

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 8032 OF 2016

M/s. Symbiosis Hospital
Through Chairman

...Petitioner

Versus

Vaishali Chandrakant Dhumal

...Respondent

....

Mr.Uday P. Warunjikar, Advocate for the Petitioner.

Mr.Ravindra K. Pandit, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 07th JUNE, 2017

P.C.

1. Heard Mr.Uday Warunuikar, learned counsel for the petitioner and Mr.Ravindra Pandit, learned counsel for respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 5.5.2015 passed by the learned Presiding Officer, Labour Court, Satara in Reference (I.D.A.) No.3/2011. By that order, the learned Judge partly answered the reference in affirmative and set aside the termination order of the respondent/second party dated 18.12.2010. The petitioner/first party was directed to

reinstate the second party with continuity of service and 50% back wages.

3. In support of this Petition, Mr. Warunjikar invited my attention to Ground (vii) to contend that during the course of cross-examination the second party admitted that she is working with another Doctor by name Dr. Santosh Jadhav. He also invited my attention to the reply dated 10.2.2011 filed by the first party before the Labour Officer, Satara. In that reply it is specifically asserted that the second party does not have requisite educational qualifications for appointment on the post of Nurse. It was further set out therein that after perusing the record the second party was not even appointed on temporary basis as a Nurse. She was never paid Rs.3,500/- per month by way of salary and after two years she was not paid salary of Rs.4,800/- per month. Mr. Warunjikar has taken me through the impugned order. He has also taken me through paragraph-3 of the Writ Petition to contend that the first party did not file written statement as the Advocate representing the first party did not give correct advise and, therefore, written statement was not filed.

4. Mr. Warunjikar submitted that by order dated 6.3.2017, this Court directed the first party to deposit a sum of Rs.1,25,000/- to show *bonafides* of the petitioner. Accordingly the first party/petitioner has deposited Rs.1,25,000/- in this Court. He, therefore, submitted that the Petition requires consideration or in any case an opportunity should be given to the petitioner to contest the proceedings before the trial Court.

5. On the other hand, Mr. Pandit supported the impugned order and submitted that 'No-WS' order was passed against the first party on 13.7.2012. However, no attempt was made for filing application for recalling the order dated 13.7.2012. The first party has also cross-examined the second party. The first party participated in the trial. The trial Court also considered the fact that the second party is working with Dr. Santosh Jadhav and, therefore, she has some source of income. The trial Court considered this aspect and accordingly ordered payment of only 50% back-wages. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by

learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the impugned order shows that the notices were served upon the first party. The first party appeared in the matter, but, failed to file written statement. On 13.7.2012, the learned trial Judge passed 'No-WS' order. The first party, however, did not take any steps for recalling that order. On the other hand, the first party participated in the trial and cross-examined the second party on 18.2.2015. In paragraph-9, the learned trial Judge observed that the evidence adduced by the second party remained unchallenged. In paragraph-10, the learned trial Judge observed that the second party has rendered more than 240 days of service preceding the date of her termination and that she has discharged her initial burden. In paragraph-11, the learned trial Judge reiterated that the evidence adduced by the second party is remained unchallenged. It was observed that the services of the second party were terminated without following the provisions of Section 25-F of the Industrial Disputes Act, 1947. Therefore there was violation of said provisions. No charge-sheet was issued and no enquiry was conducted by the first party. The learned trial Judge, therefore, held that the termination is

illegal. In paragraph-14, the learned trial Judge noted that the second party has some source of income as she is working with Dr. Santosh Jadhav and, therefore, did not award 100% back-wages.

7. Mr. Warunjikar submitted that the first party was not given correct advise by the Advocate and, therefore, no written statement was filed. Paragraph-3 of the Petition reads thus:

“3. So far as the notices are concerned, notices were issued in favour of the present petitioner herein. The petitioner availed the services of the learned Advocate. However, the learned Advocate has not given the correct advise and therefore written statement was not filed by the present petitioner herein. In view of the same, no written statement order came to be passed on 13.7.2012.”

I do not find any merit in this submission. A perusal of the statement of claim submitted by the second party, and in particular paragraph-2 thereof, shows that the first party/petitioner is a hospital having near about 60 beds. The first party has engaged more than 50 employees and 25 doctors for running the hospital. The petition is affirmed by the Chairman of the hospital who is also a Doctor. In other words,

the hospital is run by highly qualified persons. In the case of ***Salil Dutta v. T.M. & M.C. Private Ltd., JT 1993 (4) S.C. 528,*** the Apex Court considered its earlier decision in Rafiq and another v. Munshilal and another, AIR 1981 SC 1400. In paragraph-7, the submissions advanced by the defendant that their Advocate advised them that until the interlocutory applications filed by them are disposed of, the defendant need not appear before the Court, was dealt with by Apex Court by observing that, "It is difficult to believe that the defendants implicitly believed their advocate's advice. Being educated businessmen they would have known that non-participation at the final hearing of the suit would necessarily result in an adverse decision. Indeed we are not prepared to believe that such an advice was in fact tendered by the advocate. No advocate worth his salt would give such advice to his client."

8. In paragraph-8, Apex Court observed thus :

"8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence

and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the Court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear - they chose to non-cooperate with the court. Having adopted such a stand towards the Court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.”

9. I have already extracted paragraph-3 of the Petition. The petitioner has not assigned any reason as to what prevented them from giving instructions to the Advocate for drafting the

written statement. It is common knowledge that unless the instructions are given by a litigant, an Advocate would not be in a position to draft the proceedings. It is not the case of the petitioner that despite giving necessary instructions to its Advocate, the concerned Advocate did not file written statement. No explanation worth the name is given in the entire petition as to why no efforts were made for recalling 'No WS' order dated 13.7.2012. In my opinion the decision of **Salil Dutta** (supra) squarely applies to the facts of the present case.

10. Mr. Warunjikar submitted that in the reply dated 10.2.2011 filed by the first party before the Labour Officer, Satara it was specifically asserted that the second party does not have requisite qualifications for appointment on the post of Nurse. The second party was not even appointed on temporary basis as Nurse. She was never paid salary @ Rs.3,500/- per month and subsequently @ Rs.4,800/- per month. The second party is also working with Dr. Santosh Jadhav. The learned trial Judge has not considered these aspects. I do not find any merit in these submissions. As noted earlier, the first party did not file written statement. Thus the case that the second party does not have requisite qualifications for appointment on the post of Nurse is

neither pleaded nor substantiated. As far as admission of the second party that she is working with Dr. Santosh Jadhav is concerned, the learned trial Judge has considered this aspect in paragraph-14 and instead of awarding 100% back-wages awarded 50% back-wages.

11. In view thereof and for the reasons recorded in the impugned order, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

12. At this stage, Mr.Warunjikar orally applies for continuation of the ad-interim order dated 6.3.2017 for a period of six weeks from today. He assures that no further extension will be sought for. In view thereof, notwithstanding dismissal of the Writ Petition, ad-interim order dated 6.3.2017 staying further proceedings in Complaint (U.L.P.) No.96/2015 pending before the Industrial Court, Satara, shall remain in force for a period of six weeks from today, with express understanding that no application for extension shall be made and entertained. Order accordingly.

(R. G. KETKAR, J.)