

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

WRIT PETITION NO. 6106 OF 2018

Fourth Dimension Architects Pvt.Ltd.

...Petitioner

Vs.

Ms.Sangeeta Narayan Karney

...Respondent

Mr.Nitin Kulkarni for Petitioner.

Mr.Chaitanya Nikte with Prasad Sanankar I/b. Yash J. Mehta for
Respondent.

CORAM : S.C. GUPTE, J.

DATE : 9 JULY 2018

P.C. :

Heard learned Counsel for the parties.

2 The petition challenges an order passed by the Labour Court at Pune in a complaint of unfair labour practice and the revisional order passed by the Industrial Court at Pune confirming findings on certain issues, whilst remanding the matter to the Labour Court to decide the issue of limitation as well as the issue of backwages.

3 The Respondent herein, who was the original complainant and also the revision petitioner before the Industrial Court, was an employee of the Petitioner herein working as a Receptionist-cum-Telephone Operator with effect from 11 December 1993. Originally, the Respondent filed a complaint of unfair labour practice under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices

Act, 1971 on the threat of termination. She also filed an interim application in the complaint. Pending her complaint and hearing of the interim application, she was terminated by an order dated 28 July 2012 with immediate effect. The termination was challenged by her. One of the grievances against the order of termination was that it was not issued by the Manager, who was the competent authority under the standing orders but was issued by an unauthorised person. It was also her case that the termination amounted to a punitive action; that it was contrary to the provisions of the standing orders and in disregard to the principles of the natural justice. It was the Respondent's case that the employer had not followed the procedure laid down for retrenchment under section 25G of the Industrial disputes Act. The Labour Court framed six issues in the complaint. The issues, with which we are concerned in the present petition, are Issue Nos.2,3,4 and 5. Issue No.2 dealt with the objection of the Petitioner on the ground of limitation. This issue was held in favour of the Respondent. Issue Nos.3 and 4 dealt with the legality or justification of the order of termination. Both these issues were held in favour of the Respondent. On Issue No.4, which dealt with the relief to be granted to the Respondent, the Labour Court held that in the facts of the case, the Respondent was only entitled to reinstatement with continuity of service and not backwages. Both the Petitioner herein and the Respondent were aggrieved by this order and filed revision applications before the Industrial Court. The Industrial Court held that the impugned order of the Labour Court exhibited a legal error apparent on the face of the record, since it condoned the delay on the part of the Respondent to file the complaint in the absence of any prayer for condonation of delay. The court was of the view that, in the premises, it would be just and proper to direct the Labour Court to decide the issue of delay provided the Respondent (original

complainant) filed a separate application or made a suitable amendment in her complaint for condonation of delay. As far as the issues on merits of the complaint, namely, Issue Nos.3 and 4, are concerned, the Industrial Court did not find any fault with the findings of the Labour Court on these issues. As far as the question of relief forming the subject matter of Issue No.5 is concerned, the Industrial Court held the finding of the Labour Court for refusing backwages to be based on misconception of law. The court was of the view that the complainant had claimed reinstatement with consequential benefits and that the relief of backwages was a consequential relief; it need not have been prayed for separately. The court was of the view that, in the premises, it was in the interest of justice to remand the complaint to the Labour Court even on the aspect of backwages to enable the court to consider that relief on merits.

4 No infirmity can be found with the impugned order of the Industrial Court. Learned Counsel for the Petitioner questions the order of the Industrial Court to the extent it observes that the findings of the Labour Court on Issue Nos.3 and 4 are held to be legal and proper and also to the extent of remand of the complaint concerning the issue of backwages and adjustment. On Issue Nos.3 and 4, the Labour Court found that the transfer order issued to the complainant, which was placed on record, showed that she had been transferred to Accounts Division from 1 October 2009. A designation change letter was issued to her changing her designation from Assistant Manager, FMG to Manager, Accounts. Thereafter, an appointment letter-cum-Agreement dated 1 April 2012 was issued, which showed her status as deliberately graded down and her appointment as a Receptionist, reducing her basic salary and a further letter in May 2012 was issued transferring her to Accounts Department. In these circumstances, the

Labour Court was of the view that there was no evidence to show that the work or performance of the Respondent was unsatisfactory. The court observed that the Petitioner company had not produced any oral or documentary evidence in that behalf. The only argument advanced on behalf of the employer was that on the date of the termination, the complainant was paid compensation along with the termination letter. The court was of the view that the record shows that the Respondent's designation was changed on various occasions and by a new appointment letter-cum-agreement, a fresh appointment was sought to be made. The court was of the view that when the Petitioner's conduct in this behalf was challenged by the Respondent in a complaint of unfair labour practice, during the pendency of the complaint, her services were hurriedly terminated purportedly for a reason for which there was no evidence. There is nothing in the record of the case to suggest that the view of the Labour Court in this behalf is untenable or impossible.

5 Learned Counsel for the Petitioner submits that there is no finding of the court on the question of the Respondent having been rendered surplus. It is true that there is no direct discussion on the point. At the same time, the record does not bear out any argument actually advanced before the court below in this behalf. The only stand of the Petitioner company, which is reflected in the order, is that the complainant was not in a position to discharge her duties to the satisfaction of the employer and, therefore, it was decided to put an end to her service and accordingly, the termination letter along with compensation was served on her. In the premises, no infirmity can be found with the impugned order of the Labour court for this reason.

6 The Industrial Court has, accordingly, not found any fault with the impugned order of the Labour Court, insofar as Issue Nos.3 and 4 are concerned. The orders of the court below clearly reflect a possible view, which does not merit any interference in the writ jurisdiction of this court.

7 As far as the question of backwages is concerned, such wages appears to have been denied to the Respondent without any material on record to justify the denial. The only ground, which appears to have been considered by the Labour Court on this issue, was the absence of a specific prayer in that behalf in the Respondent's complaint. The Respondent had prayed for reinstatement with continuity of service and with consequential benefits. The Industrial Court was right in observing that consequential benefits in a matter like this would include even backwages. The Labour Court, in the premises, was bound to go into admissibility and propriety of the prayer for backwages claimed by the complainant. The matter has, accordingly, been correctly remanded by the Industrial Court to the Labour Court. There is no infirmity with this part of the order either.

8 In the premises, there is no merit in the petition. The petition is dismissed. It is, however, clarified that the Petitioner shall be entitled to submit such extra pleadings and lead such additional evidence as it may deem fit on the issues both of limitation and backwages. Even the Respondent employee is likewise free to file pleadings or lead evidence. No order as to costs.

9 The Industrial Court has fixed a time frame of three months for decision of the complaint by the Labour Court on remand. Since the present petition has been pending all these days and since this court has

now clarified the position that further pleadings and evidence may be allowed on the two issues, which are remanded to the Labour Court, the time limit is extended by a period of further three months from today.

(S.C. GUPTE, J.)