

(2009) 07 BOM CK 0005

In the Bombay High Court

Case No : Letter Patent Appeal No. 110 of 2005 In Writ Petition No. 2688 of 1996 and Letters Patent Appeal No. 291 of 2005 In Writ Petition No. 2688 of 2005

Crompton Greaves Ltd.

APPELLANT

Vs

Waman Narayan Trimbakkar and others

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Citation : (2009) 122 FLR 770

Hon'ble Judges : R.S. Mohite, J;D.K. Deshmukh, J

Bench : Division Bench

Advocate : S.N. Deshpande, for the Appellant; K.M. Naik instructed by y S.P. Salkar Counsel for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Deshmukh and R.S. Mohite, JJ.—By both these appeals, same order passed by the learned Single Judge is challenged. Therefore, both the appeals can be conveniently disposed of by a common order.

2. The appellant in Appeal No. 110/-2005 is the employer and appellant in Appeal No. 291/2005 is the employee. Writ petition was filed by the employee challenging the order of the Industrial Court dismissing his complaint filed under MRTU & PULP Act. The employee basically was seeking permanency in the employment of the employer. The Industrial Court found that in terms of the settlement dated 24.6.1988 the employee is not entitled to permanency and the complaint was dismissed. The order of the Industrial Court was challenged before this Court in writ petition. Learned Single Judge endorsed the finding of the Industrial Court that the denial of permanency in service to the employee is not in breach of the settlement referred to above. However, learned Single Judge found that it was also the case of the employee that he was entitled to permanency under the Standing Order because he has completed 240 days of uninterrupted service during 12 months preceding the break. Learned Single

Judge found that that aspect has not been gone into by the Industrial Court and therefore, he remanded the matter back to the Industrial Court for recording finding on that aspect of the matter. Employer has filed the appeal challenging the order of remand whereas employee has filed the appeal challenging the order of the learned Single Judge confirming the order of the Industrial Court in relation to the alleged breach of settlement.

3. We have heard both the sides at length. Learned Counsel for the appellant/ employer submits that there are no pleadings in the complaint claiming permanency on the basis of the Standing Order. He submits that there is also no evidence on record in that regard. He submits that, that question was also not argued before the Industrial Court and therefore, learned Single Judge should not have remanded the matter back for that purpose. Learned Counsel for the employee on the other hand submits that the question was agitated before the Industrial Court. There are pleadings in the complaint and that there was also some evidence led in that regard. Learned Counsel submits that in any case it is only an order of remand and therefore, Letter's Patent Appeal should not be entertained. Learned Counsel for the employee submits that the employee was in service in the year 1975. According to Clause 13 of the settlement, persons who were in the employment since 1982 were to be considered for permanency. Therefore, the employee should have been considered. Learned Counsel submits that both the Courts misconstrued the provisions of clause 13 of the settlement. Learned Counsel for the employer submits that as per the settlement 600 workmen were to be made permanent. It was the stand of the employer before Industrial Court that employer has made 623 workmen permanent and all the 623 workmen were in service prior to 1982. The employee was in service in the year 1975 for a period of only 4 and 1/2 months., Thereafter there was break in service of 10 years and thereafter for the first time, he was appointed in the year 1985. Therefore, 4 and 1/2 months service of the employee in 1975 has been ignored and if that is so done not a single employee who can be said to be junior, to the employee is given permanency. This is a finding of fact recorded by the Industrial Court and endorsed by the learned Single Judge and therefore, it cannot be interfered with.

4. First taking up the appeal filed by the employer. In our opinion, appeal cannot be entertained. Principally because appeal is directed only against the remand order and therefore, the issue is not finally determined by the learned Single Judge. In our opinion, learned Single Judge appears to be right in holding that though the contention was raised in the complaint it has not been examined by the Industrial Court. But basically in our opinion, since by the remand order, the issue is not finally determined, it will not be appropriate for this Court to entertain the appeal and prevent inquiry into the aspect considering that the employee is workman who is fighting for the last so many years. Appeal filed by the employer has to be dismissed. It is accordingly dismissed.

5. So far as appeal filed by the employee is concerned, even if the argument that

the construction placed on clause 13 of the settlement by the Industrial Court is wrong as accepted, in our opinion, no fault can be found with the finding of the Industrial Court because in the year 1975 only 4 and 1/2 months service was rendered by the employee. That service has to be ignored so far as aspect of giving permanent status is concerned. Then there is finding of fact recorded that every employee who has been made permanent under the settlement was in the employment prior to 1982. If the employment of the employee in the year 1975 is ignored then he was appointed first time in the year 1985. It cannot be said to be unreasonable implementation of the settlement because workers who were in the employment prior to 1982 have been made permanent. In our opinion, had the petitioner who joined the service in the year 1985 been given permanency ignoring those who were in service prior to his appointment then it would be unjust. There is no scope to interfere with the order of the Industrial Court.

6. In the result, therefore, both the appeals fail and are dismissed. No order as to costs.