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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3684 OF 2016

M/s Cosmo Films Ltd., Aurangabad ..PETITIONER

VERSUS

Shri Ramesh Dhirendranath paul ..RESPONDENT

Mr T.K. Prabhakaran, Advocate for petitioner;
Mr A.B. Dhongade, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 18th SEPTEMBER, 2017

ORAL ORDER :

Heard.

2. **Rule.**

3. Mr. Dhongade, learned Counsel waives service of notice for the respondent.

4. Mr. Prabhakaran, learned Counsel for the petitioner-employer submits that in view of law laid down by the Division Bench of Kerala High Court in the matter of **Everestee vs District**



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Labour Officer, reported in **1999(2) CLR 380**, once the employee tenders resignation, he cannot be termed as 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and as such, Dispute was not maintainable. He would then urge that in case of intention of the respondent – employee to withdraw the resignation, he should have acted pursuant to the Standing Order within a period of one month, which is not taken recourse to. As such, according to him, the order of reinstatement is liable to be stayed.

5. In addition to above, Mr. Prabhakaran, learned Counsel for the petitioner would invite attention of this Court to Section 2(a) of the Industrial Disputes Act, 1947 so as to canvass that the employee cannot be termed to be a 'workman' having already received benefits out of resignation.

6. Per contra, Mr. Dhongade, learned Counsel for the respondent would urge that it is not the



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case of voluntary resignation but forced resignation is already established in the judgment of learned Labour Court. He would urge that factual matrix as is brought on record which is a cause for termination viz., (timely not attending the Chairman of the Company), the fact that the respondent – employee is not aware of English language was very much established. According to him, learned Labour Court has rightly inferred a case of forced resignation and granted relief.

7. Considered rival submissions. What is required to be noted is, learned Labour Court, while dealing with the contention of the respective parties, has recorded findings that as a Driver, failure on the part of the respondent in timely attending the Chairman, resignation was extracted from him by giving him false representation.

8. *Prima facie* upon perusal of the judgment, it is required to be noted that such findings are based on the evidence.



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9. Apart from above, the fact remains that the present respondent – employee has tried to rejoin his duty within period of two months from the date of his forced resignation, which was processed by one Mr. M.I. Khan, Assistant Personnel Manager, who was only witness examined.

10. Though Mr. Prabhakaran, learned Counsel for the petitioner was right in pointing that for awarding back wages, no specific reasons are furnished, in such eventuality, this Court is inclined to stay the order of back wages. However, in view of the findings as are recorded by learned Labour Court based on resignation, this Court is not inclined to stay reinstatement.

11. It is directed that the respondent – employee be reinstated within four weeks from today. The respondent is at liberty to file his return within a period of four weeks from today.

(NITIN W. SAMBRE, J.)