

(2017) 03 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 5713 Of 2015

Surendra

APPELLANT

Vs

Radhakrishna alias Raju

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 153 FLR 502

Hon'ble Judges : P.B. Varale, J.

Bench : Single Bench

Advocate : Shri S. S. Dhengale, Advocate, for the Petitioner; Shri Sagar Katkar, Advocate appearing on behalf of Shri N. R. Saboo, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

P.B. Varale, J. (Oral)—Heard Shri S. S. Dhengale, learned counsel for the petitioner and Shri Sagar Katkar, learned counsel appearing on behalf of Shri N. R. Saboo, learned counsel for the respondent.

2. Rule. Rule made returnable forthwith.

3. The petitioner challenges the judgment and order dated 12102010 passed by the learned Judge, Labour Court, Amravati as well the judgment and order passed by the learned Member, Industrial Court, Maharashtra (Amravati Bench), Amravati dated 592015.

4. It is the submission of Shri Dhengale, learned counsel for the petitioner that both the orders are untenable and unsustainable as the Courts failed to appreciate the material in its proper perspective. The sum and substance of submissions of learned counsel for the petitioner is learned Judge of Labour Court arrived at an erroneous conclusion that the respondent had completed 240 days in a calendar year and was continuously working with the petitioner.

5. Shri Sagar Katkar, learned counsel appearing on behalf of Shri Saboo, learned

counsel for the respondent supports the order impugned in the petition. He submitted that both the Courts have passed the orders in appreciation of the material.

6. With the assistance of both the learned counsel appearing for the parties, I have gone through the material placed on record. It was the case of the respondent/complainant before the learned Judge of the Labour Court, Amravati that he was working as a Clerk with the petitioner unit from 161989. His service record was clean and unblemish. On 2121995, services of the respondent were illegally terminated orally and without assigning any reason. It was the submission that as the complainant had completed 240 days in each calendar year and before taking drastic step of termination of the complainant/respondent, no notice was issued to the respondent nor any compensation was paid to the respondent and, as such, it was act of breach of the provision of the Industrial Dispute Act as well as the act of petitioner unit was falling under the unfair labour practise in view of the fact that services of the respondent though were terminated, the juniors to the respondent were retained in the service. It was submitted by the petitioner by filing written statement that the respondent had not completed 240 days in a calendar year. It was also submitted that the respondent was in habit of remaining absent for days together and an attempt was also made to submit before the Court that the respondent by suppression of facts, sought certain benefits under the Employees State Insurance Act from the Government. It was also submitted that the petitioner unit was a Small Scale Industry and though initially ceramic products and also ceramic arts products were being manufactured, subsequently, due to economic constraints, the unit/industry was not in working condition. Learned Judge of the Labour Court on hearing rival contentions of the parties framed the issues, namely :

(1) Whether the termination of the services of the complainant amounts to unfair labour practise on the part of the respondent ?

(2) The issue no. 1 was answered in affirmative. Issue no. 2 was partly allowed.

7. On perusal of the judgment and order passed by the Labour Court, it reveals that the learned Judge of the Labour Court dealt with the grounds raised by the petitioner opposing the case of the complainant i.e. respondent before this Court. The learned Judge of the Labour Court found that either an attempt was made to submit that the respondent was in habit of absent on his duty and no supporting material, such as, issuance of any notice to the respondent was brought on record by the petitioner. The learned Judge of the Labour Court found that on the contrary, the respondent placed on record two letters issued by him raising his grievance of termination and a request for reinstatement. Learned Labour Court found that in spite of respondent forwarding these communications, the petitioner failed to reply to these communications. From the oral evidence, it was brought to the notice of the learned Judge of the Labour Court that the respondent was working as a Clerk-cum-Supervisor Trainee for a considerable long period i.e. from 1989 to 1994 and an attempt was made to submit that

preceding to the alleged termination, the respondent worked only for 233 days in a calendar year. On perusal of the relevant material, namely, the muster roll, it was observed by the learned Judge of the Labour Court that it reiterated from the muster roll that the respondent was granted certain leave. The learned Judge of the Labour Court also found that the days of leave granted to the respondent as well as the weekly off were not added to the actual working days and if this benefit is given to the respondent, his working days in a calendar year were certainly 240 days and, as such, the claim of the petitioner that the respondent only worked for 230 and some odd days was not acceptable. The learned Judge of the Labour Court further found that there was an advertisement issued in the local newspaper for filling up the post of Clerk by the petitioner. Thus, learned Judge of the Labour Court found that there was work available with the petitioner and instead of such work available with the petitioner and in spite of the fact that the respondent was working as a Clerk with the petitioner unit for a considerable long period, the petitioner in colourable exercise of the power erroneously terminated the services of the respondent. Considering all these aspects, learned Judge of the Labour Court found that the petitioner had engaged in unfair labour practise and the respondent was entitled for reinstatement with continuity of service and back wages. Resultantly, the complaint was allowed. The learned Judge of the Labour Court also considering the aspect of the entitlement of the respondent for the back wages found that he was entitled for 50% back wages.

8. Though the order of the Labour Court was challenged before the learned Member, Industrial Court in the revision, the learned Member of the Industrial Court found no error in the judgment and order passed by the learned Judge of the Labour Court. Apart from the reasons assigned by the learned Judge of the Labour Court, the learned Member of the Industrial Court also considered the judgments relied on by the respective parties. In my opinion, both the Courts below committed no error in arriving at the respective conclusions. The judgments and orders passed by both the Courts below need no interference or indulgence of this Court. The petition thus being meritless, deserves to be dismissed and the same is, accordingly, dismissed.

9. This Court by order dated November 17, 2015 directed the petitioner to deposit in this Court amount of back wages as directed by the Labour Court within stipulated period of eight weeks from the date of the order, subject to such deposit, the order impugned in the petition was stayed. On 14/12/2016, the petitioner has deposited an amount of Rs. 28,767/- in this Court. On 16/3/2016, the petitioner with permission of this Court again deposited an amount of Rs. 28,767/-.

10. In view of the dismissal of the petition, the respondent is permitted to withdraw the amount deposited by the petitioner in this Court with the interest accrued on it, if any.