

Sequeira

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 3036 OF 2015

Mr.Hemant Bhapkar.

.. Petitioner

Vs

Lal Mohan Nimayachandra Sadhuka

Balaji Cooperative Housing Society, Ltd.,

.. Respondent

Mr.R.N.Shah a/w Mr.A.K.Gopalan i/b Haresh Mehta & Co., for the
Petitioner.

Mr.R.D.Bhat, for the Respondent.

**CORAM: N.M. JAMDAR, J.
Tuesday, 1 March 2016.**

Oral Order :

In this petition, the Petitioner employer challenges the Judgment of Labour Court and Industrial Court allowing the complaint filed by the Respondent's workmen and dismissing the revision filed by the Petitioner respectively.

2. The Respondent joined the services of the Petitioner as a G.Filler on 6 January 2004. He was confirmed in service on 1 October 2004. The contract was of M/s Lavanya Jewels Ltd. According to the Respondent on 1 December 2007, some of the officers of the Petitioner Company told him to get out of the factory and physically removed him. Taking this as an act of oral termination of service the Respondent filed Complaint No.19 of 2008 in the Labour Court, Mumbai. The Petitioner filed his reply/Say and took a stand that the Respondent voluntarily

abandoned the services having been questioned once about his failure to give the requisite production. The Labour Court considered the evidence oral as well as the documentary produced on record and concluded that the case of the Petitioner that the Respondent abandoned the services was not believable and the Respondent was terminated from services without holding any inquiry and therefore was entitled for reinstatement. The Labour Court allowed the complaint by order dated 26 August 2010 and directed the Petitioner to reinstate the Respondent with 25 % back wages. The revision filed by the Petitioner in the Industrial Court, Mumbai was dismissed by order dated 13 July 2015.

3. I have heard the learned counsel for the parties. The main question that arose is whether the Respondent abandoned services as alleged by the Petitioner or that he was terminated as alleged by the Respondent. This question is purely a question of fact for which assessment of oral and documentary evidence is required. The Labour Court, the Industrial Court as well as the Revisional Court have undertaken this task and have concluded the issue against the Petitioner.

4. The learned counsel for the Petitioner relied upon decision of learned Single Judge of this Court in the case of **Sonal Garments Vs Trimbak Shankar Karve** – 2003(1) L.L.N. 91, to contend that inspite of various letters sent by the Petitioner no response was received from the Respondent even during the pendency of the complaint and therefore, the fact situation in the present case is similar to that of the case in **Sonal Garments** (*supra*). He also

relied upon the admission given by the Respondent in the cross-examination that Respondent has no documentary proof to show that he reported on duty and was not taken. In the case of **Sonal Garments** (*supra*) rule was issued only to the extent of back wages and the matter which came up for final hearing was only in respect of grant of back wages. Therefore, observations made in paragraph 4 of this decision did not really arise for consideration of the Court. Even otherwise the learned Single Judge has observed that the findings recorded by the Labour Court as to whether there was oral termination or abandonment of services was entirely based on facts and evidence and therefore, it was not possible to interfere under Section 226 and 227 of Constitution of India.

5. To find out whether the approach of both the Courts is perverse and any failure of justice has occasioned, which is the limited scope available in this petition, the immediate reaction of the Respondent has to be noted. The Respondent after alleging that he was removed from service on 1 December 2007 within two days sent a letter on 3 December 2007 protesting about his removal from services and requested for reinstatement immediately. He also sent copies of the letters to the Authority and Labour Unions. This was followed immediately within 20 days by filing the present complaint. Thereafter the litigation has been actively pursued by the Respondent. In the complaint the Respondent has pleaded as under -

'e) That Complainant states that thereafter on 01.12.2007 when the Complainant was on duty at about

09.45 a.m. Mr.Sunil Sangle and Mr.Niranjan Thakur, the Officers of the Respondent came to the department and asked the Complainant to submit his resignation and also forced the Complainant to sign on some blank papers. However the Complainant refused to submit any resignation as such the Officers got annoyed and told the Complainant to go out of the department. The Complainant requested Mr.Sunil Sangle to inform as to what he has done however Mr.Sangle was in no mood to hear and told the Complainant to go out of the factory gate. Mr.Sangle also threw the lunch box of the Complainant out of the department and forcibly took the gate pass and locker keys and told the Complainant not to come to the factory. The Complainant states that the Respondent has not informed him about the reasons for removing him from the factory. The Complainant states that the Respondent has orally and illegally terminated his services w.e.f. 01.12.2007. The Complainant states that while terminating the services of the Complainant the Respondent has not issued him any show cause notice nor any charge-sheet or any enquiry is conducted against the Complainant. The Complainant states that the many of junior employees who joined after the Complainant joined the services are still in the employment. The Complainant states that the Respondent has not followed the last come first go nor has sought permission from the government while terminating the services of the Complainant. The Complainant states the oral termination of his services amounts to retrenchment however the Respondent has not followed the provision of section 25 F of the Industrial Disputes Act, 1947 while terminating his services'.

6. The Petitioner on the other hand has sent some letters asking the Respondent to join which were after receipt of letter dated 3 December 2007. When a query was put to the learned counsel for the Petitioner as to why the Respondent cannot join the services now, the response was that the services of the Respondent were

not good and when questioned, he had abandoned the services and that substantial period has lapsed. This position is also reflected in the say filed by the Petitioner. If this was the position, it is not understood as to how still the Petitioner kept on asking the Respondent to join the services. The conclusion drawn by both the Courts that these letters were addressed by the Petitioner merely for creating a record, cannot be termed as perverse.

7. The learned counsel then relied upon the decision in the case of **Messrs. Bharat Iron Works Vs Bhagubhai Balubhai Patel and Ors.** -*F.L.R. (S.C) page 72*, to contend that the findings regarding victimisation have been wrongly recorded by both the Courts, which is a serious imputation against the Petitioner. The Labour Court has after considering the evidence recorded a finding of fact that the Petitioner utilised man power to prevent the Respondent which amounted to colourable exercise leading to victimisation. Once the fact situation is recorded by both the Courts that the Respondent was illegally prevented from joining his duties, there was no perversity in recording the finding that it was by way of victimisation.

8. The learned counsel then contended that due to passage of time and since the Respondent had worked for a short duration reinstatement ought not to have been ordered or at the most suitable compensation could have been awarded. He relied upon the decisions in the case of **Senior Superintendent Telegraph (Traffic), Bhopal V Santhosh Kumar Seal & Ors.** - *2010 III CLR 17*. In the case of **Senior Superintendent** (*supra*) the Apex Court

considered breach of section 25-F while terminating services of a casual labourer who was employed by a public body. This methodology indicated in this decision cannot be *ipso facto* applied to the present case when the position is that the Courts have found that the Respondent was arbitrarily and by way of victimisation simply removed from services. The manner in which the services of the Respondent were dispensed with, if reinstatement is not granted it will encourage the Petitioner as well as other employers to adopt similar course of action by getting rid of their permanent staff and thereafter at the end of litigation plead that compensation be awarded. I am therefore, not inclined to interfere with the orders passed by both the Courts granting reinstatement to the Respondent.

9. As regards the grant of back wages of 25 % to the Respondent, the Respondent has filed independent Writ Petition and the issue of enhancement, if any, will be considered in the said Writ petition. That petition was also partly heard today with the present petition but the learned counsel for the Respondent i.e. Petitioner herein, sought time to file reply. Issue of enhancement of back wages will have to be deferred. As regards the present petition is concerned, as stated above there is no merit in the same.

10. Writ petition is rejected.

(N.M. JAMDAR, J.)