

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE**

WRIT PETITION NO.1841 OF 2008

Smt. Shalini Dilip Gamare	...	Petitioner
Versus		
Industrial Home for Blind Women	...	Respondent

Ms. Jane Cox for the Petitioner.
Mr. R.S. Pai a/w Mr. Anand Pai i/b Mr. T.R. Yadav for Respondent.

CORAM : S.C.GUPTE, J.

DATE : 20 JULY 2016.

P.C. :

. Heard learned Counsel for the parties.

2 The Petition challenges an award of the Labour Court at Mumbai. The Petition also challenges an order passed by the Industrial Court at Mumbai in a complaint filed by the Petitioner under Item 9 of Schedule IV of the Industrial Disputes Act, 1947 ("Act") for non-implementation of the award. The grievance of the Petitioner in the complaint was that since the amount of Rs.1,25,000/- offered to her by the Respondent herein was refused by her, the Respondent was bound to reinstate the Petitioner in terms of the award of the Labour Court.

3 At the outset, it needs to be noted that in pursuance of the order of
the Industrial Court on the Petitioner's complaint, the Petitioner was
offered a cheque of Rs.1,25,000, which was accepted by her, though it is

her case that such acceptance was without prejudice to her right to challenge the orders of the Industrial Court and the Labour Court and to claim reinstatement with full back wages.

4 The Respondent has filed a reply to the Petition. Learned Counsel for the Petitioner is permitted to proceed with the hearing of the Petition on the basis of denial of the Respondent's case urged in the reply.

5 The Respondent is a vocational training institute for blind women established by a Trust by the name of Blind Relief Association for Blind Women. The object of the Trust is to impart vocational training to blind women in the age group of 18 to 35 years. During the training period, the candidates are provided with lodging, boarding and health care in the premises of the Respondent and looked after by Aayas/Molkarins. It is the Respondent's case that Aayas/Molkarins appointed in the residential quarters are required to work in 12 hours shift with rest intervals and also required to reside in the premises of the Respondent institute. The Petitioner was orally appointed as Aaya/Molkarin on or about 1 May 1995 on a monthly consolidated salary of Rs.2,100/-. By a letter dated 29 February 1996, considering the requirement of blind women trainees lodged in the Hostel, the Respondent requested the Petitioner to work in 12 hour shifts or stay indoors for 24 hours in the Hostel. In default of both these options, the Petitioner was asked not to report for work from March 1996 onwards. Since there was no response from the Petitioner, by its letter dated 25 April 1996, the Respondent terminated the services of the Petitioner on the footing that the nature of her job was temporary. After receipt of this letter, the Petitioner made a representation to the

Respondent citing *inter alia* family circumstances and requesting for allotment of 8 hours' duty. The Respondent refused to accede to the request. It is the Petitioner's case that in the meantime with effect from 1 March 1996, the Petitioner was prevented from joining duties. The Petitioner thereupon carried the matter before the Commissioner of Labour claiming reinstatement with full back wages. By a reference made to the Labour Court, after failure of conciliation, the Labour Court passed the impugned award dated 21 April 2007. The Labour Court, in its award, held that the services of the Petitioner were terminated illegally. The case of the Respondent before the Labour Court that the Petitioner was employed on probation and that after completion of the probation period, she was terminated or that the Petitioner had herself stopped reporting for duty on receipt of the Respondent's letter dated 27 February 1996, was not accepted by the Labour Court. The Labour Court, however, considered the judgment of the Supreme Court in the case of **General Manager, Haryana Roadways Vs. Rudhan Singh**¹, particularly noting observations of the Court in that case that there was no rule of thumb that in every case where the Industrial Court enters a finding that the termination of service was in violation of Section 25F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, whether ad hoc, short term, temporary or permanent in character, special qualifications, if any, required for the job and the like, should be weighed and balanced in taking a decision regarding award of back wages. The Court considered that in the present case, the Petitioner had merely worked for the length of

1 2005 II CLR 1055, S.C.

about 10 months as Molkarin. The Respondent was a Government aided institution and a public trust. There was a specific ratio to be maintained in the appointment of the institution between open and reserved categories. The Court held that considering the length of service of the Petitioner and also various other factors noted above, it was not desirable to grant full back wages to the Petitioner. The Court also held that it was desirable in the facts and circumstances of the case that the Respondent should be ordered to pay the Petitioner compensation in lieu of reinstatement, in case it did not want to reinstate the Petitioner. Whilst allowing the reference partly, the Labour Court held that the Petitioner was entitled for reinstatement without back wages with continuity of service with effect from 1 March 1996 but without the attendant benefits except for pensionary benefits. The Court gave liberty to the Respondent to pay compensation of Rs.1,25,000/- to the Petitioner instead of reinstatement. The Respondent offered the compensation of Rs.1,25,000/- to the Petitioner in lieu of reinstatement, but the Petitioner refused to accept the same. The Petitioner instead moved a complaint under Item 9 of Schedule IV of the Industrial Disputes Act, 1947 before the Industrial Court, at Mumbai. Her case in the complaint was that the compensation could be offered to her only if she were to accept the same and not otherwise.

6 The Industrial Court whilst rejecting the complaint, clarified the position insofar as the relief awarded by the Labour Court was concerned. The Industrial Court held that the Respondent was to either reinstate the Petitioner with continuity of service with effect 1 March 1996 or in the alternative, pay her the compensation of Rs.1,25,000/-. In pursuance of the order of the Industrial Court, the Respondent offered a cheque of

Rs.1,25,000/-to the Petitioner. The Petitioner accepted and encashed the same. She, however, in her letter issued to the Respondent afterwards claimed that the cheque was accepted without prejudice to her right to challenge the order of the Industrial Court.

7 In my view, in the face of a clear order of the Industrial Court, requiring the Respondent to either reinstate the Petitioner without continuity of service or in the alternative, to pay her compensation of Rs.1,25,000, the Petitioner, having accepted the cheque, could not thereafter go back and claim that the cheque was accepted without prejudice to her right or claim of reinstatement and full back wages. The acceptance of the cheque can only be on the footing that she accepts the order of the Industrial Court clarifying the options of the Respondent.

8 In any event, even on merits, it is apparent that an industrial tribunal, in case it finds the termination of a workman's employment to be illegal, is expected to mould an appropriate relief. A relief in the form of reinstatement with full back wages is not to be awarded mechanically, but various circumstances (including those listed out in paragraphs 29 and 30 of the impugned award), have to be taken into account whilst moulding the relief. In the present case, considering the facts :- (a) that the Respondent was a public trust and a government aided institution, (b) the Petitioner was appointed on an ad-hoc basis without following any particular procedure of appointment, (c) the Petitioner worked with the Respondent only for a period of 10 months in all, (d) the Petitioner was terminated since she was not inclined to work for 12 hours or stay in the Hostel for blind women, as was the requirement of the duties attached to

her post, (e) desirability of awarding of reinstatement as the only permissible relief or awarding compensation in lieu of reinstatement, the Labour Court has come to the conclusion that it was desirable that though the Petitioner was entitled to be reinstated, the Respondent should be given an option to pay her compensation in lieu of reinstatement, if it felt that reinstatement may create some problems in future. This approach of the Labour Court and the order passed by it on the basis thereof, cannot be termed as perverse. The Court clearly acted within its jurisdiction and the order passed by it cannot be termed as impermissible, in the facts and circumstances of the case.

9 There is no merit in the challenge and the Petition is accordingly dismissed. No order as to costs.

(S.C.GUPTE, J.)