

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12587 OF 2017

Suraj Pressings Pvt. Ltd. **... PETITIONER**

VERSUS

Ravindra Rajaram Bhairi **... RESPONDENT**

.....
Shri V.N. Upadhye, Advocate for petitioner
Mrs. B.B. Gunjal, Advocate for respondent

.....

WITH

**CIVIL APPLICATION NO.3286 OF 2020 IN
WRIT PETITION NO.12587 OF 2017**

Ravindra Rajaram Bhairi **... APPLICANT**

VERSUS

Suraj Pressings Pvt. Ltd. **... RESPONDENT**

.....
Mrs. B.B. Gunjal, Advocate for applicant
Shri V.N. Upadhye, Advocate for respondent

.....

WITH

**WRIT PETITION NO.11884 OF 2017 WITH
CIVIL APPLICATION NO.12277 OF 2017**

Ravindra Rajaram Bhairi

... PETITIONER

VERSUS

Suraj Pressings Pvt. Ltd.

... RESPONDENT

.....
Mrs. B.B. Gunjal, Advocate for petitioner
Shri V.N. Upadhye, Advocate for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 8th February, 2021

Date of pronouncing order : 6th May, 2021

ORDER :

Both these Writ Petitions are being decided by this common order since the challenge therein is to one and the same order passed by the Judge, Labour Court, Ahmednagar on 28/11/2016 in Complaint (ULP) No.21/2013, and confirmed by the Member, industrial Court, Ahmednagar, vide his judgment and order dated 10/7/2017, passed in Revision (ULP) No.34/2016 and Revision (ULP) No.3/2017.

For the sake of convenience, the parties and the pleadings of Writ Petition No.12587/2017 are being referred to.

2. The petitioner is an industrial undertaking. The

respondent claims to be workman, employed by the petitioner Company on 26/2/2012. The services of the respondent were terminated by the petitioner Company w.e.f. 1/7/2013. The respondent, therefore, filed Complaint (ULP) No.21/2013, alleging the petitioner Company to have indulged in unfair labour practice, described in Clause 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, MRTU & PULP Act). The Labour Court allowed the complaint, directing the petitioner Company to reinstate the respondent in service and pay him 50% of back wages. Both, the petitioner and respondent challenged the said order in Revisions before the Member, Industrial Court. The petitioner Company preferred the revision for setting aside the order passed by the Labour Court while the respondent preferred the revision with a prayer for grant of full back wages. Both the revision applications have been rejected. The petitioner Company and the respondent have, therefore, preferred these Writ Petitions.

3. Heard Mr. Upadhye, learned counsel for the petitioner Company and Mrs. Gunjal, learned counsel for the respondent employee. Perused the impugned orders and the relevant evidence relied upon.

4. Shri V.N. Upadhye, learned counsel for the petitioner Company would submit that, the respondent was appointed as a Design Engineer vide order dated 23/2/2012. The appointment was on probation for a period of two years. The post held by the respondent was managerial and supervisory. The respondent was not a workman within the definition of Section 2(S) of the Industrial Disputes Act, 1947 (I.D. Act for short). He worked only for 16 months. His services came to be terminated for unsatisfactory performance. The respondent has been paid all the monetary dues then due. The petitioner Company had disputed the respondent's status as a workman. The Labour Court, therefore, did not have jurisdiction to entertain and decide the complaint. No issue regarding the respondent's status as a workman was framed by the Labour Court. The respondent held the post of a Design Engineer. He is well qualified. The nature of duties performed by him were managerial and supervisory as well. The Labour Court did not give due weightage to the evidence produced by the petitioner Company in proof of the managerial duties performed by the respondent. On the question of back wages, the learned counsel would submit that the petitioner Company had offered the respondent reinstatement in terms of the interim order

passed by the Court. The respondent did not resume duty. He has been gainfully employed. The documentary evidence in that regard was produced before the revisional Court. The Learned Member, Industrial Court, however, has neither considered the said evidence nor made any whisper in that regard in the impugned order. There are averments in the petition regarding gainful employment of the respondent. Documentary evidence has also been produced along with the Writ Petition. The respondent, in his affidavit, has not traversed the same. According to learned counsel, the order granting back wages therefore needs to be set aside.

5. The learned counsel for the petitioner Company would further submit that, the recent trend of judicial pronouncements does indicate that, granting of compensation instead of reinstatement with or without back wages is an adequate relief. The learned counsel has relied on a few authorities in this regard. He would further submit that, this Court, vide order dated 8/8/2018, has observed that, "... as sufficient bad blood has been shed between the parties, learned Advocate for the management makes an offer that he is willing to pay the quantified compensation of about 6 months wages in order to part ways with the complainant." The Court also observed that, no issue has been framed as to

whether the respondent was a workman in terms of Section 2(S) of the I.D. Act. The learned counsel for the petitioner Company ultimately urged for allowing the petition.

6. Mrs. Gunjal, learned counsel appearing for the respondent would, on the other hand, submit that, the Labour Court, on appreciating the evidence in the case, held the respondent to be a workman. The revisional Court has affirmed the said finding. This Court, in exercise of jurisdiction under Article 227 of the Constitution of India, cannot reopen the said issue and again decide on the basis of factual matrix of the case. The learned counsel would submit that, in case of illegal termination of services, the normal rule is grant of reinstatement with full back wages. She has relied on the judgment of the Apex Court in the case of **Hindustan Tin Works (Private) Ltd. Vs. Employees of Hindustan Tin Works (Private) Ltd.** [1979 L.L.N. 6 (Supreme Court)]. The learned counsel would further submit that, the respondent was not allowed to resume his duties. He, therefore, filed five criminal complaints against the petitioner Company. The respondent is unemployed. He is the sole bread winner in the family. The learned counsel, therefore, urged for grant of full back wages.

7. Admittedly, the respondent was appointed as a Design Engineer w.e.f. 26/2/2012. The appointment order does not spell out the respondent to have been appointed as a probationary nor does it contain nature of duties to be performed by him. True, the respondent, before joining the service with the petitioner Company, had served with three different industrial establishments. He is not a degree holder in the stream of Engineering. He did I.T.I. in Draftsman – Mechanic. On appreciating the oral evidence in the case, both the Courts below have observed the respondent to have been appointed as a workman. In exercise of writ jurisdiction and more particularly in view of the evidence referred to hereinabove, I do not proposal to reappreciate the evidence. True, the Labour Court did not frame the issue as to whether the respondent was a workman within the meaning of Section 2(S) of the I.D.A Act. Although such an issue has not been framed, on appreciating the evidence in that regard, it held the respondent to be a workman. The issue No.1 framed by the Labour Court was :-

“Whether the present complaint is maintainable in the eye of law against the respondent ?”

8. The findings recorded on this issue with the

reasons given cover the question as to whether the respondent was a workman.

In case of **S. Kalyankrishnan Vs. Blue Star Ltd.** (Letters Patent Appeal No.1549/2011), it has been observed by Gujarat High Court :

“The principle therefore is, one must look into the main work and that must be found out from the main duties. A supervisor was one who could bind the company to take some kind of decision on behalf of the company. One who was reporting merely as to the affairs of the company and making assessment for the purpose of reporting was not a supervisor. . . .

The term ‘supervisor’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

9. It is reiterated that the Labour Court, on appreciating the evidence in the case, has found the respondent to have been a workman within the meaning of Section 2(S) of the I.D. Act. The revisional Court has affirmed the said finding. After having gone through the findings of

fact recorded by the Labour Court, I do not find that a different view was possible therefrom.

10. The services of the respondent have been orally terminated. He had admittedly worked for about 16 months. He completed 240 days of continuous service during first year of service. The order of appointment is silent to state him to have been employed as a probationer. Before terminating his services, he had neither been given three months' notice nor salary in lieu thereof. Both the courts below have found the petitioner Company to have been governed by the model standing orders. In view of both the Courts below, in case of a workman, probationary period completes on completion of three months of uninterrupted service. Admittedly, the respondent had not been given any memo or communication informing him that his performance was satisfactory. As such, the termination of services of the respondent has rightly been held to be illegal.

11. The learned counsel for the petitioner Company relied on a judgment of the Apex Court in case of **Jagbir Singh Vs. Haryana State Agriculture Marketing Board & anr. [2009 AIR (SCW) 4824]** to submit that, in case of termination of a daily wager in violation of provisions of Section 25(F) of the

I.D. Act, compensation in lieu of reinstatement shall meet the ends of justice. The judgment of the Apex Court in case of **Assistant Engineer, Rajasthan Dev. Corp. & anr. Vs. Gitam Singh [(2013) 2 SCC 136]** has also been relied in this regard. Besides, the judgment rendered by learned Single Judge of this Court in Writ Petition No.4216/1997, Writ Petition No.2636/2019 and Writ Petition No.4215/1997 etc. are also relied upon.

12. The facts of the judgment of the Apex Court relied on indicate that those were cases of a daily wagers. The facts of the case in hand are quite different. The respondent was not a daily wager. He was appointed as a Design Engineer at a fixed pay of Rs.14,000/- per month. His salary was to be revised after three months of his appointment. The salary is, however not been revised. Be that as it may, it has been observed by the Apex Court in the case of Hindustan Tin Works (supra) :-

“Ordinarily workman whose service has been illegal terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness, that is the normal rule.”

13. In the present case, by an interim order, the order

of termination was stayed. The petitioner Company was directed to allow the respondent to resume duties. The petitioner Company has been unsuccessful in revision challenging the interim order. It, however, appears that, the respondent has given a lame excuse to resume the duty. The petitioner Company had issued him a letter, asking to join the service as a probationer. According to the respondent, since he was not a probationer, the letter issued by the petitioner Company was not in compliance with the interim order. It is also his case that, in spite of his efforts to resume the duty, the petitioner Company did not allow him to join. It is a question of fact. Same cannot be gone into in this Writ Petition. The Industrial Court has rightly observed that the respondent could have joined or resumed duty under protest. The petitioner Company has produced on record some documents to indicate the respondent to have been gainfully employed with the GAL IMPEX Company. Some documents have also been produced on record to indicate that a certain sum of money has been deposited in the Bank Account of the respondent each month. The same is said to be towards his salary. These documents were produced before the Industrial Court. It appears that, the Member, Industrial Court, did not look into these documents. The petitioner Company has

produced these documents along with the Writ Petition. An affidavit in support thereof has also been filed. These facts have not been duly traversed by the respondent. It has, therefore, to be inferred that the respondent appears to have been gainfully employed. The fact that he did not join the duty under protest speaks in volume. In my view, therefore, ends of justice would be met if the petitioner Company is directed to pay the respondent one fourth of his salary of Rs.14,000/- without there being any hike therein until he is reinstated in service. On his reinstatement, his salary may be notionally fixed, granting him all the benefits of revision in the pay and perks and the same be actually paid to him from his resumption/ reinstatement of duty.

14. For the reasons given hereinabove, the Writ Petitions stand disposed of in terms of the following order.

ORDER

(i) Writ Petition No.12587/2017 is partly allowed. The order passed by the Labour Court, dated 28/11/2016, and affirmed by the Industrial Court as regards granting of 50% back wages is hereby set aside with a direction that the petitioner Company is directed to pay the respondent one fourth of his salary of Rs.14,000/- without there being any

hike therein until he is reinstated in service. On his reinstatement, his salary may be notionally fixed, granting him all the benefits of revision in the pay and perks and the same be actually paid to him from his resumption/reinstatement of duty.

(ii) Writ Petition No.11884/2017 is dismissed.

(iii) In view of disposal of the Writ Petitions, Civil Applications are disposed of.

**(R. G. AVACHAT)
JUDGE**

fmp/-