

Presented on:— 16.10.2012.
Registered on:— 16.10.2012.
Decided on:— 07.10.2017.
Duration: 04Yrs, 11Mths, 22Dys
Exhibit:— 19.

BEFORE THE PRESIDING OFFICER, 3rd LABOUR COURT, NAGPUR

(Presided over by Shri R. N. Ambatkar)

Ref.I.D.A.Case No.124/2012.

The Manager,
Vansh Nimay Infraprojects Pvt.Ltd.,
301, NIT Complex, Variety Chowk,
Sitabuldi, Nagpur.

... Party No.1

-Versus-

Shri Shankar Madhukar Lakhorkar,
C/o. Adv. B. V. Chawhan,
R/o. 492, Anand Nagar, Rani Durgawati
Nagar, Nagpur.

... Party No.2

.....
Shri P. C. Marpakwar Advocate for the party no.1.
Shri B. V. Chawhan Advocate for the party no.2.
.....

A W A R D

(Passed on 07.10.2017)

1) The Additional Commissioner of Labour, Nagpur has referred the industrial dispute between, The Manager, Vansh Nimay Infraprojects Pvt.Ltd., Nagpur and Shri Shankar Madhukar Lakhorkar by order No.औसं/औविअ/समेट/२—अ/संदर्भ/८६५४, dated 12.10.2012. He has made the reference alongwith schedule as given below:-

: S C H E D U L E :

[i]	Whether the termination of the service of Shri Shankar Madhukar Lakhorkar by The Manager, Vansh Nimay Infraprojects Pvt.Ltd., Nagpur, dated 17.12.2011, is legal, valid and justified.?
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| [ii] | If not, whether the workman, Shri Shankar Madhukar Lakhorkar is entitled for the reliefs of reinstatement, continuity of service and consequential relief of back wages.?. |
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2) After receiving the reference from the Additional Labour Commissioner, Nagpur, notices were sent to both the parties. The party no.2 has appeared and filed the Statement of Claim, which is at Exh.6. The facts in nutshell emerging from the Statement of Claim are as follows:-

The party no.2 claims to be working as Bus Conductor since July 2009. The employees of party no.1 called the strike. He had not taken part in the strike, which was illegal. He was knowing that, the permission is not sought for the strike. The strike was called in November December 2011. On 17.12.2011 when the party no.2 approached to its destination of his service to take the Electronic Ticket Machine, he was refused orally, and he was also told that his service has been terminated. It is contended that, without conducting the preliminary enquiry or departmental enquiry, the party no.1 has terminated the service of the party no.2 without following due procedure of labour laws. The party no. 2 claims that, he was permanent employee, and his termination is illegal in the eyes of law. He had repeatedly requested the party no.1 for taking into the service and had given the approach notice, but in vain. The party no.2 contends that, as his termination is illegal, he is entitled for the relief of reinstatement, continuity of service and back wages.

3) The party no.1 has filed the reply (Exh.15) and has denied all the contentions of the party no.2. It is contended that, the party no.1 has already filed Complaint U.L.P.No.397/2011 for declaring the strike as illegal, which was commenced w.e.f. 17.12.2011. The party no.2 and other employees were arrested by the police for the offence of disturbing law and order situation. The party no.2 and other employees were detained in different jails. The employees on strike had taken help of local Gundas. The loyal employees were not allowed to ply the buses. The strike has created hurdles and had affected smooth working and administration of party no.1. The party no.2 through union has filed Complaint No.16/2012 before the Hon'ble Industrial Court at Nagpur. In this complaint, the party no.2 and other employees have prayed that the party no.1 had restrained the employees from joining the duties. The employees who have reported on duties were provided with work. The interim relief which was sought in the said complaint (16/2012), has been rejected. The employees like party no.2 were not reporting on duties, due to which much inconvenience has been caused. The party no. 2 never reported on duties. The management had issued two advertisements requiring the party no.2 and other employees to join the duties, but there was no response. The party no.2 was aware about the proceeding filed by his union, and the proceeding filed by party no.1 about declaration of illegal strike. Now, the party no.2 after approaching the Hon'ble Industrial Court, cannot approach to the Assistant Labour Commissioner, and this reference is bad-in-law. The party no.2 has not come before this Court with clean hands. He was never terminated by the

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party no.1. He had proceeded on illegal strike. It is contended that, the party no.2 is not entitled for the reliefs claimed.

4) After going through the rival allegations, my Ld.Predecessor has framed following Issues in vernacular (Exh.12). I have recorded my findings for the reasons given below:-

Sr.No.	<u>ISSUES</u>	<u>FINDINGS</u>
[1]	Whether the 1951 Act is applicable to the party no. 1.?.	Does not arise.
[2]	Whether the reference is barred by limitation.?.	Does not arise.
[3]	Whether the reference is barred by Section 59 of 1972.?.	Does not arise.
[4]	Whether the Court has jurisdiction to try and entertain the present reference.?.	Does not arise.
[5]	Does party no.2 prove that, on 17.12.2011 the party no.1 has illegally terminated his service.?.	In negative.
[6]	Does party no.1 prove that, the party no.2 himself has remained absent from duties.?.	Does not arise.
[7]	Whether party no.2 is entitled for reinstatement, continuity of service and full back wages.?.	In negative.
[8]	What Award.?.	The reference is answered in negative.

// REASONS //

5) After framing the Issues, the present matter was fixed for recording evidence of the party no.2. The party no.2 has remained absent continuously. The issues were framed on 21.10.2013, and thereafter the party no.2, the employee has remained absent continuously. This itself

goes to show that the party no.2 is not interested in recording evidence. It appears to me that, the party no.2 is not in need of any decision on the issues framed by my Ld.Predecessor. As the party no.2 has not come before this Court with his evidence to prove the aforesaid issues, those are required to be answered in negative. Hence, I answer issues no.5 & 7 in negative, and I pass the following award.

A W A R D

- [1] The reference is answered in the negative.
- [2] The copies of award and original conciliation proceeding be sent to the Ld.Additional Commissioner of Labour, Nagpur for publication and necessary action.

Place:Nagpur.
Dated : 07.10.2017.


(R. N. Ambatkar)^{7.10.17}
Presiding Officer,
3rd Labour Court, Nagpur.

ATB/-

