far as, relief of back wages is concerned, the respondent discharged initial burden by stating on oath that he tried to find a job, but due to stigmatic termination and absence of relief, he could not find a job. He therefore, stated that he was not gainfully employed after his termination.

9. The onus, therefore, shifted on the petitioner to prove that the respondent was gainfully employed elsewhere. However, in absence of any material to prove respondents employment after terminating, the Labour Court was justified in directing the petitioner to pay back wages from the date of termination along

with the consequential benefit.

10. At this stage, learned advocate for the petitioner submitted that the petitioner's company is not having sufficient work to reinstate the petitioner and, therefore, without relief of reinstatement need to be converted into relief of compensation. However, considering the period of employment of eight and a half years, failure to prove misconduct, in my opinion, the ground for grant of compensation is not sufficient in law to modify the award of Labour Court. Hence, his submission to that effect cannot be accepted.

11. On overall consideration of the material on record, I am of the opinion that there is no error apparent on the face of record nor perversity in the findings recorded by the Labour Court. Hence, there is no merit in the petition.

12. The writ petition stands dismissed.

(AMIT BORKAR, J.)