

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1445 OF 2003

Sarda Cloth Stores,
Sarda Lane, Ahmednagar
through Managing partner

...PETITIONER

VERSUS

Pandharinath Bhanudas Mehetre,
R/o Shri Bhakti Niwas,
Station Road, Front of Akshaye
Nursing Home, Ahmednagar,
Tq. and Dist. Ahmednagar.

...RESPONDENT.

...
Advocate for the Petitioner : Shri B. B. Yenge
Advocate for the Respondent : Shri P. V. Barde

...
CORAM : RAVINDRA V. GHUGE, J.

DATED : 09th MAY, 2019.

...

ORAL JUDGMENT :

1. The petitioner establishment is aggrieved by the judgment of the Industrial Court dated 08/01/2003, vide which, the respondent original complainant before the Labour Court, was granted reinstatement in service and his Revision (ULP) No. 66/1997 was allowed.

2. The prayers at clauses (C) and (D) in the petition, read

as under :-

"(C) To quash and set aside the order dated 8.1.2003 passed by the Hon'ble Member of the Industrial court in revision ULP No. 66/1997.

(D) To quash and set aside the order dated 30.4.1997 passed by the Hon'ble Labour court at Ahmednagar in complaint ULP No. 3/1990."

3. The learned Advocate for the petitioner submits that though the petitioner partnership firm is one of the largest cloth stores in this part of the State, he tried to contact his client and did not receive any instructions and response. He has still performed his duty of arguing extensively in this matter in the light of the grounds formulated by him in the memo of the petition.

4. The respondent who was admittedly working as a sales person in the shirting section of the petitioner establishment from 1981, approached the Labour Court by preferring complaint (ULP) No. 3/1990, alleging that he was orally terminated on 24/06/1989. Section 25 F of the ID Act was not complied with. No departmental enquiry was conducted

under the Model Standing Orders. He prayed for being allowed to work in the shop as usual, but was restrained by the Management. A letter dated 17/07/1989 was addressed to the Management, which was not accepted. He approached the Assistant Commissioner, Labour on 06/09/1989 and as the matter was not settled, he lodged the ULP complaint before the Labour Court.

5. The learned Advocate for the Management points out that an allegation was levelled upon the respondent that while he was working in the shirting section on 23/06/1989, he held the hand of a lady customer in between 3.30 to 3.45 p.m. There were three witnesses. As he misbehaved with the lady customer on 23/06/1989, he was issued with a letter after one month on 25/07/1989 which can be termed as a show cause notice. Thereafter, he himself stopped reporting for duties and has abandoned employment. In this backdrop, neither the Labour Court could have granted reinstatement as a fresh employee by the judgment dated 30/04/1997, nor could the Industrial Court have allowed Revision (ULP) No. 66/1997 filed by the respondent workman granting him reinstatement him service with continuity and full back wages.

6. The learned Advocate for the respondent worker submits that there are several fallacies in the conflicting stands taken by the Management. On the one hand, it is canvassed that the employee had held the hand of a lady and he could not be kept in employment. On the other hand, it is stated that he himself abandoned employment. He then points out the stand taken by the Management that they had issued a notice to the worker asking him to report for duties and then it is stated that a grave and serious misconduct is committed by the workman since he held the hand of a woman. Shri Barde then points out that even after the Labour Court directed induction of the workman as a fresh employee in the service of the Management, the petitioner Management did not challenge the said judgment and accepted the verdict of the Labour Court. In this backdrop, Mr. Barde submits that assuming that he might as well waive the effect of the impugned judgment of the Industrial Court, the Management should implement the judgment of the Labour Court, which it had unequivocally accepted and it cannot directly challenge the same in this Court.

7. I find that Shri Barde has put forth an interesting argument. Even if this petition was to be allowed and the judgment of the Industrial Court was to be set aside, the Management would be legally bound to implement the judgment of the Labour Court and grant continuity and back wages from the date of the said judgment which is 30/04/1997 till the date of superannuation of the respondent which is 2013, as it has not challenged the same before the Industrial Court. It cannot challenge the judgment of the Labour Court, directly before this Court in view of *Engineering Employees Union Vs. Devidayal Rolling and Refinery Pvt. Ltd. [1986 (52) FLR 40 = 1986 Mh.L.J. 331]* and *Clifford Rebello v/s Hotel Oberoi Towers [(2001) III CLR 805]*,

8. Notwithstanding the contentions of the parties as recorded above and even if it is to be assumed that this petition could be partly allowed and the Industrial Court judgment could be set aside by restoring the judgment of the Labour Court, the respondent would be entitled for all wages and continuity from the date of the judgment of the Labour

Court. However, I do not find it appropriate to adopt this option for the reason that, notwithstanding that the Management did not conduct an enquiry against the respondent, their defence that he abandoned employment is unsustainable in the light of the judgment of the Honourable Supreme Court in the matter of *Novartis India Ltd. Vs. State of West Bengal and others*, [(2009) 3 SCC 124 = AIR 2008 SC (Suppl) 836], coupled with the fact that he had not abandoned employment as he promptly approached the Assistant Commissioner, Labour on 06/09/1989.

9. I deem it appropriate to take into account the following factors :

(a) The workman had worked with the petitioner establishment from 1981 to 1989, a period of 8 years in employment.

(b) The Labour Court had directed re-appointment of the workman. The Industrial Court had directed his reinstatement and this Court, while admitting the petition on 16/06/2003, refused interim relief as against reinstatement.

(c) The respondent had been reinstated in employment on

01/07/1998 after he had filed Contempt of Court proceedings.

(d) After he withdrew the Contempt proceedings, he was again discontinued on 02/04/2004.

(e) He was paid wages from 01/07/1998 to 02/04/2004, @ Rs. 900/- per month, an amount of Rs. 56,000/-.

(f) As such, he is out of employment for 9 years from 2004 to 2013.

10. In the above backdrop, I deem it appropriate to rely upon the following four judgments of the Honourable Apex Court :-

(a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal,*

[2013 LLR 1009] ;

(b) *Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh, [(2013) 5 SCC 136] ;*

(c) *BSNL Vs. Man Singh, [(2012) 1 SCC 558] ; and*

(d) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board, [(2009) 15 SCC 327].*

11. In the above judgments, the Honourable Apex Court has held that it would not be pragmatic and practicable to reinstate

a workman after a long spell of unemployment. Instead, he could be paid quantified compensation for each year of service rendered by him. In 2012-2013, the Honourable Apex Court quantified compensation at the rate of Rs.30,000/- to Rs. 40,000/- per year of service.

12. In the peculiar facts of this case where the Labour Court had granted re-employment, the Industrial Court had granted reinstatement and this Court had not interfered with the relief of reinstatement, it would have been appropriate to grant reinstatement with continuity of service and full back wages from the date of the Labour Court's judgment, in the light of the judgment delivered by the Honourable Apex Court in the matter of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyala (D.Ed.) and others [(2013) 10 SCC 324]*. However, as an allegation of holding the hand of a lady customer in the shop has been levelled and since he was reinstated for a period of 1998 to 2004, it would be inappropriate to grant him reinstatement upto the date of his superannuation in 2013. Keeping this in mind, I am granting compensation to the respondent for his remainder service of

nine years, by modifying the impugned judgments.

13. This petition is, therefore, partly allowed. The impugned judgment of the Industrial Court stands modified and the effect of the judgment of the Labour Court would lose its efficacy in view of the following directions :-

- (a) The petitioner shall deposit an amount of Rs. 3,25,000/- as a quantified compensation, before the Industrial Court, Ahmednagar, on or before 25/06/2019, keeping in view the request that the employee is suffering from age related issues and finds it difficult even to walk.
 - (b) If the amount is not deposited, it shall carry interest at the rate of 6 % per annum from April 2004 until the said amount is deposited.
14. After the amount is deposited, the respondent shall withdraw the said amount under identification by the Advocate, without conditions, by tendering a recent photograph, a copy of the Election Commission Voter ID Card and present address proof.
15. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

shp/-