



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

WRIT PETITION NO.4917 OF 2022

M/s. Blue Jet Healthcare Ltd.
(Formerly known as
Blue Circle Organics Pvt. Ltd.)

....Petitioner

V/S

Surekha Surendra Bachate

....Respondent

**WITH
INTERIM APPLICATION NO.2642 OF 2022
IN
WRIT PETITION NO.4917 OF 2022**

M/s. Blue Jet Healthcare Ltd.
(Formerly known as
Blue Circle Organics Pvt. Ltd.)

....Applicant

IN THE MATTER BETWEEN:

M/s. Blue Jet Healthcare Ltd.
(Formerly known as
Blue Circle Organics Pvt. Ltd.)

....Petitioner

V/S

Surekha Surendra Bachate

....Respondent

Dr. D.S. Hatle i/b Mr. Deepak P. Jamsandekar *for the Petitioner.*
Ms. Ashwini Gaikwad *for THE Respondent.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 20 AUGUST 2026
PRONOUNCED ON : 01 SEPTEMBER 2026

J U D G M E N T :

1. The Petition is filed by the Employer challenging the Award dated 23 July 2018 passed by the learned Presiding Officer, First Labour Court, Thane, answering Reference (IDA) No.200 of 2013 in the affirmative and directing reinstatement of the Respondent with full backwages and continuity of service with effect from 7 October 2010.

2. Respondent was engaged in the establishment of the Petitioner as Laboratory Assistant with effect from 5 October 2007. She was drawing wages of Rs.4,000/- per month. The Petitioner had employed about 260 employees in the Laboratory wherein the activity of testing of chemical powder used to be carried out. Respondent claims that her services were illegally terminated on 7 October 2010. At her instance, Reference was made to Labour Court, Thane, which was registered as Reference (IDA) No.200 of 2013. Respondent filed her Statement of Claim, which was resisted by the Petitioner by filing Written Statement. Petitioner contended that there was no termination of services of the Respondent. The Petitioner claims that Respondent was merely given training and used to be employed intermittently from the year 2007. Petitioner contended that in September 2010, Respondent telephonically informed the officials of the Petitioner that she had secured better employment

near her residence and left the intermittent employment with the Petitioner. Based on the pleadings, issues were framed relating to existence of employer-employee relationship, completion of 240 days in service and validity of termination order. Respondent examined herself. Petitioner led evidence by examining Ms. Tejashree Chintamani Urankar. After considering the pleadings, documentary and oral evidence, the Labour Court has made Award dated 23 July 2018, answering the Reference in the affirmative. The Labour Court has directed reinstatement of the Respondent with full backwages and continuity of service with effect from 7 October 2010. Aggrieved by the Award dated 23 July 2018, the Petitioner has filed the present Petition.

3. By order dated 3 April 2019, this Court directed the Petitioner to deposit 50% backwages awarded by the Labour Court. Accordingly, an amount of Rs.1,87,107/- has been deposited by the Petitioner. Implementation of the Award has accordingly been stayed. Respondent has filed Interim Application No.2642 of 2022, seeking withdrawal of the deposited amount. Instead of deciding that Application, this Court has taken up the Petition for final disposal.

4. Dr. Hatle, the learned counsel appearing for Petitioner submits that the Labour Court has grossly erred in answering the Reference in the affirmative and directing reinstatement of the Respondent. He submits that Respondent was never terminated by the Petitioner. That she was in fact not in regular or formal employment of the Petitioner. That she used to be engaged intermittently and never completed 240

days of service. That even her intermittent period of service was only for three years. That the Labour Court has erroneously assumed that she has completed 240 days of service or has been terminated. That Respondent secured better job near her house and voluntarily stopped reporting to duties. That therefore the case does not involve termination of services by Respondent and that therefore, there is no question of granting reinstatement, continuity and back-wages. He further submits that Respondent sought Reference belatedly after three years thereby belying the claim of unlawful termination. In any case, backwages could not have been granted considering the delay in approaching the Labour Court. That Respondent has otherwise crossed the age of retirement and therefore there is no question of reinstatement. That Respondent did not lead evidence of absence of gainful employment and that therefore it was impermissible for the Labour Court to award backwages. He prays for setting aside the impugned Award.

5. *Per contra*, Ms. Gaikwad, the learned counsel appearing for the Respondent, opposes the Petition submitting that the Labour Court has rightly appreciated the entire evidence on record for holding that termination of the Respondent is unlawful. That Respondent worked continuously for a period of three years since 5 October 2007 and has been unceremoniously terminated without following due process of law. That she was not issued any notice nor paid retrenchment wages. That neither any chargesheet was issued nor any inquiry was conducted against her. That there is no evidence in support of claim of alternate employment. That the Labour Court has rightly appreciated the evidence

for holding that Respondent has completed 240 days of service. That Respondent was rendered jobless and was not gainfully employed after her termination. That therefore there is no warrant for interference in the impugned Award of the Labour Court directing reinstatement with full backwages. She prays for dismissal of the Petition.

6. Rival contentions urged on behalf of the parties now fall for my consideration.

7. Respondent claimed that she was working with the Petitioner since 5 October 2007 as a Lab Assistant in the Laboratory Department of the Company and was performing the duties in Quality Control and Research and Development Section of the Company. She claimed completion of 240 days of service and complained of illegal termination w.e.f. 7 October 2010. Thus, going by the claim of the Respondent, she has worked for only about three years from 5 October 2007 to 7 October 2010. Though Petitioner sought to create dispute about existence of employer-employee relationship, the Labour Court, after assessment of the entire evidence on the record, has recorded a finding that there was admission of Respondent's engagement since August 2007 by the witness of the Petitioner. After assessing the evidence on record, the Labour Court has recorded finding of existence of employer-employee relationship. The Labour Court has also not accepted the claim of the Petitioner that Respondent voluntarily left the employment for the better prospects. Though a defence was raised that Respondent secured alternate job near her residence, the said assertion is not proved by

leading evidence by the Petitioner. The Labour Court has also conducted enquiry about completion of 240 days of service. Since the factum of engagement in October 2007 and discontinuation of services in October 2010 was not disputed by the Petitioner, the Labour Court has recorded a finding of fact that Respondent proved completion of 240 days in service. Petitioner has not made out any case of perversity in the findings recorded by the Labour Court about existence of employer-employee relationship, factum of termination and completion of 240 days of service.

8. The Labour Court has adjudged termination of the Respondent as unlawful on account of failure on part of the Petitioner to follow procedure established by law. Admittedly, Respondent was not issued any notice nor was paid notice wages. Similarly, retrenchment compensation was also not offered to her. The termination therefore is rightly held illegal.

9. The Labour Court has directed reinstatement of Respondent with full backwages and continuity of service. However, while awarding the backwages, the Labour Court has glossed over the fact that the Respondent raised the demand for reinstalment after considerable delay. The Reference was made by the Appropriate Government on 18 December 2013. Thus, Respondent raised grievance relating to termination belatedly after a period of three years. Award of backwages for those three years was clearly unwarranted.

10. More importantly, in her Affidavit of Evidence, Respondent did not lead evidence of absence of gainful employment. This aspect is again glossed over by the Labour Court. It is a well-settled position that in absence of pleadings and evidence of absence of gainful employment, backwages cannot be awarded. In my view therefore, award of backwages to the Respondent was clearly unwarranted.

11. Coming to the aspect of reinstatement, it is also seen that the Respondent is now of the age of 58 years. She was terminated in the year 2010 and by now, period of 16 long years has elapsed. Considering the advanced age of Respondent and the nature of duties involving physical handling of chemicals, it would not be appropriate that the Respondent joins back the service. Also if the age of retirement is 58 years, she has already crossed the same. In my view therefore, award of lumpsum compensation to the Respondent would meet the ends of justice.

12. The next issue for consideration is about the quantum of compensation to be awarded to the Respondent. As observed above, Respondent has worked with the Petitioner for hardly three years. Monthly wages at the time of termination were Rs.4000/-. As observed above, Petitioner has deposited in this Court 50% wages of Respondent of Rs.1,87,107/- on or about 30 May 2019. Since the deposited amount is invested by the Registry, the same would have earned interest. In my view therefore, awarding the entire deposited amount to the Respondent alongwith accrued interest would represent just and proper amount of compensation considering the length of service rendered by her and the amount of her last paid wages.

13. Accordingly, I proceed to pass following order:

- i) Award dated 23 July 2018 passed by Labour Court in Reference (IDA) No.200 of 2013 is modified by directing that Respondent shall be entitled to only lumpsum compensation in lieu of reinstatement, continuity and backwages.
- ii) The entire amount deposited by the Petitioner in this Court alongwith accrued interest shall represent the amount of compensation payable to the Respondent.
- iii) Respondent shall accordingly withdraw the entire deposited amount from this Court alongwith the accrued interest.
- iv) Beyond the amount awarded above, Respondent shall not be entitled to any other service related benefits from the Petitioner.

14. With the above direction, the Writ Petition is **partly allowed and disposed of**. There shall be no orders as to costs.

15. In view of the disposal of the Writ Petition, nothing would survive in the Interim Application and the same is also **disposed of**.

(SANDEEP V. MARNE, J.)