

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 730 OF 2003

Smt. Rajani Rajendra Rahate	...Petitioner
<i>Versus</i>	
M/s. Amersay Industries & Exports	...Respondent

....

Mr.Rahul L. Nerlekar, Advocate for the Petitioner.
Mr. K.S. Bapat, Advocate for the Respondent.

....

WITH
Writ Petition NO. 4033 OF 2002

M/s.Amersay Industries & Exports	...Petitioner
<i>Versus</i>	
Smt.Rajani Rajendra Rahate	...Respondent

....

Mr. K.S. Bapat, Advocate for the Petitioner.
Mr.Rahul L. Nerlekar, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 28th JULY, 2017

J U D G M E N T:

1. Heard Mr.Rahul Nerlekar, learned counsel for the petitioner in W.P. No.730/2003 & for the respondent in W.P. No.4033/2002, Mr.K.S. Bapat, learned counsel for the respondent in W.P. No.730/2003 & for the petitioner in W.P. No.4033/2002, at length.

2. Both these Petitions take exception to the judgment and order dated 16.3.2001 passed by the learned Presiding Officer, 11th Labour Court, Mumbai in Reference (I.D.A.) No.798/1996. By that order, the Labour Court allowed the Reference and directed M/s. Amersay Industries & Exports, hereinafter referred to as the 'first party', to reinstate Smt. Rajani Rajendra Rahate, hereinafter referred to as the 'second party' by granting her continuity of service and by paying 50% of her back wages on and from 1.12.1994 or till she is reinstated whichever is earlier.

3. Writ Petition No.730/2003 is instituted by the second party as the Labour Court denied 50% back-wages to her. Writ Petition No.4033/2002 is instituted by the first party challenging the order of reinstatement as also payment of 50% back-wages. The relevant and material facts, briefly stated, are as under.

4. The second party was appointed as a Tailor w.e.f. 1.3.1987. From 2.12.1993 to 29.11.1994, she remained absent. It is the case of the second party that her services were terminated on 1.12.1994. The conciliation proceedings were

held in the year 1996. The first party did not participate in the conciliation proceedings. Eventually the Deputy Commissioner of Labour, in exercise of powers under Section 10(1) and Section 12(5) of the Industrial Disputes Act, 1947 (for short, 'Act') referred the dispute for adjudication to the Labour Court for the following demand:

“Smt. Rajani Rajendra Rahate should be reinstated with full back wages and continuity of service with effect from 1.12.1994.”

5. The second party filed statement of claim on 26.3.1997. In paragraph-3, the second party contended that she had put in eight years service with the first party and her last drawn wages were Rs.1,700/- per month. She was orally terminated without any notice on and from 1.12.1994. She was not issued any show cause notice or memo. No enquiry was conducted against her before terminating her services. She, therefore, contended that the termination of her services are against the provisions of Section 25-F of the Act. She is, therefore, entitled to reinstatement in the service with full back-wages and continuity of service w.e.f. 1.12.1994 till she is allowed to resume her duties. In paragraph-5, it was

contended that from the date of termination of service, she is unable to secure alternate/gainful employment inspite of her efforts and, therefore, the first party may be directed to reinstate her in service with full back-wages and continuity of service from 1.12.1994.

6. The first party filed written statement resisting the claim. In paragraph-2, the first party contended that the second party remained absent from 2.12.1993 to 29.11.1994 on the ground of sickness. She reported for duties on 30.11.1994 for one day only and thereafter on and from 1.12.1994 she remained absent without prior permission and sanction of the employer. The second party did not make any leave application on 1.12.1994 till date nor she had given any sufficient or good reason for remaining absent. In paragraph-3, the first party contended that it had sent a letter dated 29.6.1995 to the second party stating therein that she is remaining absent without any proper leave and/or permission from the factory since 1.12.1994. Said letter was received by the second party. She did not give any reply nor she reported for duties. The first party denied that it had terminated the services of the second party as alleged and also denied applicability of Section 25-F of

the Act.

7. The first party also contended that the second party was gainfully employed. She was, therefore, not reporting for duties. The first party denied that the second party was unable to secure alternate / gainful employment.

8. On the basis of the pleadings of the parties, necessary issues were framed.

9. On 19.8.2000, the second party adduced her evidence and she was cross-examined on 25.8.2000. On 6.11.2000, the first party filed purshis *inter alia* contending that since her services were not terminated and second party of her own volition was remaining absent, she may report for duties if she is interested to work and the offer was made without prejudice to the rights and contentions of the first party raised in the written statement. It appears that on the same day the Court passed order directing the second party to join duty.

10. On 18.12.2000 the representative of the first party filed purshis to the effect that as per the order dated 6.11.2000, the second party reported for work on 13.11.2000 without prejudice to the rights and contentions taken in the

reference. It was further set out that the second party has already led her evidence in the matter and the matter is fixed for the evidence of the first party. It was further contended that the issue now remains only as regards the back-wages.

11. The first party thereafter adduced evidence of Suresh Maruti Sawant on 23.2.2001. By the impugned award, the Labour Court answered the Reference in the affirmative by ordering reinstatement of the second party workman along with continuity of service by paying her 50% of back-wages on and from 1.12.1994 or till she is reinstated whichever is earlier. It is against this order, the first party and the second party have instituted present Petitions.

12. W.P. No.4033/2002 instituted by the first party was heard for admission on 2.8.2002 when Rule was issued and Rule on interim relief was made returnable after six weeks. Statement made on behalf of the first party that the first party does not press for stay of the order of reinstatement was recorded and ad-interim relief insofar as it directed payment of 50% back-wages was stayed. By order dated 15.7.2003, ad-interim order granted on 2.8.2002 regarding back-wages was

continued till disposal of the petition. W.P. No.730/2003 was heard for admission on 22.4.2003 when Rule was issued and the petition was directed to be heard along with W.P. No.4033/2002.

13. Mr. Bapat submitted that basically the first party did not terminate the second party. The Labour Court did not record any finding as to whether in fact the first party terminated the second party. He, therefore, submitted that the issue of alleged termination of the second party may be kept open. It is not possible to accept this submission for more than one reason. In the first place, the first party came with the case that on 29.6.1995 they had sent a letter calling upon the second party to resume duties. Secondly, on 6.11.2000, the first party filed purshis *inter alia* contending that since her services were not terminated and the second party of her own volition was remaining absent, she may report for duties, in case she is interested to work. On the same day, the Court passed order directing the second party to join the duty. Thirdly, on 18.12.2000, the first party filed purshis setting out therein that as the second party has reported for work on 13.11.2000, the issue now remains only as regards the back-

wages. In other words, question of reinstatement was not kept open. In view thereof, the question of termination and reinstatement of the second party cannot be kept open.

14. A perusal of the impugned order shows that evidence and more particularly paragraphs-5 and 6 of cross-examination of the second party was not at all considered by the Labour Court. The Labour Court has only considered paragraph-8 of the cross-examination of the second party. This is evident from paragraph-23 of the impugned order. As the Labour Court has not considered the evidence on the question of back-wages, the impugned order deserves to be set aside to the extent of back-wages only. Hence, the following order:

- (i) The finding recorded by the Labour Court on the question of back-wages is set aside. The matter is remitted to the Labour Court for deciding the question of back-wages afresh on the basis of evidence already on record.
- (ii) By way of abundant caution, it is made clear that this Court has not interfered with the order of

reinstatement.

(iii) Rule in W.P. Nos.730/2003 and 4033/2002 is partly made absolute in aforesaid terms with no order as to costs.

(iv) Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)